

ADMINISTRATIVE PANEL DECISION

Pixabay GmbH v. Anonymize, Inc.

Case No. D2023-2254

1. The Parties

The Complainant is Pixabay GmbH, Germany, represented by SafeNames Ltd., United Kingdom.

The Respondent is Anonymize, Inc., United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <pixabaz.com> (the “Disputed Domain Name”) is registered with Epik Holdings Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 24, 2023. On May 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On May 26, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 25, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 26, 2023.

The Center appointed Nicholas Weston as the sole panelist in this matter on June 29, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant operates a business that makes available online more than 4 million stock images, video, and music files as a subsidiary of Canva Pty Ltd, the operator of a popular online graphic design platform. The Complainant holds a number of registrations for the mark PIXABAY including, for example, Australian Trademark No. 2004679, registered in classes 9, 42, and 45, on April 22, 2019.

The Complainant owns the domain name <pixabay.com>, where its e-commerce website is located.

The Disputed Domain Name <pixabaz.com> was registered on August 29, 2020. The Disputed Domain Name resolves to a website impersonating the Complainant's official e-commerce website and offering stock photographic images for sale.

5. Parties' Contentions

A. Complainant

The Complainant cites its trademark registrations for PIXABAY in various countries as *prima facie* evidence of ownership.

The Complainant submits that it "also relies on the goodwill and recognition that it has attained under the PIXABAY brand, which has become a distinctive identifier of its offerings" and that its rights in that trademark predate the Respondent's registration of the Disputed Domain Name <pixabaz.com>. It submits that the Disputed Domain Name is confusingly similar to its trademark, because the Disputed Domain Name incorporates in its entirety the PIXABAY trademark and that the similarity is not removed by the substitution of the letter "y" with the letter "z".

The Complainant contends that "the Respondent has not been licensed by the Complainant to register or use domain names that feature its PIXABAY trademark" and that the Respondent has no authorized rights or legitimate interests in respect of the Disputed Domain Name arising from any of the circumstances set out in paragraph 4(c) of the Policy.

Finally, the Complainant alleges that the registration and use of the Disputed Domain Name was, and currently is, in bad faith, contrary to the Policy and the Rules. It submits that the Respondent registered the Disputed Domain Name then used it to resolve to "a site which advertises a competing image-sharing offering" is evidence of registration and use of the Disputed Domain Name in bad faith. The Complainant also submits that the Respondent's failure to respond to a cease-and-desist notice is further evidence of bad faith.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant has the burden of proving the following:

- (i) that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and

(iii) that the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has produced sufficient evidence to demonstrate that it has registered trademark rights in the mark PIXABAY in several jurisdictions. The propriety of a domain name registration may be questioned by comparing it to a trademark registered in any country (see WIPO Overview of WIPO Panel Views on Selected URDP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 1.2.1).

Turning to whether the Disputed Domain Name is identical or confusingly similar to the PIXABAY trademark, the Panel observes that the Disputed Domain Name comprises: (a) a version of the Complainant’s PIXABAY trademark with the letter “y” replaced by the letter “z”; (b) followed by the generic Top-Level Domain (“gTLD”) “.com”.

It is well established that the gTLD used as technical part of a domain name may be disregarded (see section 1.11.1 of the [WIPO Overview 3.0](#)). The relevant comparison to be made is with the second-level portion of the Disputed Domain Name, specifically: “pixabaz”.

It is also well-established that in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing (see [WIPO Overview 3.0](#), section 1.7).

This Panel finds that the Disputed Domain Name consists of a common, obvious, or intentional misspelling of the Complainant’s trademark, a fact situation that is considered by UDRP panels to amount to confusing similarity to the relevant mark for purposes of the first element (see [WIPO Overview 3.0](#), section 1.9).

The Panel finds that the Complainant has established paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists the ways that the Respondent may demonstrate rights or legitimate interests in the Disputed Domain Name. The Policy also places the burden of proof on the Complainant to establish the absence of the Respondent’s rights or legitimate interests in the Disputed Domain Name. Because of the inherent difficulties in proving a negative, the consensus view is that the Complainant need only put forward a *prima facie* case that the Respondent lacks rights or legitimate interests. The burden of production then shifts to the Respondent to rebut that *prima facie* case (see [WIPO Overview 3.0](#), section 2.1).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because it has not licensed, permitted, or authorized the Respondent to use the Complainant’s trademark or to sell its products and for those reasons, the Respondent is not making a *bona fide* offering of goods or services. The Complainant submits that “[t]he Respondent is using the [Disputed] Domain Name which, as noted above, is a typosquatting variation of the Complainant’s distinctive PIXABAY mark, to redirect Internet users [...] a website that [...] purports to offer services in competition with the Complainant: the provision of royalty-free photos”.

This Panel accepts that the Respondent is not an authorized reseller with a legitimate interest in a domain name incorporating the Complainant’s mark, and there is no disclaimer on the website the Disputed Domain Name resolves to, therefore it cannot meet the tests set out in *Okidata Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). Nor, alternatively, is the Respondent commonly known by the Disputed Domain Name.

The composition of the Disputed Domain Name consists of the Complainant’s trademark with the letter “y” replaced by the letter “z”. In this Panel’s view, the conduct indicates an awareness of the Complainant and

its mark and intent to take unfair advantage of such, which does not support a finding of any rights or legitimate interests (see [WIPO Overview 3.0](#), section 2.5.1).

This Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because it is engaging in an illegitimate commercial use of the Disputed Domain Name by suggesting some association with the Complainant and misleading consumers who are seeking out the Complainant's mark PIXABAY to opportunistically divert Internet traffic to its webpage.

The Panel finds for the Complainant on the second element of the Policy.

C. Registered and Used in Bad Faith

The third element of the Policy that a complainant must also demonstrate is that the disputed domain name in question has been registered and used in bad faith. Paragraph 4(b) of the Policy sets out certain circumstances to be construed as evidence of both.

There is clear evidence that the Respondent has registered and used the Disputed Domain Name in bad faith.

On the issue of registration, taking into account the composition of the Disputed Domain Name and the content of the website it resolves to, the Panel is satisfied that the Respondent knew of the Complainant's trademark PIXABAY when it registered the Disputed Domain Name.

On the issue of use, the evidence of record is that the Disputed Domain Name was used to resolve to a website with a competing offering of royalty-free photographic images. In line with prior UDRP panel decisions, the Panel finds that this misconduct is an intentional attempt to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website (see [WIPO Overview 3.0](#), section 3.1.4).

This Panel finds that the Respondent has replaced the letter "y" in the Complainant's PIXABAY trademark with the letter "z", and incorporated it in the Disputed Domain Name without the Complainant's consent or authorization, for the purpose of capitalizing on the reputation of the trademark by diverting Internet users for commercial gain to its website which falls into the meaning of bad faith under paragraph 4(b)(iv) of the Policy. The Panel also observes that the Respondent failed to respond to the cease-and-desist letter sent by the Complainant prior to the proceeding.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Disputed Domain Name <pixabaz.com> be transferred to the Complainant.

/Nicholas Weston/
Nicholas Weston
Sole Panelist
Date: July 5, 2023