

## ADMINISTRATIVE PANEL DECISION

Axpo Holding AG v. R. I.

Case No. D2023-3015

### 1. The Parties

The Complainant is Axpo Holding AG, Switzerland, represented by Rentsch Partner Ltd., Switzerland.

The Respondent is R. I., Switzerland.

### 2. The Domain Name and Registrar

The disputed domain name <axpocorrupt.com> is registered with Dynadot, LLC (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 13, 2023. On July 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 14, 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 July 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 8, 2023. The Response was filed with the Center on August 7, 2023.

The Center appointed Andrea Mondini as the sole panelist in this matter on August 30, 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 is a large Swiss-based company offering services mainly in the field of energy production, financing and trade. It operates over 100 power plants in Switzerland. Internationally, Axpo focuses on wind power and solar energy.

The Complainant owns numerous registrations for the trademark AXPO, *inter alia*, the Swiss Trademark No. P-468939, registered on January 26, 2000, for classes 4, 11, 35, 36, 37, 38, 39, 40, 41, 42 and the International Trademark No. 729075 registered on January 26, 2000, for classes 44, 11, 35, 36, 37, 38, 39, 40, 41, 42, designating the European Union and several other countries.

The Complainant also holds several domain names, including the domain name <axpo.com>.

The Respondent is a former employee of the Complainant.

The disputed domain name was registered on June 28, 2023.

The record shows that the disputed domain name resolves to a website which e.g., under the headings “Ethical and Legal Issues” lists “Bossing and Mobbing”, “Racial discrimination”, and “Retaliation and Threats”.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant contends that the disputed domain name is confusingly similar to the AXPO trademark in which the Complainant has rights, because it incorporates this trademark in its entirety, and the addition of the word “corrupt” is not sufficient to avoid confusing similarity.

The Complainant further alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain name. To the contrary, by using the word “corrupt” and hereby implying that the Complainant is purportedly corrupt, the Respondent openly and willingly accuses the Complainant of wrongful behavior relating to their fields of business in order harm the Complainant.

The Complainant contends that the disputed domain name was registered and is being used in bad faith because the content of the website posted under the disputed domain name is aiming at distributing false accusations about the Complainant, such as e.g., “Ethical & Legal Issues” like “Bossing and Mobbing”, “Racial Discrimination”, or “Retaliation and Threats”, which are very serious allegations for any company. Further, the website advises its visitors to combat such alleged behavior by the Complainant by e.g., reporting them to financial and official authorities. Thereby the Respondent allegedly registered and used the disputed domain name aiming at intentionally disrupting and damaging the Complainant’s business and the Complainant’s reputation.

##### **B. Respondent**

The Respondent denies the Complainant’s allegations. In essence, he states that he posted the website under the disputed domain name in “self-defense”, alleging that he “had previously exposed corruption within the company and reported it to management, resulting in retaliation.”

The Respondent denies that the disputed domain name is confusingly similar to the AXPO trademark. He states that not a single sentence in his website is targeted against the Complainant.

The Respondent further alleges that he acted in good faith by sharing the webpage link with the individuals involved, providing them an opportunity to voice any concerns they might have had. He alleges that the website's content is not designed to disseminate accusations against the Complainant.

The Respondent claims that two lawsuits are currently in progress against the Complainant: one in labor court and another in criminal court.

Finally, the Respondent states:

"Given their alleged interest in obtaining the domain name, let's hypothetically assume that they indeed prefer to have the domain. Additionally, considering their prospective loss of at least USD 1,000 due to WIPO's ruling, regardless of the verdict, the Respondent, as a gesture of goodwill and a demonstration of good faith, is open to selling the domain name to the Complainant at that price.

If the Complainant declines this offer, it could potentially serve as supplementary evidence for WIPO, suggesting that this situation is a continuation of harassment and an endeavor to obfuscate the truth, rather than being truly concerned with the domain name per se. From a logical standpoint, accepting the offer would make sense, assuming the opposing party places credence in their own assertions.

Notably, the transfer of domain name ownership will in no way impact the ownership of the content associated with it."

## **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, in order to succeed, a complainant must establish each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to the trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

### **A. Identical or Confusingly Similar**

The Panel is satisfied that the Complainant has trademark rights by virtue of the registrations it owns for its AXPO trademark.

The Panel notes that the disputed domain name incorporates the AXPO trademark in its entirety. The addition of the term "corruption" does not prevent a finding of confusing similarity under the Policy, paragraph 4(a)(i). See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8.

A domain name consisting of a trademark and a negative or pejorative term is confusingly similar to the Complainant's trademark for the purpose of satisfying standing under the first element ([WIPO Overview 3.0](#), section 1.13).

The addition of the generic Top-Level Domain ("gTLD") ".com" in the disputed domain name is a standard registration requirement and as such is disregarded under the confusing similarity test under the Policy, paragraph 4(a)(i). See [WIPO Overview 3.0](#), section 1.11.1.

For these reasons, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's mark AXPO.

The first element of paragraph 4(a) of the Policy has been met.

## **B. Rights or Legitimate Interests**

Paragraph 4(c)(iii) of the Policy provides that a respondent may demonstrate rights or legitimate interests in a domain name by providing evidence of legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's trademark or service mark at issue.

The Respondent claims in essence to have rights or legitimate interests in the disputed domain because he purportedly "had previously exposed corruption within the company and reported it to management, resulting in retaliation" and that he registered and used the disputed domain name to provide other individuals involved an opportunity to voice any concerns they might have.

Where the domain name is not identical to the complainant's trademark, but it comprises the mark plus a derogatory term (such as "corrupt" in the present case), the respondent would tend to have a legitimate interest in using the trademark as part of the domain name of a noncommercial criticism site if such use is *prima facie* genuinely fair, and not misleading or false ([WIPO Overview 3.0](#), Section 2.6.3).

Irrespective of whether the Respondent's accusations are founded or not (which is not for this Panel to determine), the Panel cannot escape the fact that the Respondent offered to sell the disputed domain to the Complainant for USD 1,000 which undermines his claim to merely voice legitimate criticism. The Panel cannot follow the Respondent's allegation that the Complainant's refusal to purchase the disputed domain name would purportedly constitute "a continuation of harassment and an endeavor to obfuscate the truth".

Therefore, the Panel finds that the second element of paragraph 4(a) of the Policy has been met.

## **C. Registered and Used in Bad Faith**

As a former employee of the Complainant, the Respondent was obviously aware of the Complainant's trademark AXPO.

If the registration of the disputed domain name was merely to criticize the Complainant this would not be bad faith. The Panel cannot escape however the fact that the Respondent offered to sell the disputed domain name to the Complainant for an amount in excess of the registration costs which is evidence of registration and use in bad faith (paragraph 4(b)(i) of the Policy).

The Panel thus finds that the third element of paragraph 4(a) of the Policy has been met.

## **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 <axpocorrupt.com> be transferred to the Complainant.

*/Andrea Mondini/*

**Andrea Mondini**

Sole Panelist

Date: September 13, 2023