

## **ADMINISTRATIVE PANEL DECISION**

### **Drax Corporate Limited v. Drax Energy**

### **Case No. D2024-1293**

#### **1. The Parties**

The Complainant is Drax Corporate Limited, United Kingdom, represented by Walker Morris LLP, United Kingdom.

The Respondent is Drax Energy, United Kingdom.

#### **2. The Domain Name and Registrar**

The disputed domain name <drraxxeenergi.com> is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the "Registrar").

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 26, 2024. On March 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 28, 2024, the Registrar transmitted by email to the Center its verification response, disclosing contact information for the registrant of the disputed domain name which differed from the contact information in the Complaint. The Center sent an email communication to the Complainant on March 28, 2024, providing the registrant and contact information disclosed by the Registrar and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on April 2, 2024.

The Center verified that the Complaint together with the amended 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 April 23, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 13, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 15, 2024.

The Center appointed Antony Gold as the sole panelist in this matter on May 28, 2024. 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 an energy company which operates four sustainable biomass, hydro-electric and pumped hydro-storage facilities in the United Kingdom. It says that it is the largest source of renewable energy in the United Kingdom, measured by output. It also has manufacturing facilities at 13 sites in the United States of America and Canada and employs approximately 3,400 people.

The Complainant's primary brand is DRAX and it has registered trade marks in a number of countries to protect this trading style. These include, by way of example only, United Kingdom registration number 00002604738, for DRAX in class 42, registered on April 6, 2012.

The disputed domain name was registered on October 5, 2023. As at the date of filing the Complaint, it resolved to a website which purported to be that of a company, Drax Energy Limited. On the home page, under the banner heading "Explore us from the experience", was the text "Drax Energy Limited supplies gas and electricity to businesses across the United Kingdom. It purchases electricity from wind, solar, hydro, and anaerobic digestion generators, and provides support to develop energy-generating sites". The website offered Internet visitors the opportunity to invest in its activities "to enable us to raise funds for our renewable energy projects, which made us grant an investment opportunity to investors with a minimum fund for as low as \$50". The syntax of much of the website content is poor, one of many possible examples being "Users' KYC needs to verify to before making any withdrawals". The disputed domain name now resolves to a website containing pay-per-click ("PPC") links including "Grants for Solar Panels" and "Government Grant for New Boiler".

#### **5. Parties' Contentions**

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

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer to it of the disputed domain name. Notably, the Complainant contends that;

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights. The disputed domain name is visually, aurally and conceptionally identical, or at least highly similar, to the Complainant's DRAX trade mark. The distinctive element of the disputed domain name replicates a substantial part of the Complainant's DRAX mark and could only be construed as relating to it;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name. There is no evidence that, since the date of registration, the Respondent has used the disputed domain name in connection with a bona fide offering of goods and services. In fact, the webpage of the disputed domain name acts as a potential instrument of fraud. The Respondent has not been commonly known by the disputed domain name and has no relevant trade mark rights. Nor is the Respondent making a legitimate non-commercial or fair use of the disputed domain name. It is clear that the Respondent intends to obtain commercial gain by misleadingly diverting consumers to the disputed domain name;
- the disputed domain name was registered and is being used in bad faith. The Respondent is using the disputed domain name in a manner which seeks to disrupt the business of the Complainant and is in any event detrimental to its business. The Respondent is purporting to offer investment opportunities under the Complainant's name and its activities are likely to cause loss, both to the public and to the Complainant.

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

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

## 6. Discussion and Findings

Dealing, first, with the Respondent's failure to file a reply to the Complainant's contentions, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under, these Rules the Panel shall be entitled to draw such inferences from this omission as it considers appropriate.

Paragraph 4(a) of the Policy provides that a complainant proves each of the following three elements in relation to a domain name in order to succeed in its complaint in respect of it:

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

### A. Identical or Confusingly Similar

The Complainant has provided evidence of its trade mark registrations for DRAX, full details of an example registration having been set out above. It has thereby established its rights in this mark.

For the purpose of considering whether the disputed domain name is identical or confusingly similar to the Complainant's DRAX mark, the generic Top-Level Domain ("gTLD") ".com" is typically disregarded as this is a technical requirement of registration. The disputed domain name does not reproduce the Complainant's DRAX mark exactly, in that the letters "r", "x" and "e" are duplicated and the last six letters of the disputed domain name form the word "energi". However, the disputed domain name is recognizably a typo-squat variation of the Complainant's mark and, as explained at section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"): "A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element". See also section 1.8 of the [WIPO Overview 3.0](#); "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element".

Notwithstanding the differences identified above, the Complainant's DRAX mark is clearly identifiable within the disputed domain name and, for the above reasons, the Panel finds the first element of the Policy has been established.

### B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances by which the Respondent may demonstrate rights or legitimate interests in a disputed domain name. Whilst the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such evidence, the complainant is deemed to have satisfied the second element; see [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise. In particular, the Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services; see paragraph 4(c)(i) of the Policy, and the [WIPO Overview 3.0](#), section 2.2.

The Panel deals first, with the use of the domain name to resolve to a website soliciting investments into “Drax Energy”. Whilst this trading style is not identical to the Complainant’s name, “Drax Corporate Limited”, Internet users will assume from the use of the distinctive term “Drax” and the fact that “Drax Energy” purports to be active in a related field (the supply of gas and electricity) that the Respondent is a company closely associated with the Complainant. The Respondent is therefore using the repute of the Complainant in order to encourage Internet users to purportedly invest in it. The rather amateurish content of the Respondent’s website coupled with the Respondent’s failure to respond to the Complaint suggest that the Respondent was most likely engaging in a scam, which would not give the Respondent any rights or legitimate interests in the disputed domain name; see, for example, *Fmd Financial Pty Ltd v. Domain Administrator*, see *PrivacyGuardian.org / Nike Nolan*, WIPO Case No. [D2020-2713](#) and *Hedge Invest SGR P.A. v. WhoisGuard, Inc. / Hedge Invest, Hedge Invest International*, WIPO Case No. [D2020-0869](#). Even if the Respondent was offering an actual investment opportunity, mis-using the repute of the Complainant in this manner does not comprise a bona fide offering of goods and services.

Turning to the current use of the disputed domain name, it is well established under the Policy that use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with, or capitalise upon, the reputation and goodwill of a complainant’s trade mark; see section 2.9 of the [WIPO Overview 3.0](#). Links such as “Grants for Solar Panels” and “Government Grant for New Boiler” are only indirectly connected with the Complainant’s activities in that they are more likely associated with consumer-related energy interests rather than energy production. However, irrespective of the extent to which the links are likely to be associated with the Complainant, the Respondent is using the repute of the Complainant’s mark and the association which consumers are apt to make between the disputed domain name and the Complainant’s activities to drive traffic to its webpage; see, by way of example, *Government Employees Insurance Company v. See PrivacyGuardian.org / johnny leed*, WIPO Case No. [D2022-0826](#);

- there is no evidence in the record that the Respondent has been commonly known by the disputed domain name. In this respect, see paragraph 4(c)(ii) of the Policy and the [WIPO Overview 3.0](#), section 2.3. Whilst the name of the underlying registrant is given as “Drax Energy”, having regard to the circumstances of this case, in particular, the typo-squat characteristics of the disputed domain name, the use to which it has been put, as described above, and the Respondent’s failure to challenge the Complainant’s allegations of dishonest intent or to advance any case in terms of paragraph 4(c)(ii) of the Policy, it is very likely that the registrant name provided by the Respondent to the registrar is false;

- the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue; see paragraph 4(c)(iii) of the Policy and the [WIPO Overview 3.0](#), section 2.4;

- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

For the above reasons, based on the available record, the Panel finds the second element of the Policy has been established.

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

The fact that the disputed domain name comprises a typo-squat variation of the Complainant’s DRAX mark and was used to solicit investments in a (probably fictitious) company which used a variant of the Complainant’s DRAX mark in order to imply an affiliation with the Complainant establishes, that the Respondent was aware of the Complainant as at the date of registration of the disputed domain name and that it was registered in order that the Respondent could profit unfairly from the connection which Internet

users would make between it and the Complainant. It is well-established under the Policy that registration of a domain name by an unconnected party with knowledge of a complainant's trade mark registration and where the domain name is put to a misleading use can, by itself, establish a presumption of bad faith; see, for example, *The Frankie Shop LLC v. xi bing*, WIPO Case No. [D2023-3311](#). Moreover, it is well-established under the Policy that typo-squatting comprises evidence of registration of a domain name in bad faith; see, for example, *Wesco Aircraft Hardware Corp. v. Contact Privacy Inc. Customer 1245095601 / Gulf Guns and Gear*, WIPO Case No. [D2019-2131](#). The Panel therefore finds the Respondent's registration of the disputed domain name to have been in bad faith.

Paragraph 4(b) of the Policy sets out, without limitation, circumstances which, if found by a panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The circumstance set out in paragraph 4(b)(iv) of the Policy is if a respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website. The use to which the Respondent initially put the disputed domain name, as described above, falls within this circumstance in that the content of its website will have misled Internet users into believing that it was closely associated with the Complainant. Such a belief will have been reinforced because of the confusing similarity between the disputed domain name and the Complainant's DRAX trade marks; see *Delsey v. Lenna Wehner*, WIPO Case No. [D2023-4648](#).

The disputed domain name currently hosts a PPC website. Whilst the use of a domain name to point to parking pages hosting PPC sponsored links is not inherently objectionable, previous decisions under the Policy have found that such conduct can, in appropriate circumstances, constitute bad faith use. See, for example, *Yahoo! Inc. v. Hildegard Gruener*, WIPO Case No. [D2016-2491](#), in which the UDRP panel explained that "the use, to which the disputed domain names are put, namely parking pages featuring sponsored advertising links, is calculated to attract Internet users to the site in the mistaken belief that they are visiting a site of or associated with the Complainant. [...] Even if visitors arriving at the websites to which the disputed domain name resolve become aware that these websites are not such of the Complainant, the operators of these websites will nonetheless have achieved commercial gain in the form of a business opportunity, namely the possibility that a proportion of those visitors will click on the sponsored links".

So, in similar circumstances, the Respondent is attracting Internet users to its website, and deriving income from the PPC links on it, because of the confusing similarity between the disputed domain name and the Complainant's DRAX mark. Such conduct falls within the example of bad faith registration and use set out at paragraph 4(b)(iv) of the Policy.

For the above reasons, the Panel finds that the disputed domain name was both registered and is being used in bad faith.

## 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 <drraxxeenergi.com> be transferred to the Complainant.

*/Antony Gold/*

**Antony Gold**

Sole Panelist

Date: June 11, 2024