

ADMINISTRATIVE PANEL DECISION

Newsmax Media Inc. v. Shi Lei

Case No. D2024-2033

1. The Parties

The Complainant is Newsmax Media Inc., United States of America (“United States”), represented by SafeNames Ltd., United Kingdom.

The Respondent is Shi Lei, China.

2. The Domain Name and Registrar

The disputed domain name <newsmaxcustomerservice.com> and <newsmaxplussubscription.com> (the “Disputed Domain Names”) are registered with Dynadot Inc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 15, 2024. On May 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On May 18, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Names which differed from the named Respondent (“REDACTED FOR PRIVACY”) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 23, 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 May 23, 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 May 27, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 16, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 18, 2024.

The Center appointed Mariia Koval as the sole panelist in this matter on June 24, 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, founded in 1998, is a multi-media broadcasting, digital publishing company and operator of online newspaper Newsmax which has become a well-known and influential news source. The Complainant's Newsmax Media divisions include its cable and broadcast channel Newsmax TV, its website "www.newsmax.com", which includes Newsmax Health and Newsmax Finance, and Newsmax magazine, its monthly print publication. In accordance with the YouGov Survey: 2023 U.S. Trust in Media Poll the newspaper Newsmax is the second-most trusted conservative news outlet for Republican voters. The Complainant reaches a monthly readership/viewership of over 40 million. Newsmax TV is the 4th highest-rated cable news channel in the United States and is carried in over 100 million homes through all major cable systems and streaming platforms; the Newsmax Feed Network is carried on 2,000 partner websites; and Newsmax Email Alerts are received by 2 million opt-in subscribers. With headquarters in Boca Raton, Florida, New York City and Washington DC, the Complainant currently employs approximately 375 people.

The Complainant is the owner of numerous NEWSMAX trademark registrations (the "NEWSMAX Trademark") around the world, among which are:

- United States Trademark Registration No. 3177090, registered on November 28, 2006, in respect of goods in class 16;
- European Union Trademark Registration No. 010951192, registered on October 24, 2012, in respect of goods and services in classes 9, 16, 38, 41;
- United States Trademark Registration No. 4708616, registered on March 24, 2015, in respect of services in class 38.

The Complainant has built up a considerable online presence and is operating the domain names <newsmax.com> (currently gains more than 24.2 million visits a month), <newsmaxtv.com> and <newsmaxplus.com> (the subscription service for both has gained more than 225,000 subscribers, since being launched in November 2023). The Complainant also operates pages on various social media platforms, in particular Facebook (4.7 million followers), Instagram (1.8 million followers), YouTube (2.19 million subscribers) and Twitter (2.7 million followers).

The Disputed Domain Names were both registered on November 5, 2023. At the date of this Decision, the Disputed Domain Names resolve to parked webpages, containing different pay-per-click ("PPC") links to third party websites.

On February 9, 2024, the Complainant sent a cease-and-desist letter (Annex 16 to the Complaint) to the Respondent, but no response was received.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Names.

Notably, the Complainant contends that the Disputed Domain Names are confusingly similar to the Complainant's NEWSMAX Trademark. The Disputed Domain Names contain the entirety of the Complainant's NEWSMAX Trademark with the addition of the words "customer", "service", "plus" and "subscription", which, in their turn, are related to the Complainant and its services. The Complainant also

highlights the recognition and goodwill attained under the NEWSMAX Trademark since its creation.

The Complainant further asserts that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names. The Respondent does not have any rights to the NEWSMAX Trademark. There is also no evidence that the Respondent retains any unregistered trademark rights to NEWSMAX. Neither has the Respondent received any license from the Complainant to use the Disputed Domain Names featuring the NEWSMAX Trademark.

The Complainant also submits that the Respondent has not used, nor prepared to use, the Disputed Domain Names in connection with a bona fide offering of goods and services. The Disputed Domain Names currently resolve to PPC advertisement links that redirect users to third party websites.

The Respondent is not commonly known by the term NEWSMAX and the Disputed Domain Names or anything similar. Therefore, there is no plausible reason for the registration and use of the Disputed Domain Names, other than the motive of taking advantage of the goodwill and reputation attached to the NEWSMAX Trademark. The Complainant notes that the Disputed Domain Names comprise, without alteration, its distinctive NEWSMAX Trademark combined with the additional terms “customer service” and “plus subscription” making it clear that the Respondent, when registering the Disputed Domain Names, targeted the Complainant in a manner likely to confuse people into believing the Disputed Domain Names are registered to, operated or authorized by, or otherwise connected with the Complainant, when this is not the case. Any Internet user seeing the Disputed Domain Names would believe they are connected to the Complainant. Moreover, the Complainant has a customer service department on its official website “www.newsmax.com” and offers a subscription service “Newsmax+”, which has gained over 225,000 subscribers since its launch in 2023. This shows that the additional terms “customer service” in the Disputed Domain Name <newsmaxcustomerservice.com> have relevance to the NEWSMAX Trademark.

The Complainant contends that the Respondent registered and is using the Disputed Domain Names in bad faith based on the following. The Complainant’s earliest NEWSMAX Trademark registration predates the registration date of the Disputed Domain Names by 16 years. Given the Respondent’s clear and prominent use of the Complainant’s NEWSMAX Trademark in the Disputed Domain Names, it is clear that the Respondent should have been aware of the Complainant’s rights in the NEWSMAX Trademark. Additionally, the first Google results for “newsmax”, “newsmax customer service” and “newsmax plus subscription” pertain to the Complainant’s offerings.

The Complainant further submits that a cease-and-desist letter and other notices were sent to the Respondent on February 9 and 16, 2024, in order to notify the Respondent of the Complainant’s NEWSMAX Trademark and with a view to resolving the matter amicably. The Respondent was given the opportunity to provide evidence of any actual or contemplated good faith use but chose not to respond.

The Complainant submits that the Respondent has engaged in an abusive pattern of conduct. The Respondent is a well-known serial cybersquatter, who has been involved in 66 domain disputes (Annex 19 to the Complaint).

The Complainant emphasizes that the Disputed Domain Names are currently used to direct Internet users to webpages that display PPC hyperlinks which redirect to third-party websites related to the Complainant’s customer service department, which constitutes a clear attempt to generate commercial gain by misleading Internet users with the Disputed Domain Names.

Finally, the Complainant notes the Respondent’s activation of mail exchange (MX) records for the Disputed Domain Names (Annex 17 to the Complaint). The Complainant emphasizes the risk entailed in such configuration, as it enables the Respondent to send fraudulent emails to unsuspected customers from the Disputed Domain Names. The Complainant submits that the presence of MX records suggests the Respondent could engage in phishing activity through email distribution, given the evidently implied affiliation with the Disputed Domain Names due to the Complainant’s NEWSMAX Trademark.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, a complainant to succeed must satisfy the panel that:

- (i) the disputed domain name is identical or confusingly similar to a 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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Disputed Domain Names completely reproduce the Complainant's NEWSMAX Trademark in combination with the generic Top-Level domain ("gTLD") ".com". The Disputed Domain Name <newsmaxcustomerservice.com> also includes the terms "customer" and "service"; the Disputed Domain Name <newsmaxplussubscription.com> includes the terms "plus" and "subscription". According to the [WIPO Overview 3.0](#), section 1.8, 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. The addition of the terms "customer", "service"; "plus" and "subscription" to the NEWSMAX Trademark does not prevent a finding of confusing similarity.

According to the [WIPO Overview 3.0](#), section 1.11, the applicable gTLD in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.

Pursuant to section 1.7 of the [WIPO Overview 3.0](#), in cases where a domain name incorporates the entirety of a trademark, the domain name will normally be considered identical or confusingly similar to that mark for purposes of UDRP standing.

Accordingly, the Panel finds that the Disputed Domain Names are confusingly similar to the Complainant's NEWSMAX Trademark pursuant to paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Names. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Names such as those enumerated in the Policy or otherwise.

The Complainant has not licensed or otherwise authorized the Respondent to use its NEWSMAX Trademark or to register the Disputed Domain Names which are confusingly similar to the NEWSMAX Trademark.

The composition of the Disputed Domain Names – reproducing the NEWSMAX Trademark – carries a risk of implied affiliation with the Complainant. (see [WIPO Overview 3.0](#), section 2.5.1). The Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Names without intent for commercial gain to misleadingly divert consumers or to tarnish the NEWSMAX Trademark of the Complainant. As of the date of this Decision the Disputed Domain Names resolve to websites with PPC links to third party websites, some of them related to news pages that compete with the services of the Complainant. In accordance with [WIPO Overview 3.0](#), section 2.9, panels have found that the 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 capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users. Therefore, such use of the Disputed Domain Names by the Respondent does not amount to a bona fide offering of goods or services or a legitimate noncommercial or fair use.

Moreover, in accordance with the [WIPO Overview 3.0](#), section 2.5.1, even where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. The addition of the terms "customer", "service", "plus" and "subscription", which relate to the Complainant's activity and services, is further evidence that the Respondent was very well aware of the Complainant's NEWSMAX Trademark and business at the time of registration of the Disputed Domain Names and has done so for the only purpose of creating the impression that the Disputed Domain Names are connected with the Complainant's NEWSMAX Trademark.

Finally, the Respondent neither responded to the Complainant's cease-and-desist letter nor the Complainant's contentions and did not participate in this proceeding. As such, the Respondent did not present any evidence for supporting any rights or legitimate interests in the Disputed Domain Names.

In view of the foregoing, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names and that the Complainant succeeds under the second element of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel comes to the conclusion that the Disputed Domain Names were registered and are being used in bad faith in view of the following. The Complainant obtained the registration of the NEWSMAX Trademark more than 16 years earlier than the Respondent registered the Disputed Domain Names in 2023. Taking into account all circumstances of this case, the Panel finds that the Respondent was very well aware of the Complainant's business and its NEWSMAX Trademark when registering the

confusingly similar Disputed Domain Names that completely incorporate the Complainant's NEWSMAX Trademark. The Panel considers it is obvious bad faith that the Respondent deliberately chose the Disputed Domain Names to create a likelihood of confusion with the Complainant's NEWSMAX Trademark, so as to create a false association or affiliation with the Complainant.

According to section 3.1.4 of the [WIPO Overview 3.0](#), UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. The Panel is of the opinion that it is clear that the Respondent, having registered and used the Disputed Domain Names, which are confusingly similar to the Complainant's widely-known NEWSMAX Trademark, intended to disrupt the Complainant's business and confuse Internet users seeking or expecting the Complainant's website. In view of the absence of any evidence to the contrary and the fact that the Respondent did not file any response to claim otherwise, the Panel concludes that the Respondent has registered and is using the Disputed Domain Names in bad faith.

Resolving the Disputed Domain Names to typical PPC websites showing a variety of hyperlinks to active third party websites, for the obvious purpose of generating PPC revenue, is a clear indication that the Respondent intentionally attempted to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusion with Complainant's NEWSMAX Trademark as to the source, sponsorship, affiliation or endorsement of this website. Such circumstances are evidence of registration and use of the Disputed Domain Names in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

The evidence presented by the Complainant (Annex 19 to the Complaint) demonstrates that the Respondent is a serial cybersquatter. The Panel has no reason to believe that this case is anything other than another case in the long line of cases brought against the Respondent in respect of the unauthorized use for commercial purposes of well-known trademarks. The Panel has visited the Center's website at "www.wipo.int/amc/en/domains/casesx/all.html" where cases filed with the Center are listed and the decisions are available for review online. The number of cases against the Respondent are in excess of 65, see for example *Haleon UK IP Limited v. 石磊 (Shi Lei)*, WIPO Case No. [D2024-0730](#).

Furthermore, taking into account that MX records on the server hosting the Disputed Domain Names have been activated, the Disputed Domain Names may be actively used for email purposes. Noting the composition of the Disputed Domain Names, the Panel is of the opinion that recipients of any such potential emails would be under the impression that the emails are associated with or endorsed by the Complainant.

In view of the foregoing, the Panel finds that the paragraph 4(a)(iii) of the Policy has been satisfied by the Complainant and accordingly, the Disputed Domain Names have been registered and are 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 Names <newsmaxcustomerservice.com> and <newsmaxplussubscription.com> be transferred to the Complainant.

/Mariia Koval/

Mariia Koval

Sole Panelist

Date: July 8, 2024