

ADMINISTRATIVE PANEL DECISION

Amitkumar Ashokkumar Patel, XCLUSIVE BOATS CHARTER (L.L.C) v.
Wiam Abdullah

Case No. DAE2024-0008

1. The Parties

The Complainant is Amitkumar Ashokkumar Patel, XCLUSIVE BOATS CHARTER (L.L.C), United Arab Emirates, internally represented.

The Respondent is Wiam Abdullah, United Arab Emirates.

2. The Domain Name and Registrar

The disputed domain name <xclusiveyacht.ae> (the “Disputed Domain Name”) is registered with AE Domain Administration (.aeDA).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 3, 2024. On May 3, 2024, the Center transmitted by email to AE Domain Administration (.aeDA) a request for registrant verification in connection with the Disputed Domain Name. On May 9, 2024, AE Domain Administration (.aeDA) 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 UAE Domain Name Dispute Resolution Policy for – UAE DRP approved by .aeDA (the “Policy”), the Rules for UAE Domain Name Dispute Resolution Policy – UAE DRP (the “Rules”), and the Supplemental Rules for UAE Domain Name Dispute Resolution Policy – UAE DRP (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 20, 2024. In accordance with the Rules, paragraph 5(a), the due date for Response was June 9, 2024. The Respondent did not submit a substantive Response within the due date for Response. Accordingly, the Center notified the Respondent’s default on June 12, 2024.

The Center received an email communication on June 12, 2024 from an email address associated with the registration of the Disputed Domain Name (see further below).

The Center appointed Nick Gardner as the sole panelist in this matter on June 19, 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 in substance a company incorporated in the United Arab Emirates which charters luxury yachts and other craft. It has been in business since 2008. It is the proprietor of a registered trademark in the United Arab Emirates registration no. 196498 registered on December 11, 2014 for a device which comprises the words XCLUSIVE YACHTS contained in a box and accompanied by a stylised design of two waves. This trademark is referred to as the “XCLUSIVE YACHTS” trademark in this decision.

The Complainant’s principal website is linked to the domain name <xclusiveyachts.com>.

The Disputed Domain Name was registered on October 10, 2023. It currently resolves to a “coming soon” webpage with an image of a luxury motor cruiser. There are no contact details or email addresses on that page. Evidence filed by the Complainant shows it previously resolved to a website (the “Respondent’s Website”) which in substance impersonated the Complainant’s website.

5. Parties’ Contentions

A. Complainant

The Complainant says that Disputed Domain Name is confusingly similar to the XCLUSIVE YACHTS trademark as it reproduces the same words with the omission of the final letter “s”.

The Complainant says the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, and that the Complainant has not authorized nor licensed the Respondent to use the XCLUSIVE YACHTS trademark or to register the Disputed Domain Name.

In consequence the Complainant alleges that the Disputed Domain Name was registered and is being used in bad faith. The Complainant says the deceptive nature of the Respondent’s Website is clear evidence of bad faith. It says that by using the Disputed Domain Name, the Respondent intentionally attempted 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 or of a product or service on the Respondent’s Website.

B. Respondent

The Center received an email communication on June 12, 2024 from an email address which according to the Registrar verification was the email address for the Respondent. That address had been served a copy of the Complaint. The email read as follows “Hi, I have not been working with this company anymore. I had left the job in 2022. I wonder how I received this email. Thank You, [name provided]”. It appears to the Panel more likely than not that this individual is not the substantive Respondent. In any event the Panel concludes that no substantive Response has been filed.

6. Discussion and Findings

According to paragraph 15(a) of the Rules: “A panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.” Paragraph 6(a) of the Policy directs that the Complainant must prove each of the following:

- (i) that the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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 or is being used in bad faith.

A. Preliminary issue: Nature of the Policy

So far as the Policy is concerned the Panel notes that it is substantially similar to (though not identical to) the Uniform Domain Name Dispute Resolution Policy (the “UDRP”) as adopted by the Internet Corporation for Assigned Names and Numbers (“ICANN”). The Panel will where appropriate apply principles that have been established in relation to the UDRP, including those set out in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) in determining this dispute.

B. Preliminary issue: No Response

The Complaint and Written Notice were sent to the relevant email address disclosed by the Registrar and to the postmaster email address associated with the Disputed Domain Name. Registrar verification did not provide a meaningful physical address for the Respondent. In these circumstances the Panel considers that the requirement in paragraph 2(a) of the Rules to “employ reasonably available means calculated to achieve actual notice to the Respondent” has been satisfied. Accordingly, the Panel considers it is able to proceed to determine this Complaint.

C. Substantive Matters: Identical or Confusingly Similar

The Panel finds that the Complainant has established rights in the XCLUSIVE YACHTS trademark.

As highlighted in section 1.7 of the [WIPO Overview 3.0](#), the first element functions primarily as a standing requirement, and the threshold test for confusing similarity typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. Moreover, as stated in section 1.10 of the [WIPO Overview 3.0](#), “to the extent that design (or figurative/stylized) elements would be incapable of representation in domain names, these elements are largely disregarded for purposes of assessing identity or confusing similarity under the first element”.

In the case at hand, the Panel finds that the Disputed Domain Name is confusingly similar to the XCLUSIVE YACHTS trademark as it reproduces the words (omitting the final letter “s”) which are the dominant feature in the Complainant’s trademark. The omission of the final “s” is a trivial difference which does not prevent a finding of confusing similarity. Accordingly, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant’s trademark and hence the first condition of paragraph 6(a) of the Policy has been fulfilled.

D. Rights or Legitimate Interests

Paragraph 6(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a domain name:

(i) before any notice to the respondent of the dispute, the respondent’s use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

None of these apply in the present circumstances. The Complainant has not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use the XCLUSIVE YACHTS trademark. The Complainant has prior rights in the XCLUSIVE YACHTS trademark which precede the Respondent's acquisition of the Disputed Domain Name. The Complainant has therefore established a prima facie case that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name (see, for example, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

The Panel finds that the Respondent has failed to produce any evidence to establish his rights or legitimate interests in the Disputed Domain Name. Accordingly, the Panel finds the Respondent has no rights or any legitimate interests in the Disputed Domain Name and the second condition of paragraph 6(a) of the Policy has been fulfilled.

E. Registered or is Being Used in Bad Faith

For the purposes of paragraph 6(a)(iii) of the Policy, the following circumstances in particular but without limitation, if found by the panel to be present, shall be evidence of the registration or use of a domain name in bad faith:

“i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

In the present circumstances the fact that the Disputed Domain Name was linked to the Respondent's Website which impersonated the Complainant's own website lead the Panel to conclude the registration and use were in bad faith.

The Panel concludes that the Respondent chose to register a domain name which was confusingly similar to the Complainant's trademark in order to facilitate a scheme where the Respondent's Website impersonated that of the Complainant and offered services which competed with those offered by the Complainant.

In the present circumstances the Panel agrees with the Complainant that factor (iv) above applies as the Respondent was seeking to achieve commercial gain by impersonating the Complainant. Factor (iii) above also applies given Respondent's Website directly impersonates the Complainant's own website. The Panel also notes that the Respondent has not filed a substantive Response and hence has not availed himself of the opportunity to present any case of good faith that he might have. The Panel infers that none exists.

Accordingly, the Panel finds that the Disputed Domain Name has been registered and is being used in bad faith and the third condition of paragraph 6(a) of the Policy has been fulfilled.

7. Decision

For the foregoing reasons, in accordance with paragraphs 6(a) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <xclusiveyacht.ae> be transferred to the Complainant.

/Nick J. Gardner/

Nick J. Gardner

Panelist

Date: July 3, 2024