

ADMINISTRATIVE PANEL DECISION

**Associated Newspapers Limited v. Domain Administrator, See
PrivacyGuardian.org / Vankovich Andrey Ignatievich
Case No. D2022-0097**

1. The Parties

The Complainant is Associated Newspapers Limited, United Kingdom, represented by Adlex Solicitors, United Kingdom.

The Respondent is Domain Administrator, See PrivacyGuardian.org, United States of America / Vankovich Andrey Ignatievich, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <dailymail.fun> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 12, 2022. On January 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 12, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on January 13, 2022 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 January 13, 2022.

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 January 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 3, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 7, 2022.

The Center appointed Edoardo Fano as the sole panelist in this matter on February 7, 2022. 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.

Having reviewed the communication records in the case file provided by the Center, the Panel finds that the Center has discharged its responsibility under the Rules, paragraph 2(a), "to employ reasonably available means calculated to achieve actual notice to the Respondent". Therefore, the Panel shall issue its Decision based upon the Complaint, the Policy, the Rules and the Supplemental Rules and without the benefit of a response from the Respondent.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

4. Factual Background

The Complainant is Associated Newspapers Limited, a United Kingdom company operating in the media and communication field that owns several trademark registrations for DAILY MAIL, including the following:

- United Kingdom Trademark Registration No. UK00001207666 for DAILY MAIL, registered on November 22, 1983;
- United Kingdom Trademark Registration No. UK00001355361 for DAILY MAIL and design, registered on August 30, 1991;
- European Union Trademark Registration No. 000193433 for DAILY MAIL, registered on November 5, 1999;
- United States Trademark Registration No. 2956380 for DAILY MAIL, registered on May 31, 2005.

The Complainant also operates on the Internet, its official website being "www.dailymail.co.uk".

The Complainant provided evidence in support of the above.

According to the Whois records, the disputed domain name was registered on October 18, 2021 and in November 2021 it resolved to a website that was a copy of the BBC News website, while in December 2021 and when the Complaint was filed it resolved to a website that was a mimic of the Complainant's website, reproducing the Complainant's trademark and logo and with links redirecting to the website "https://bitcointigerinvest.site/".

5. Parties' Contentions

A. Complainant

The Complainant states that the disputed domain name <dailymail.fun> is identical to its trademark DAILY MAIL.

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name since it has not been authorized by the Complainant to register the disputed domain name or to use its trademark within the disputed domain name, it is not commonly known by the disputed domain name, nor it is making a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name. The Respondent, in the website at the disputed domain name, has set out to impersonate the Complainant to attract, confuse and profit from Internet users seeking the

Complainant.

The Complainant submits that the Respondent has registered the disputed domain name in bad faith, since the Complainant's trademark DAILY MAIL is distinctive and internationally known. Therefore, the Respondent targeted the Complainant's trademark at the time of registration of the disputed domain name and the Complainant contends that the use of the disputed domain name with the purpose of unfairly disrupting the business of the Complainant by impersonating the Complainant, making profit by diverting Internet users seeking the Complainant to a cryptocurrency website most likely in connection with a scam, and creating a likelihood of confusion with the Complainant's trademark as to an association between the Respondent and the Complainant, qualifies as bad faith registration and use.

B. Respondent

The Respondent has made no reply to the Complainant's contentions and is in default. In reference to paragraphs 5(f) and 14 of the Rules, no exceptional circumstances explaining the default have been put forward or are apparent from the record.

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, reasonable facts asserted by a complainant may be taken as true, and appropriate inferences, in accordance with paragraph 14(b) of the Rules, may be drawn (see, e.g., *Reuters Limited v. Global Net 2000, Inc.*, WIPO Case No. [D2000-0441](#); *Microsoft Corporation v. Freak Films Oy*, WIPO Case No. [D2003-0109](#); *SSL International PLC v. Mark Freeman*, WIPO Case No. [D2000-1080](#); *Altavista Company v. Grandtotal Finances Limited et. al.*, WIPO Case No. [D2000-0848](#); *Confédération Nationale du Crédit Mutuel, Caisse Fédérale du Crédit Mutuel Nord Europe v. Marketing Total S.A.*, WIPO Case No. [D2007-0288](#)).

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements, which the Complainant must satisfy in order to succeed:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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 finds that the Complainant is the owner of the trademark DAILY MAIL both by registration and acquired reputation and that the disputed domain name <dailymail.fun> is identical to the trademark DAILY MAIL.

It is well accepted that a generic Top-Level Domain ("gTLD"), in this case ".fun", is ignored when assessing the similarity between a trademark and a domain name. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.11.

The Panel finds that the Complainant has therefore met its burden of proving that the disputed domain name is identical or confusingly similar to the Complainant's trademark, pursuant to the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the Complainant to prove that the Respondent has no rights or legitimate interests in the disputed domain name.

The Respondent may establish a right or legitimate interest in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following circumstances, in particular but without limitation:

“(i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate noncommercial 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.”

According to paragraph 4(a) of the Policy, the Complainant has the burden of proving the three elements of the Policy. However, satisfying the burden of proving a lack of the Respondent’s rights or legitimate interests in respect of the disputed domain name according to paragraph 4(a)(ii) of the Policy is potentially quite difficult, since proving a negative circumstance is always more complicate than establishing a positive one. As such, it is well accepted that it is sufficient for the Complainant to make a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name in order to shift the burden of production on the Respondent. If the Respondent fails to demonstrate rights or legitimate interests in the disputed domain name in accordance with paragraph 4(c) of the Policy or on any other basis, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant in its Complaint, and as set out above, has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. It asserts that the Respondent, who is not currently associated with the Complainant in any way, is not commonly known by the disputed domain name and is not making a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name: the Respondent, in the website at the disputed domain name, was trying to impersonate the Complainant in order to attract, confuse and profit from Internet users seeking the Complainant.

According to the [WIPO Overview 3.0](#), section 2.13:

“2.13.1 Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent [...].”

The *prima facie* case presented by the Complainant is enough to shift the burden of production to the Respondent to demonstrate that it has rights or legitimate interests in the disputed domain name. However, the Respondent has failed to file a formal response in accordance with the Rules, paragraph 5, and has not rebutted the Complainant’s *prima facie* case. The Respondent has not presented any evidence of any rights or legitimate interests it may have in the disputed domain name, and the Panel is unable to establish any such rights or legitimate interests on the basis of the evidence in front of it.

Moreover, the Panel finds that the composition of the disputed domain name along with its use carries a risk of implied affiliation. See [WIPO Overview 3.0](#), section 2.5.1.

The Panel therefore finds that paragraph 4(a)(ii) of the Policy has been satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that “for the purposes of paragraph 4(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 and use of a domain name in bad faith:

(i) circumstances indicating that [the respondent has] registered or has 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 the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or

(ii) that [the respondent has] 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 [the respondent has] engaged in a pattern of such conduct; or

(iii) that [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) that by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website or other online location, 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 location or of a product or service on [the respondent's] website or location".

Regarding the registration in bad faith of the disputed domain name, the reputation of the Complainant's trademark DAILY MAIL in the field of media and communication is clearly established and the Panel finds that the Respondent likely knew of the Complainant and deliberately registered the disputed domain name, especially because the disputed domain name resolved to a website offering the same information services as the Complainant and reproducing the Complainant's trademark and logo.

The Panel further notes that the disputed domain name is also used in bad faith since on the relevant website the Respondent was trying to impersonate the Complainant, by reproducing the Complainant's trademark and logo with the purpose of intentionally attempting to create a likelihood of confusion with the Complainant's trademark as to the disputed domain name's source, sponsorship, affiliation or endorsement.

The above suggests to the Panel that, in accordance with paragraph 4(b)(iv) of the Policy, the Respondent intentionally registered and is using the disputed domain name in order to create confusion with the Complainant's trademark and attract, for commercial gain, Internet users to its website, by subsequently diverting them to a cryptocurrency website.

Furthermore, the Panel considers that the nature of the disputed domain name, which is identical to the Complainant's trademark, further supports a finding of bad faith. See, [WIPO Overview 3.0](#), section 3.2.1.

The Panel finds that the Complainant has presented evidence to satisfy its burden of proof with respect to the issue of whether the Respondent has registered and is using the disputed domain name in bad faith.

The Panel therefore finds that paragraph 4(a)(iii) of the Policy has been satisfied.

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 <dailymail.fun> be transferred to the Complainant.

/Edoardo Fano/

Edoardo Fano

Sole Panelist

Date: February 21, 2022