

ADMINISTRATIVE PANEL DECISION

QlikTech International AB v. Privacy Service Provided by Withheld for Privacy ehf / Carolina Rodrigues
Case No. D2022-0481

1. The Parties

The Complainant is QlikTech International AB, Sweden, represented by Ports Group AB, Sweden.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Carolina Rodrigues, Panama.

2. The Domain Name and Registrar

The disputed domain name <kundqlik.com> (the “Disputed Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 11, 2022. On February 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On February 11, 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 February 14, 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 February 14, 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 February 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 16, 2022.

On February 14, 2022, the Center sent its expiry email to the Registrar, copying both parties, requesting information and noting that the Disputed Domain Name was due to expire on March 5, 2022, and in accordance with the relevant Registrar Accreditation Agreement, paragraph 3.7.5.7: asking if any action was required from the parties to keep the domain name lock during the proceedings. On February 16, 2022 the Complainant confirmed it had received confirmation from the Registrar that the Disputed Domain Name had been renewed.

The Center appointed Nick J. Gardner as the sole panelist in this matter on March 22, 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.

4. Factual Background

The Complainant is a Swedish company. It was founded in 1993 and provides a range of products, which deal with the analysis of data. It describes these as “platform solutions for self-service data visualization, guided analytics applications and embedded analytics”. A wide range of customers, comprising companies of all sizes, across all industries and geographies, use the Complainant’s products to visualize and explore information and data.

The Complainant holds a European Union word Trademark for the term QLIK - registration No. 001115948 filed on March 23, 1999 and registered on May 5, 2000 in Nice classes 9, 35 and 42 and an International word trademark for the term QLIK - registration No. 839118, granted on May 14, 2004, in addition to many other trademark registrations that include the word QLIK and several figurative Q trademark registrations in the same above-mentioned classes. These trademarks are referred to as the QLIK trademark in this decision.

The Complainant’s products and services are sold throughout the world and advertised in a variety of media, including via the Complainant’s website at “www.qlik.com” and have been recognized by the business and the software community for several industry awards.

The Respondent registered the Disputed Domain Name on March 5, 2021. How it is used is discussed below.

The term “kund” means client in Swedish.

5. Parties’ Contentions

A. Complainant

The Complainant’s contentions can be summarized as follows:

The Disputed Domain Name is identical or confusingly similar to the Complainant’s QLIK trademark.

The Respondent has no rights or legitimate interests in the terms “Qlik” or “KundQlik”.

The Disputed Domain Name was registered and is being used in bad faith. The Complainant refers to certain customers as Qlik Gold Clients and says that the Disputed Domain Name is deliberately attempting to attract traffic by use of a similar term. The Complainant says that the website to which the Disputed Domain Name resolves “misleads visitors not only to believe the Respondent are the owner of the mark but also take advantage of the goodwill and draw the consumers attention to competitors which will make profit loss for the compliant [sic]”.

B. Respondent

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

6. Discussion and Findings

Preliminary Matters

The Panel notes that no communication has been received from the Respondent. However, given that the Complaint and Written Notice were sent to the relevant addresses disclosed by the Registrar, then the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to “employ reasonably available means calculated to achieve actual notice”. Accordingly, the Panel considers it is able to proceed to determine this Complaint and to draw inferences from the Respondent’s failure to file any Response. While the Respondent’s failure to file a Response does not automatically result in a decision in favor of the Complainant, the Panel may draw appropriate inferences from the Respondent’s default (see, e.g., *Verner Pantan Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#)).

The Panel also notes this is a case where one Respondent (“Withheld for Privacy ehf LC”) appears to be a privacy or proxy service.

The Panel in this case adopts the approach of most UDRP panels, as outlined in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) at section 4.4.5, as follows:

“Panel discretion

In all cases involving a privacy or proxy service and irrespective of the disclosure of any underlying registrant, the appointed panel retains discretion to determine the respondent against which the case should proceed.

Depending on the facts and circumstances of a particular case, e.g., where a timely disclosure is made, and there is no indication of a relationship beyond the provision of privacy or proxy registration services, a panel may find it appropriate to apply its discretion to record only the underlying registrant as the named respondent. On the other hand, e.g., where there is no clear disclosure, or there is some indication that the privacy or proxy provider is somehow related to the underlying registrant or use of the particular domain name, a panel may find it appropriate to record both the privacy or proxy service and any nominally underlying registrant as the named respondent.”

In the present case, the Panel considers the substantive Respondent to be Carolina Rodrigues, and references to the Respondent are to that person.

Substantive Matters

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

- (i) the Disputed Domain Name is identical with 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;
- (iii) the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has rights in the QLIK trademark. The Panel finds the Disputed Domain Name is confusingly similar to this trademark. Previous UDRP panels have consistently held that domain names are

identical or confusingly similar to a trademark for purposes of the Policy “when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name” (*Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. D2000-0662). It is established that, where a domain name incorporates the entirety of a mark, the disputed domain name is considered to be confusingly similar to that mark (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) at section 1.7).

It is also established that the addition of other terms (such as here “kund” meaning “client” in English) to a disputed domain name does not prevent a finding of confusing similarity between the domain name and the mark ([WIPO Overview 3.0](#) at section 1.8).

It is also well established that the generic Top-Level Domain (“gTLD”), in this case “.com”, does not affect the Disputed Domain Name for the purpose of determining whether it is identical or confusingly similar. See [WIPO Overview 3.0](#) at section 1.11.

Accordingly, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant’s trademark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

B. Rights or Legitimate Interests

The Panel finds the QLIK trademark is, on the evidence before the Panel, a term in which the Complainant has developed a significant reputation. It also has no other meaning save in relation to the Complainant and its products.

Paragraph 4(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, 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 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 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.

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 QLIK trademark. The Complainant has prior rights in the QLIK trademark which precede the registration 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 her 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 4(a) of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

The Panel finds that the composition of the Disputed Domain Name indicates the Respondent registered the Disputed Domain Name with the Complainant’s QLIK trademark in mind.

The Panel did not find the Complainant's explanation of how the Disputed Domain Name is being used particularly easy to understand. The Panel's own inspection indicates that the Disputed Domain Name appears to resolve by redirection to various different third party websites. The precise website in question appears to change dynamically each time the redirection occurs.

Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

(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 on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

The Panel concludes that (iv) applies as the Disputed Domain Name is likely to attract traffic because of confusion with the Complainant's mark, and the Respondent presumably derives some form of commercial gain as a result. The Panel infers the redirection that occurs is automatically generated. This does not however matter. The Panel regards this type of redirection as analogous to the situation where a website displays a series of "pay per click" links. It is well established that where a domain name is used to generate revenue in respect of "click-through" traffic, and that traffic has been attracted because of the name's association with the complainant, such use amounts to use in bad faith, see for example *Shangri-La International Hotel Management Limited v. NetIncome Ventures Inc.*, WIPO Case No. D2006-1315; *Owens Corning v. NA*, WIPO Case No. [D2007-1143](#); *McDonald's Corporation v. ZusCom*, WIPO Case No. [D2007-1353](#); *Villeroy & Boch AG v. Mario Pingerna*, WIPO Case No. [D2007-1912](#); *Rolex Watch U.S.A., Inc. v. Vadim Krivitsky*, WIPO Case No. [D2008-0396](#).

See also [WIPO Overview 3.0](#), section 3.5: "Can third-party generated material 'automatically' appearing on the website associated with a domain name form a basis for finding bad faith?"

Particularly with respect to 'automatically' generated pay-per-click links, panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name (nor would such links *ipso facto* vest the respondent with rights or legitimate interests).

Neither the fact that such links are generated by a third party such as a registrar or auction platform (or their affiliate), nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of bad faith."

Accordingly, the Panel finds the Respondent has registered and used the Disputed Domain Name in bad faith and the third condition of paragraph 4(a) of the Policy has been fulfilled.

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 <kundqlik.com> be transferred to the Complainant.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: April 5, 2022