

ADMINISTRATIVE PANEL DECISION

The Commissioners for HM Revenue and Customs v. Rickie Brown Case No. D2023-0832

1. The Parties

The Complainant is The Commissioners for HM Revenue and Customs, United Kingdom, represented by Demys Limited, United Kingdom.

The Respondent is Rickie Brown, Australia.

2. The Domain Name and Registrar

The disputed domain name <hmrc-rebate-tax-unit.com> is registered with Nicenic International Group Co., Limited (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 23, 2023. On February 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 25, 2023, 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 (Redacted) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 3, 2023 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 March 6, 2023.

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 March 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 27, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 29, 2023.

The Center appointed Ganna Prokhorova as the sole panelist in this matter on April 4, 2023. 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 formally known as “Her Majesty’s Revenue and Customs”, which is often shortened to “HM Revenue and Customs” or the initialism “HMRC”.

The Complainant is a non-ministerial department of the United Kingdom (“UK”) Government responsible for the collection of taxes, the payment of some forms of state support and the administration of other regulatory regimes.

Whilst various tax-raising authorities have existed in the territory now known as the UK since before the Norman conquest, the Complainant can trace its predecessors through the Board of Taxes (founded in 1665 under Charles II) and the Board of Inland Revenue (created in 1849 through the Inland Revenue Board Act). The Complainant, in its present form and with its current name, was created by the merger of the Inland Revenue and HM Customs and Excise in April 2005 and was established in The Commissioners for Revenue and Customs Act, 2005.

The Complainant operates a website within the UK Government’s official portal at the URL “www.gov.uk/government/organisations/hm-revenue-customs”. This website can also be accessed through the domain name <hmrc.gov.uk>.

The Complainant is the proprietor of several UK trademarks, in particular:

- HMRC, UK trademark registration no. 2471470 registered on March 28, 2008 for goods and services of classes 9, 16, 35, 36, 38, 41 and 45;
- HM Revenue & Customs, UK trademark registration no. 3251234 registered on December 29, 2017 for goods and services of classes 9, 16, 35, 36, 38, 41 and 45.

The disputed domain name was registered on December 1, 2022, and does not resolve to an active website. The disputed domain name is marked as unsafe by Google’s Transparency Report. When visiting the disputed domain name via the Chrome Internet browser or Virgin Media Internet service provider respective warnings are displayed.

5. Parties’ Contentions

A. Complainant

The Complainant asserts that each of the elements enumerated in paragraph 4(a) of the Policy and the corresponding provisions in the Rules have been satisfied. In particular, the Complainant asserts that:

(1) The disputed domain name is confusingly similar to the Complainant’s trademarks with only difference by the addition of the generic term “rebate tax unit”. By virtue of it being the United Kingdom’s governmental tax authority, the Complainant contends that the term “rebate tax unit” is inherently associated with the Complainant and its activities. The generic Top-Level Domain “.com” is required only for technical reasons and, as in common in proceedings under the UDRP, can be ignored – alongside the hyphens – for the purposes of comparison of the disputed domain name to the Complainant’s marks.

(2) The Respondent does not have any rights or legitimate interests in the disputed domain name. There is no evidence that the Respondent has been commonly known by the names HRMC or HMRC REBATE TAX UNIT prior to or after the registration of the disputed domain name. The Respondent is not a licensee of the

Complainant and has not received any permission, consent or acquiescence from the Complainant to use its marks or name in association with the registration of the disputed domain name or, indeed, any domain name, service or product. At the point of submission the disputed domain name does not resolve to an active website, which constitutes passive holding and, as such, has not been used in connection with a *bona fide* offering of goods or services. The use of the disputed domain name for criminal activity, such as malware distribution or phishing, could never give the Respondent a legitimate interest in the disputed domain name.

(3) The disputed domain name was registered and is being used in bad faith. The Complainant is very well-known in both in the UK and beyond and its marks have been used for many years prior to the registration of the disputed domain name. The Complainant did not discover any evidence of actual or contemplated good faith use on the part of the Respondent. On the contrary, reputable third-party sources indicate that the disputed domain name has been used for malicious or criminal purposes. The Respondent has redacted, or allowed the redaction, of its details from the public WhoIs. Given the fame, widespread use and reputation of the Complainant, it is inconceivable that the Respondent could have registered the disputed domain name without the Complainant's marks in mind and with good-faith intentions. This is especially so given the inclusion of the adornment "rebate tax unit" which, in this context, could only reasonably relate to the Complainant and its activities when incorporated into a domain name that also includes the Complainant's well-known name and marks.

The Complainant requests a decision that the disputed domain name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied, as following:

- (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.

The Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complaint.

Moreover, the Panel has taken note of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") and, where appropriate, will decide consistent with the consensus views captured therein.

A. Identical or Confusingly Similar

According to paragraph 4(a)(i) of the Policy it should be established that the disputed domain name is identical or confusingly similar to a mark in which the complainant has rights.

The Panel confirms that for the purposes of paragraph 4(a)(i) of the Policy the Complainant has satisfied the threshold requirement of having relevant trademark rights for HMRC.

The disputed domain name contains the Complainant's trademark HMRC in its entirety. Prior UDRP panels have recognized that confusing similarity is established for purposes of the Policy where the disputed domain name incorporates the complainant's trademark in its entirety. See [WIPO Overview 3.0](#), section 1.7.

Furthermore, the addition of the terms "rebate tax unit" and the use of hyphens do not prevent a finding of confusing similarity between the Complainant's trademark and the disputed domain name. Section 1.8 of the [WIPO Overview 3.0](#).

The gTLD ".com" may be disregarded for purposes of comparison under the first element, as it is viewed as a standard registration requirement. See [WIPO Overview 3.0](#), section 1.11.1.

For all of the above-mentioned reasons, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademark and therefore finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* case demonstrating that the Respondent has no rights or legitimate interests in the disputed domain name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

There is no evidence before the Panel that the Respondent has been authorized or licensed by the Complainant to use the Complainant's HMRC registered trademark. In fact, the adoption by the Respondent of a disputed domain name confusingly similar to the Complainant's trademark would appear not to be by mere chance. On the contrary, the inclusion of the terms "rebate tax unit" in the disputed domain name increases the potential for confusion amongst Internet users, in view of the Complainant's activities.

There are also no evidence that the Respondent has been commonly known by the names HRMC or HMRC REBATE TAX UNIT prior to or after the registration of the disputed domain name. There is also no information in the case file that the Respondent owns any trademarks that incorporate or are similar or identical to the terms HRMC or HMRC REBATE TAX UNIT. Equally, there are no evidence that the Respondent has ever traded or operated as HRMC or HMRC REBATE TAX UNIT.

The disputed domain name resolves to an inactive webpage. According to this Panel, the Complainant also proved that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name nor is it using the disputed domain name in connection with a *bona fide* offering of goods or services, so as to confer a right or legitimate interest in it in accordance with paragraph 4(c)(i) of the Policy given that the Respondent's website is not used legitimately by the Respondent.

Moreover, taking into account reports by Google's Transparency status, the Chrome Internet browser and Virgin Media Internet service provider, the Panel deems it highly likely that the disputed domain name has been or is being used for the distribution of malware or other malicious software – even if the Complainant was unable to put forward direct evidence that it received malware by accessing such website.

The Respondent has not replied to the Complainant's contentions, claiming any rights or legitimate interests in the disputed domain name.

With the evidence on file, it is undoubtedly established that the Respondent has no rights or legitimate interests in respect to the disputed domain name under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Under the third UDRP element, the Complainant is required to prove that the disputed domain name was registered and is being used in bad faith.

The disputed domain name resolves to an inactive website. It has been established in many UDRP cases that passive holding under the appropriate circumstances falls within the concept of a domain name being used in bad faith. Section 3.3 of the [WIPO Overview 3.0](#) describes the circumstances under which the passive holding of a domain will be considered to be in bad faith: “While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.”

The Panel finds that passive holding of the disputed domain name does not in the circumstances of this case prevent a finding of bad faith. There is no evidence in the record of a legitimate use of the disputed domain name. The trademark of the Complainant is distinctive and widely used. Previous panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

The Respondent has provided no evidence of actual or contemplated good-faith use of the disputed domain name and the Panel does not find any such use plausible. On the contrary, reputable third-party sources indicate that the disputed domain name has been used for malicious or criminal purposes.

Based on the evidence provided on the record, the Panel considers that the Respondent, by registering the disputed domain name confusingly similar to the Complainant’s HMRC registered trademark, intended to take unfair advantage of the Complainant’s valuable goodwill established in such trademark.

Also, the composition of the disputed domain name is likely to mislead Internet users and consumers into thinking that the Respondent is, in some way or another, connected to, sponsored by, or affiliated with the Complainant.

Again, in the absence of any explanation to the contrary by the Respondent, of which none is forthcoming on the record, the Panel agrees with the Complainant’s contention that the Respondent did not register and use the disputed domain name by chance; but, as noted above, the Respondent appears to have been – or, at least, should have been – fully aware of the notoriety of the Complainant and its worldwide activity, as well as its well-known and widely used HMRC registered trademark and its prior use.

For the reasons set out above, the Panel concludes that the disputed domain name was registered and is being used in bad faith, within the meaning of paragraph 4(a)(iii) of the Policy.

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 <hmrc-rebate-tax-unit.com> be transferred to the Complainant.

/Ganna Prokhorova/

Ganna Prokhorova

Sole Panelist

Date: April 17, 2023