

## **ADMINISTRATIVE PANEL DECISION**

Hannes Schmutterer Schmutterer & Partner Information Technology GmbH v.  
Ross McIntosh

Case No. D2024-0560

### **1. The Parties**

The Complainant is Hannes Schmutterer Schmutterer & Partner Information Technology GmbH, Austria, internally represented.

The Respondent is Ross McIntosh, United States of America (“United States”).

### **2. The Domain Name and Registrar**

The disputed domain name <resourcex.com> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 7, 2024. On February 8, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 8, 2024, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 9, 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 amendment to the Complaint on February 13, 2024.

The Center verified that the Complaint together with the amendment to the 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 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 10, 2024. The Respondent sent an informal email to the Center dated February 20, 2024. The Complainant sent an unsolicited supplemental filing to the Center on February 21, 2024. The Response was filed with the Center on March 10, 2024. The Complainant sent a further unsolicited supplemental filing to the Center on March 12, 2024.

The Center appointed Steven A. Maier as the sole panelist in this matter on March 18, 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. The Parties' Supplemental Filings**

Unsolicited supplemental filings are discouraged in proceedings under the UDRP, which are designed to be a simple and procedurally efficient process. Accordingly, submissions outside of the formal Complaint and Response are liable to be disregarded by panels unless they pertain to matters of which the relevant party could not reasonably have been aware at the time of filing its formal pleading, or some other exceptional circumstances exist. In this case, the Panel has taken account only of a limited amount of material contained in the Parties' supplemental filings, which satisfy the above criteria.

#### **5. Factual Background**

The Complainant is a distributor of software relating to electronic health records.

The Complainant is the owner of the following trademark registrations:

- European Union ("EU") trademark registration number 017371394 for the word mark RESOURCEX, registered on February 1, 2018 (with an application date of October 20, 2017) in International Classes 9 and 42; and
- United States trademark registration number 5778001 for the word mark RESOURCEX, registered on June 18, 2019 (with an application date of April 5, 2018) in International Classes 9 and 42.

The disputed domain name was registered on April 23, 2014.

The disputed domain name appears to have resolved to a holding page stating "biz236.inmotionhosting.com" and including what appears to be the visitor's IP address.

#### **6. Parties' Contentions**

##### **A. Complainant**

The Complainant submits that it has used the trademark RESOURCEX since 2010 and provides a link to a website at "www.resourcex.at". It also references its "principal" website at "www.schmutterer-partner.at". The Complainant states that it plans to expand its operations within the EU and to the United States, and that: "[t]o achieve this and make it more Universal, the Complainant and the Company will need to be able to use resourcex.com." The Complainant submits that it made two attempts to purchase the disputed domain name via a GoDaddy broker, but was unable to obtain any response from the Respondent.

The Complainant submits that the disputed domain name is identical to its trademark RESOURCEX.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It contends that it has not licensed or authorized the Respondent to use its RESOURCEX trademark, that the Respondent has no apparent rights in that trademark, and that the Respondent is not making any use of the disputed domain name, whether for the purpose of a website or any other legitimate objective.

The Complainant submits that the disputed domain name has been registered and is being used in bad faith.

It states that it made substantial efforts to identify and contact the Respondent with a view to purchasing the disputed domain name, but was unsuccessful in all such attempts. It adds that the Respondent's passive holding of the disputed domain name evidences bad faith in circumstances where the Complainant's mark has a strong reputation.

Based on the Respondent's submissions in reply to the Complainant, the Complainant notes that the Respondent appears to have asked for USD 100,000 for the disputed domain name via the GoDaddy broker (notwithstanding that the Complainant received no communication in this regard). The Complainant states that it is unwilling to pay more than USD 1,000 for the disputed domain name. It submits that the Respondent's price "is totally overpriced and does not reflect the intrinsic value of the domain. This price is clearly only to sell the domain for a profit."

The Complainant requests the transfer of the disputed domain name.

## **B. Respondent**

The Respondent denies having ever heard from the Complainant directly. He acknowledges that he did have correspondence with a GoDaddy broker about the disputed domain name, but states that no response was received to his offer. The Respondent exhibits an email dated May 14, 2023, stating "\$100k is min at this time" and a response from the broker stating that this would be discussed with the prospective buyer.

The Respondent contends that there is no legal basis for the Complainant's claim. He submits that the Complainant's only interest in the disputed domain name is that he wishes to buy it. The Respondent states that he has used the disputed domain name for his own business named "ResourceX". He states that the Complainant was well aware of that use, and provides evidence that the Complainant has followed him on his LinkedIn page (which the Complainant submits was only in an attempt to identify the owner of the disputed domain name). The Respondent states that he used the disputed domain name since 2017, but his business was impacted by Covid and he subsequently parked the domain.

The Respondent submits that the Complainant is trying to use the UDRP for an illegitimate purpose.

## **7. Discussion and Findings**

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are 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 has been registered and is being used in bad faith.

### **A. Identical or Confusingly Similar**

The Complainant has established that it has registered trademark rights in respect of the mark RESOURCEX. The disputed domain name is identical to that trademark. It is irrelevant to considerations under the first element of the Policy (although potentially relevant to considerations under the second and third elements) that the Complainant's trademark was registered after the date of registration of the disputed domain name. The Panel therefore finds that the disputed domain name is identical to a trademark in which the Complainant has rights.

### **B. Rights or Legitimate Interests**

In the light of the Panel's findings in respect of the third element under the Policy, below, it is unnecessary for the Panel to make a determination under the second element.

### **C. Registered and Used in Bad Faith**

It is well established in jurisprudence under the UDRP that a complainant cannot demonstrate that a domain name was registered for the purpose of targeting its trademark, and therefore in bad faith, if the complainant had not acquired relevant trademark rights at the date the relevant domain name was registered: see *e.g.* section 3.8 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)).

In this case, the disputed domain name was registered in April 2014, while the Complainant’s trademarks were not registered until February 2018 and June 2019, with filing dates of October 2017 and April 2018 respectively.

The Complainant submits, however, that it used the RESOURCEX mark from 2010 and refers to a website at “www.resourcex.at” in this regard. It does not, however, provide any other evidence of such claimed use. Furthermore, based on the Panel’s limited independent enquires from publicly available resources, the earliest archived website capture for the website at “www.resourcex.at” is dated August 3, 2018 (source: “www.web.archive.org”). The website relates to resource management provided by the Complainant, but (other than in the domain name itself) does not appear to reference the name “ResourceX”. Furthermore, an archived page for the website “www.schmutterer-partner.at” as of January 2, 2014 (the last available date before the date of registration of the disputed domain name) offers services related to “information technology for the medical sector” but does not appear to reference the name “ResourceX” (source: “www.web.archive.org”). The earliest indication of the Complainant’s use of the name “ResourceX” on its website is December 2014, which is after the Respondent’s registration of the disputed domain name.

In the circumstances, the Panel finds that the Complainant has failed to establish that it had any common law trademark rights in RESOURCEX at the date the Respondent registered the disputed domain name. Furthermore, even if the Complainant had any such rights, the Panel has seen no evidence upon which to infer that the Respondent was aware of the Complainant’s use of the “ResourceX” name, or that it registered the disputed domain name in order to take unfair advantage of the Complainant’s rights in that name. The Complainant cannot therefore establish registration of the disputed domain name in bad faith.

In the circumstances, the Respondent’s offer to sell the disputed domain name for USD 100,000 cannot of itself satisfy the requirements of the third element under the Policy. The Respondent having registered the disputed domain name otherwise than in bad faith, the Policy does not preclude him from setting an asking price for the disputed domain name at such level as he may deem appropriate.

Therefore, the Complainant must necessarily fail.

### **D. Reverse Domain Name Hijacking**

Paragraph 15(e) of the Policy provides that, if after considering the submissions, the Panel finds that the Complaint was brought in bad faith, for example in an attempt at reverse domain name hijacking or to harass the domain-name holder, the Panel shall declare in its decision that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding. The mere lack of success of the complaint is not, on its own, sufficient to constitute reverse domain name hijacking: [WIPO Overview 3.0](#), section 4.16.

In this case, the Panel accepts the Respondent’s submission that the Complainant has disclosed no reasonable basis for bringing the Complaint. However, in view of the fact that the Complainant is not legally represented, and also the evident failure of communication between the Parties in connection with the offer for sale of the disputed domain name, the Panel declines to make a finding that the Complaint was brought in bad faith.

**8. Decision**

For the foregoing reasons, the Complaint is denied.

*/Steven A. Maier/*

**Steven A. Maier**

Sole Panelist

Date: March 28, 2024