

ADMINISTRATIVE PANEL DECISION

Diageo PLC v. Nicholas Ramdial
Case No. D2024-2532

1. The Parties

The Complainant is Diageo PLC, United Kingdom, represented by Arochi & Lindner, S.C., Mexico.

The Respondent is Nicholas Ramdial, Trinidad and Tobago.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 20, 2024. On June 21, 2024, the Center sent an email to the Registrar requesting information in connection with the disputed domain name. On June 21, 2024, the Registrar responded the email of the Center, disclosing the registrant and its contact information for the disputed domain name, which differed from the named Respondent (Private Registrant) and contact information provided in the Complaint. On June 25, 2024, the Center sent an email to the Complainant, providing the Registrant name and further contact information disclosed by the Registrar, and inviting the Complainant to amend the Complaint. On June 26, 2024, the Complainant filed an amended Complaint.

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 June 27, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 17, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 18, 2024.

The Center appointed Simone Lahorgue Nunes as the sole panelist in this matter on July 23, 2024. The Panelist finds that the panel was properly constituted. The Panelist have 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 company founded in 1997, which is one of the world's largest alcoholic beverage companies. According to the Complainant, "DIAGEO markets its approximately 200 brands in nearly 180 countries and is listed on the New York and London stock markets". In addition, the Complainant has eight brands considered global: Smirnoff, Johnnie Walker, Captain Morgan, Baileys, J&B, Tequila Don Julio, as well as Tanqueray gin and Guinness beer.

The Complainant has provided evidence of being the right holder of the trademark DIAGEO in several jurisdictions. For instance, in Mexico, the registration date is June 26, 2008, and the registration number is 1046940; in the United States of America, the registration date is October 31, 2000, and the registration number is 2398900; in the United Kingdom, the registration date is February 5, 1999, and the registration number is UK0002148529B; and in Trinidad and Tobago the registration date is March 13, 2013, and the registration number is 1070278.

Furthermore, the Complainant has provided evidence of being the registrant of several domain names with the trademark DIAGEO.

The disputed domain name <diogeo.com> was registered on May 8, 2024. The disputed domain name was used to send emails from the email address [...]@diogeo.com impersonating the Complainant's employee, and requesting payments from the Complainant's customer.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the trademark DIAGEO "which the Complainant has rights". The Complainant alleged being the registrant "of more than 170 domain names which include the wordmark DIAGEO.

The Complainant contends that the Respondent has no rights or legitimate interests in respect to the disputed domain name and that the disputed domain name was registered and is being used by him in bad faith. According to the Complainant, "there is no evidence that the registrant of the domain name 'diogeo.com' is known as 'DIOGEO' or that there is any connection or relationship between the Respondent and the DIAGEO trademark."

The Complainant argues that there is no website related to the disputed domain name. In addition, the Complainant affirms that the Respondent registered the disputed domain name on May 8, 2024, and since then it has not been used, other than to send fraudulent emails impersonating the company's personnel trying to obtain an illegitimate economic benefit from DIAGEO's suppliers.

The Complainant affirms that a DIAGEO supplier received an email from the account [...]@diogeo.com, impersonating a the Complainant's employee who has the same name. In this message the Respondent informed the supplier that the Complainant had changed the bank account and that a due payment in the amount of USD 195,991.20 should be made to the new bank account informed in the message. A copy of the fraudulent email is attached as Annex 8. According to the Complainant, "the registrant intends to establish a direct relationship with DIAGEO, which obviously does not exist, but does cause great confusion among the people who receive such fraudulent e-mails."

Finally, the Complainant requests the transfer of the disputed domain name to the Complainant.

B. Respondent

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

6. Discussion and Findings

The analysis of the Complainant's arguments and of the presented evidence leads to the conclusion that the Complaint should be upheld, based on the following grounds:

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panelist finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. According to [WIPO Overview 3.0](#), section 1.9, "[a] domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element."

In light of these factors, the Panel finds the first element of the Policy has been met.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panelist finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity (e.g. 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. [WIPO Overview 3.0](#), section 2.13.1.

In light of these factors, the Panelist finds the second element of the Policy has been met.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances, such as the ones present in this case, may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In addition, Panels have held that the use of a domain name for illegal activity constitutes bad faith, such as in the case herein. [WIPO Overview 3.0](#), section 3.4.

According to the records of the present case, the Respondent used the disputed domain name to pretend to be a staff member of the Complainant and send out a fake invoice for financial gain. The Respondent also used the trademark DIAGEO in such email, which violates the Complainant's intellectual property rights (Annex 8). This fact shows that the Respondent was aware of the Complainant's business and trademark when it registered the disputed domain name. In addition, the disputed domain name is almost identical to the Complainant's domain name used also in its email addresses, which evidences that the Respondent deliberately intends to mislead Internet users, including the Complainant's suppliers.

In light of all these elements, it is reasonable to infer that the Respondent intends to take advantage of or to disrupt the Complainant's business by pretending to be its staff member. The Panel therefore finds that the Respondent registered and is using the disputed domain name in bad faith.

In light of these factors, the third element of the Policy has been met.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panelist orders that the disputed domain name <diogeo.com> be transferred to the Complainant.

/Simone Lahorgue Nunes/

Simone Lahorgue Nunes

Sole Panelist

Date: August 6, 2024