

ADMINISTRATIVE PANEL DECISION

Newsmax Media Inc. v. valeriy s
Case No. D2024-2865

1. The Parties

The Complainant is Newsmax Media Inc., United States of America (“United States” or “US”), represented by SafeNames Ltd., United Kingdom.

The Respondent is valeriy s, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <prnewsmax.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 July 15, 2024. On July 15, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 15, 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 July 16, 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 amended Complaint on July 17, 2024.

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 July 24, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 13, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 15, 2024.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on August 20, 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. Factual Background

The Complainant is a US multi-media broadcasting, digital publishing company and operator of online conservative newspaper “Newsmax”. Founded in September 1998, it reaches a monthly readership/viewership of over 40 million.

As evidenced by the Complainant, it placed a public relations tag on its website which is used to read articles that are related to public relations or “pr”.

The Complaint is based amongst others on the following word trademarks consisting of the term NEWSMAX, applied for before the date of registration of the disputed domain name:

- United States Trademark, registered on November 28, 2006, under number 3177090 for goods in class 16; and
- European Union Trademark, registered on October 24, 2010, under number 010951192 for goods and services in classes 9, 16, 38, and 41.

Both trademarks have duly been renewed and are in force.

The Registrar confirmed in its registrar verification response that the Respondent registered the disputed domain name on January 25, 2024, and that the language of the registration agreement at the time of registration was English.

The Complainant provided evidence that the disputed domain name resolves to a webpage that purports to offer competing services of the Complainant, such as news and articles within the sport and economic industry.

Finally, it results from the Complainant’s documented evidence that on May 15, 2024, it contacted the Respondent through the Registrar with a cease and desist letter requesting, among other things, the disputed domain name to be transferred to the Complainant. The Complainant did not receive any response by the Respondent.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that

- (1) the disputed domain name is confusingly similar to the Complainant’s trademarks. The addition of the letters/term “pr”, which is an abbreviation for “public relations” further contributes to the likelihood of confusion between the Complainant’s mark and the disputed domain name as this letters/term is related to the Complainant and their services;

(2) by registering a domain name confusingly similar to the Complainant's mark, the Respondent attempts to attract online users to the disputed domain name and offer services competing to the Complainant. Such use cannot be considered a bona fide offering of goods or services, since it rather capitalizes on the Complainant's mark's reputation and goodwill. The current use to allegedly advertise services competing to the Complainant's offerings, is not a legitimate, noncommercial, or fair use. This is because the Respondent intends to confuse Internet visitors as to the disputed domain name's affiliation to the Complainant and lead them to inevitably land on the Respondent's own site;

(3) the selection of a domain name that is so obviously connected to a complainant's trademark strongly suggests 'opportunistic bad faith', particularly where it is used by someone with no affiliation with the complainant. Finally, the lack of reply to the cease and desist notice prior to commencing the proceedings infers bad faith behaviour.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements in order to obtain an order that the disputed domain name should be transferred or cancelled:

- (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 Panel is satisfied that the registrant of record for the disputed domain name is the Respondent and will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

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.

While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing. In the case at hand, the entirety of the mark NEWSMAX is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy, [WIPO Overview 3.0](#), section 1.7.

Although the addition of the further lettering “pr” at the beginning of the disputed domain name may bear on assessment of the second and third elements, the Panel finds the addition of these letters does not prevent a finding of confusing similarity between the disputed domain name and the marks for the purposes of the Policy, [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

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 Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

In particular, the Panel notes that there is no evidence in the record or Whois information showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy. Furthermore, the Complainant has not given its consent for the Respondent to use its registered trademarks in any domain name registration.

Moreover, the Panel notes that the nature of the disputed domain name carries a risk of implied affiliation, since it identically contains the Complainant’s trademark NEWSMAX with a term related to the Complainant’s business. Generally speaking, previous UDRP panels have found that domain names identical to a complainant’s trademark carry a high risk of implied affiliation. Even where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (see [WIPO Overview 3.0](#), at section 2.5.1). The Panel shares this view and notes that in particular common abbreviations with an inherent link to the Complainant’s business (in the case at hand “pr” for “public relations” which is used as a tag on the Complainant’s website for articles that are related to public relations or “pr”.) are to be seen as tending to suggest sponsorship or endorsement by the trademark owner.

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.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name 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 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.

One of these circumstances is that the Respondent by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its 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 its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

In the present case, the Panel notes that it results from the Complainant's documented allegations that the disputed domain name resolves to a webpage that purports to offer competing services of the Complainant, such as news and articles within the sport and economic industry. For the Panel, noting also the fact that the Complainant's trademark predates the disputed domain name's registration by over a decade, it is more likely than not that the Respondent knew the Complainant's mark. Consequently, and in the absence of any evidence to the contrary, the Panel finds that the Respondent also knew that the disputed domain name included the Complainant's trademark when it registered the disputed domain name. This is underlined by the fact that the disputed domain name identically includes the Complainant's trademark.

Finally, the further circumstances surrounding the disputed domain name's registration and use confirm the findings that the Respondent has registered and is using the disputed domain name in bad faith:

(i) the nature of the disputed domain name, identically containing the Complainant's mark combined with the abbreviation "pr" which is used as a tag on the Complainant's website for articles referring to "public relations";

(ii) the Respondent's failure to submit a response to the Complainant's cease and desist letter and to the Complaint and therefore not providing any evidence of actual or contemplated good faith use;

(iii) absence of rights or legitimate interests coupled with no explanations for the Respondent's choice of the disputed domain name; and

(iv) the Respondent originally hiding his identity behind a proxy service.

The Panel finds that the Complainant has established the third element 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 <prnewsmax.com> be transferred to the Complainant.

/Tobias Malte Müller/

Tobias Malte Müller

Sole Panelist

Date: September 3, 2024