

ADMINISTRATIVE PANEL DECISION

Dept Holding B.V. v. Pamela Sayer, Cccc Name
Case No. D2024-3350

1. The Parties

The Complainant is Dept Holding B.V., Netherlands (Kingdom of the), internally represented.

The Respondent is Pamela Sayer, United States of America ("United States") and Cccc Name, United States.

2. The Domain Names and Registrars

The disputed domain names <deptagencys.com> and <deptagency.vip> are registered with NameSilo, LLC. The disputed domain name <deptagencys.vip> is registered with Namecheap, Inc. (the "Registrars").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 15, 2024. On August 15, 2024, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On August 15, 2024, the Registrars transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint.

The Center sent an email communication to the Complainant on August 19, 2024, with the registrant and contact information of nominally different underlying registrants revealed by the Registrars, requesting the Complainant to either file separate complaints for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity and/or that all domain names are under common control. The Complainant filed an amended Complaint on August 23, 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 August 27, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 16, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 24, 2024.

The Center appointed David Taylor as the sole panelist in this matter on October 2, 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 company incorporated in the Netherlands (Kingdom of the), operating a digital agency, specialized in technology, design, marketing, and data. The Complainant's services include digital marketing, web development, and branding.

The Complainant is the owner of trademark registrations for DEPT, including:

- United States Trademark Registration No. 5352713, DEPT, registered on December 12, 2017;
- United States Trademark Registration No. 7109819, , registered on July 18, 2023;
- European Union Trade Mark No. 015186125, DEPT, registered on August 4, 2016;
- European Union Trade Mark No. 018526667, , registered on January 6, 2022.

The Complainant is also the registrant of a substantial number of domain names comprising its DEPT trademark, including <deptagency.com>, from which it operates a public-facing website.

The disputed domain names <deptagencys.com> and <deptagencys.vip> were registered on June 24, 2024.

The disputed domain name <deptagency.vip> was registered on August 3, 2024.

The disputed domain names resolve to web pages that display the Complainant's DEPT trademark at the top of the page, in the same manner that the mark is displayed on the Complainant's official website, underneath which is written, "Log in to your Account. Welcome back, please enter your details", inviting Internet users to enter their phone number and password (the "Respondent's websites").

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 names.

Notably, the Complainant asserts rights in the DEPT trademark, and submits that the disputed domain names are confusingly similar to its trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain names. The Complainant asserts that the disputed domain names are not being used for legitimate business purposes. Rather, the websites connected to the disputed domain names prompt users to provide personal information. The Complainant infers that the Respondent is trying to illegitimately obtain login credentials and personal data for fraudulent purposes. Evidence from the websites' source code, which includes financial terms such as "current balance" and "withdraw", suggests that the disputed domain names

are being used as part of a financial phishing scheme. The Complainant further argues that there is no evidence of legitimate business activity associated with the disputed domain names, and that the disputed domain names appear to have been created as variants of the Complainant's official domain name. The Complainant submits that the Respondent is not making any legitimate noncommercial or fair use of the disputed domain names.

The Complainant submits that the disputed domain names were registered and are being used in bad faith. The Complainant asserts that at the time that the Respondent registered the disputed domain names, the Complainant's DEPT Marks had already been registered in multiple countries, including the United States, where the Respondent is apparently based. This makes it unlikely that the Respondent was unaware of the Complainant's trademark. Moreover, the Respondent's websites display the Complainant's DEPT trademark, suggesting familiarity with the Complainant's marks. The Complainant submits that the disputed domain names were registered in order to create confusion for commercial gain or for other illicit purposes, such as unauthorized account access or phishing.

The Complainant requests transfer of the disputed domain names.

B. Respondent

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

6. Discussion and Findings

6.1. Consolidation: Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The disputed domain name registrants did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.11.2.

As regards common control, the Panel notes that (1) the disputed domain names resolve to identical websites, (2) the disputed domain names follow a similar naming pattern at the second level, comprising the Complainant's DEPT trademark followed by the term "agency" or "agencys", (3) the disputed domain names <deptagencys.com> and <deptagencys.vip> were registered on the same date, (4) the disputed domain names <deptagency.vip> and <deptagencys.com> were registered using the same underlying registrant email address, and (5) the disputed domain names <deptagencys.com> and <deptagency.vip> were registered providing the same registrant name, registrant address, and registrant phone number.

As regards fairness and equity, the Panel sees no reason consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as the "Respondent") in a single proceeding.

6.2. Substantive Matters

In order to prevail, the Complainant must demonstrate on the balance of probabilities that it has satisfied the requirements of paragraph 4(a) of the Policy:

- (i) the disputed domain names are 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 names; and
- (iii) the disputed domain names were registered and are being used in bad faith.

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 3.0](#), section 1.7.

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

Each of the disputed domain names comprises the Complainant's DEPT trademark in its entirety as its leading element, followed by the term "agency" or "agencys". Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the Complainant's DEPT trademark to be recognizable within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the Complainant's DEPT trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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

B. Rights or Legitimate Interests

As noted above, the disputed domain names resolve to websites that invite Internet users to "log in" by providing their phone number and a password. In light of the similarities between the disputed domain names and the Complainant's official domain name <deptagency.com>, and further noting the way in which the DEPT trademark is displayed on the Respondent's websites, there is a risk that Internet user seeking the Complainant online may be misled to the Respondent's websites, believing that they have arrived at a website operated by the Complainant, and disclose personal identifying information. Given that the source code for the disputed domain names contains terms that relate to the provision of financial services, such as "current balance", "withdraw", "deposit", and others, the Panel infers that the Respondent may be engaged in a financial phishing scheme.

Panels have held that the use of a domain name for illegal activity such as phishing, 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.

The Respondent has not come forward with any evidence to support a finding that it has rights or legitimate interests in the disputed domain names pursuant to any of the provisions of paragraph 4(c) of the Policy.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain names and that the second element of the Policy has been established.

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 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 the present case, the Panel notes that the Respondent has used the disputed domain names to resolve to websites that are likely to mislead Internet users into believing that they have arrived at websites operated by the Complainant. The Panel infers that the Respondent's use of the disputed domain names is intended to induce Internet users into disclosing personal identifying information, which may in turn be used for fraudulent purposes.

Panels have held that the use of a domain name for illegal activity, here claimed unauthorized account access/hacking, as well as impersonation/passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain names constitutes bad faith under the Policy.

The Panel further finds that the Respondent's registration of the disputed domain names using a proxy service, coupled with the provision of what appear to be false or incomplete underlying registrant details, amounts to further evidence of the Respondent's bad faith. [WIPO Overview 3.0](#), section 3.6.

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 names <deptagencys.com>, <deptagencys.vip>, and <deptagency.vip> be transferred to the Complainant.

/David Taylor/

David Taylor

Sole Panelist

Date: October 16, 2024