

ADMINISTRATIVE PANEL DECISION

Travellers Exchange Corporation Limited v. Craig Stepnell Travel Pty Ltd Case No. DAU2022-0028

1. The Parties

The Complainant is Travellers Exchange Corporation Limited, United Kingdom, represented by Deloitte LLP, United Kingdom.

The Respondent is Craig Stepnell Travel Pty Ltd, Australia.

2. The Domain Name and Registrar

The disputed domain name <thetravelexchange.com.au> is registered with GoDaddy.com, LLC.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 19, 2022. On October 19, 2022, the Center transmitted by email to GoDaddy.com, LLC a request for registrar verification in connection with the disputed domain name. On October 20, 2022, GoDaddy.com, LLC transmitted by email to the Center its verification response disclosing the registrant and contact information for the disputed domain name. The Center sent an email communication to the Complainant on October 28, 2022, 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 November 2, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .au Dispute Resolution Policy (the “Policy” or “.auDRP”), the Rules for .au Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .au Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on November 7, 2022. In accordance with the Rules, paragraph 5(a), the due date for Response was November 27, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 28, 2022.

The Center appointed John Swinson as the sole panelist in this matter on December 13, 2022. 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 United Kingdom company that provides services in respect of foreign currency exchange. The Complainant operates across 60 countries and covers many aspects in the retail foreign exchange industry.

The Complainant is known under its brand "TravelEx".

The Complainant operates TravelEx outlets in international airports and in major transport hubs, shopping malls, supermarkets, and city centres, including many such outlets in Australia.

The Complainant owns several trademark registrations for or including the TRAVELEX trademark, including Australian Registration No. 663330 for TRAVELEX that was filed on June 6, 1995, and entered on the Australian Trade Marks Register on November 28, 1997, for "money exchange services".

The Respondent is Craig Stepnell Travel Pty Ltd. This entity is listed in the Whols records and the Registrar's records as the registrant of the disputed domain name. This entity has changed its name to VIP TRAVEL NETWORK PTY LTD but has not updated the relevant Whols records to reflect this change of name.

The Respondent did not file a response, so little is known of the Respondent. The Respondent appears to be a travel agent or tour specialist, and operates a website at <theviptraveller.com.au>.

The disputed domain name was registered on May 14, 2020.

At the present time, the disputed domain name resolves to a Registrar-generated parking page with links to "related searches" for "tour packages" and "Forex Trading" and the like.

5. Parties' Contentions

A. Complainant

In summary, the Complainant made the following submissions.

The Complainant has registered trademark rights and common law rights in the trademark TRAVELEX.

The dominant and most distinctive element of the disputed domain name is the TRAVELEX trademark which appears in its entirety and comprises the middle part of the disputed domain name. No amendments have been made to the trademark. The only other elements of the disputed domain name appear at the beginning and end, comprising of the words "the" and "change".

The use of the word "change" when added to the TRAVELEX describes the travel currency exchange services for which the Complainant is known, which reinforces the proximity to the Complainant's activities.

The Complainant has not licensed or otherwise given any third parties the permission to use the TRAVELEX trademark as part of the disputed domain name. To the Complainant's knowledge, no third party, let alone the Respondent has sought or attempted to seek any authorization from the Complainant to use the TRAVELEX trademark as part of the disputed domain name or otherwise.

The disputed domain name does not resolve to an active website, which is indicative that the Respondent does not have any ongoing commercial or business offering under the TRAVELEX, or for which it uses the TRAVELEX trademark. There is no evidence that the disputed domain name is being used in a descriptive sense.

The Complainant asserts that the disputed domain name was registered in bad faith.

Due to the reputation of the TRAVELEX trademark, the Respondent must have been aware of the Complainant at the time of registering the disputed domain name.

Use of the disputed domain name will clearly cause confusion for customers and partners by deceiving them into thinking that the disputed domain name will be used for a website which is operated by or associated with the Complainant and will disrupt the Complainant's business.

B. Respondent

The Respondent did not file a Response.

6. Discussion and Findings

Paragraph 4(a) of the auDRP provides that a complainant must prove each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to a name, 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 or subsequently used in bad faith.

The burden of proof of each element is borne by the Complainant.

Paragraph 15(a) of the Rules directs the Panel to decide the 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 the Panel deems applicable.

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's name, trademark or service mark.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a name or mark at the date the Complaint was filed and, if so, the disputed domain name must be identical or confusingly similar to the name or mark.

For present purposes, the Complainant has proven that it owns a registered trademark for TRAVELEX as discussed in section 4 above.

Typically and as is appropriate in this case, it is permissible to disregard respectively the Top and Second Level Domains, ".com.au", as a functional component of the domain name system.

Disregarding the ".com.au", the disputed domain name can be seen as the terms "the", "travel", and "exchange". It can also be seen, as the Complainant contends, as consisting of the Complainant's registered trademark and the terms "the" and "change". As this requirement under the Policy is essentially a

standing requirement, the central fact is that the disputed domain name does contain the exact alphanumeric string comprising the Complainant's trademark. The inclusion of other of terms in addition to that alphanumeric string does not preclude a finding of confusing similarity. Compare *Travellers Exchange Corporation Limited v. Registration Private, Domains By Proxy, LLC / Tracy Robbison, Epic Promoters*, WIPO Case No. [D2022-2385](#).

Accordingly, the disputed domain name is confusingly similar to the Complainant's TRAVELEX trademark.

The Complainant succeeds on the first element of the Policy.

B. Rights or Legitimate Interests

The Complainant's allegations as to the Respondent's lack of rights or legitimate interests in the disputed domain name are outlined above in section 5A. The Panel finds that the Complainant has made a *prima facie* showing that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Complainant asserts that the disputed domain name does not resolve to an active website. At the present time, the disputed domain name resolves to a registrar generated parking page with content relevant to the travel industry and also to the trading of foreign exchange. A registrar generated parking page does not, without more, support a finding that the Respondent has rights or legitimate interests in the disputed domain name.

The disputed domain name is not currently being used in connection with an active website created by the Respondent. In the circumstances present here, absence of use does not establish rights or legitimate interests in the disputed domain name.

There is no evidence that the disputed domain name is being used by the Respondent in a descriptive sense.

The Complainant has rights in its trademark which precedes the Respondent's registration of the disputed domain name.

The Panel finds that the Respondent has failed to produce any evidence to establish any rights or legitimate interests in the disputed domain name. Accordingly, the Panel finds that the Respondent has not rebutted the *prima facie* case established by the Complainant and that, on the evidence before the Panel, none of the circumstances listed in paragraph 4(c) of the Policy apply in the present circumstances.

The Complainant succeeds on the second element of the Policy in relation to the disputed domain name.

C. Registered or Subsequently Used in Bad Faith

Unlike the UDRP, the requirements that the disputed domain name be registered or used in bad faith are disjunctive in the auDRP. That is, it is sufficient for the Complainant to show either that the disputed domain name was registered in bad faith or has been used in bad faith.

The Complaint is unclear whether the Complainant is alleging both bad faith registration and bad faith use, or only bad faith registration. At no point does the Complaint explicitly allege bad faith use, and states that the disputed domain name is not in use. The Complaint does not rely on doctrine of passive holding to argue bad faith use.

The Complainant's case on bad faith can be simply stated as follows: the Complainant is well known throughout the world and the Respondent "must have been aware of the Complainant" at the time of registering the disputed domain name. Further, the Respondent had the responsibility to determine if the disputed domain name infringed another's rights, and the Respondent "in this case could easily have established that the Disputed Domain Name would infringe the Complainant's rights".

Generally speaking, a finding that a domain name has been registered in bad faith requires an inference to be drawn that the respondent in question has registered the disputed domain name to take advantage of its significance as a trademark owned by the complainant.

Because the Respondent is a company in the travel business, the Panel is prepared to accept that the Respondent was aware of the Complainant's TRAVELEX trademark in 2020.

That the Respondent may be aware of the TRAVELEX trademark does not necessarily mean, however, that the Respondent registered the disputed domain name to take advantage of the TRAVELEX trademark.

There is no evidence before the Panel to suggest that the Respondent had bad faith motives vis-a-vis the Complainant. The Panel comes to this conclusion based on the following factors:

1. There is no evidence that the Respondent has tried to sell the disputed domain name to the Complainant.
2. There is no evidence that the Respondent is attempting to attract consumers via the disputed domain or is attempting to disrupt the Complainant's business.
3. The disputed domain name is not identical to the Complainant's trademark.
4. It is not clear that use of the disputed domain name by the Respondent would infringe the Complainant's trademark rights in Australia. The test under the first element of the Policy, discussed above, is narrower than and thus different to the question of "likelihood of confusion" under Australian trademark law. It is debatable whether "The Travel Exchange" is deceptively similar to TRAVELEX so as to cause a likelihood of confusion.

In short, the Complainant has not presented evidence, circumstantial or otherwise, as to why the registration or use (albeit based on a registrar parking page) by the Respondent of the disputed domain name must be bad faith.

Ultimately, the Panel concludes on the preponderance of the evidence, that the Complainant has not carried its burden of proving the Respondent's bad faith as required by the Policy.

7. Decision

For all the foregoing reasons, the Complaint is denied.

/John Swinson/

John Swinson

Sole Panelist

Date: December 28, 2022