

ADMINISTRATIVE PANEL DECISION

OmniMax International, LLC v. Guizhi Teng
Case No. D2022-3104

1. The Parties

Complainant is OmniMax International, LLC, United States of America (“United States”), represented by Williams Mullen, P.C., United States.

Respondent is Guizhi Teng, China.

2. The Domain Name and Registrar

The disputed domain name <amerimax-shop.com> is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 22, 2022. On August 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 25, 2022, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 Respondent of the Complaint, and the proceedings commenced on August 26, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 15, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on September 16, 2022.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on October 4, 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

Complainant is a company organized under the laws of the United States whose business is designing, developing, manufacturing, testing, marketing and selling building products and related services.

Complainant has provided evidence that it is the registered owner of numerous trademarks relating to its brand AMERIMAX, including, but not limited, to the following:

- Word mark AMERIMAX, United States Patent and Trademark Office, registration number: 4387048, registration date: August 20, 2013, status active.

Moreover, Complainant has evidenced to own since 1998 the domain name <amerimax.com>, which resolves to Complainant's official website at "www.amerimax.com", promoting Complainant's building products and related services throughout the United States and beyond.

Respondent, according to the Whois information for the disputed domain name, is a resident of China who registered the disputed domain name on May 12, 2022. By the time of the rendering of this decision, the disputed domain name does not resolve to any content on the Internet. Complainant, however, has demonstrated that at some point before the filing of the Complaint, the disputed domain name resolved to a website at "www.amerimax-shop.com", which prominently displayed Complainant's AMERIMAX trademark and official logo as well as other building materials, offered for online sale at reduced prices, apparently in a fraudulent manner for commercial gain, as evidenced by some communication with Internet consumers who made payments to Respondent in connection with the website under the disputed domain name, but did not receive any ordered goods.

Complainant requests that the disputed domain name be transferred to Complainant.

5. Parties' Contentions

A. Complainant

Complainant contends that it has prominently and extensively used, promoted, and advertised its AMERIMAX trademark for decades and that, as a result, such trademark nowadays is extremely well-known and recognized globally for high-quality building products and related services.

Complainant submits that the disputed domain name is identical or confusingly similar to Complainant's AMERIMAX trademark, as it incorporates the latter in its entirety and also fully subsumes Complainant's <amerimax.com> domain name, simply added by the generic term "shop". Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Respondent has no license, permission, or authorization from Complainant to use the AMERIMAX trademark, (2) Respondent is not known individually, as a business, or in any other manner by the disputed domain name, or by the name "Amerimax" generally, and (3) the website at the disputed domain name is being used as a pretext for Respondent's commercial gain or other such purposes inheriting to Respondent's benefit. Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since (1) Internet users could easily mistake Respondent's website at the disputed domain name as being operated by Complainant, or otherwise being affiliated with or authorized by Complainant, which it is not, and (2) Respondent is using the disputed domain name for commercial gain by deceiving consumers and offering fraudulent, counterfeit, or non-existent products for sale under Complainant's AMERIMAX trademark, thereby attempting to pass itself off as Complainant.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) that Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

Respondent's default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a Response as it considers appropriate.

A. Identical or Confusingly Similar

The Panel concludes that the disputed domain name is confusingly similar to the AMERIMAX trademark in which Complainant has rights.

The disputed domain name incorporates Complainant's AMERIMAX trademark in its entirety. Numerous UDRP panels have recognized that where a domain name incorporates a trademark in its entirety, 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 trademark (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7). Moreover, it has been held in many UDRP decisions and has become a consensus view among panelists (see [WIPO Overview 3.0](#), section 1.8), that the addition of other terms (whether *e.g.* descriptive or otherwise) would not prevent the finding of confusing similarity under the first element of the UDRP. Accordingly, the addition of the term "shop" does not dispel the confusing similarity arising from the incorporation of Complainant's entire AMERIMAX trademark in the disputed domain name.

Therefore, Complainant has established the first element under the Policy as set forth by paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Panel is further convinced on the basis of Complainant's undisputed contentions that Respondent has not made use of the disputed domain name in connection with a *bona fide* offering of goods or services, nor has Respondent been commonly known by the disputed domain name, nor can it be found that Respondent has made a legitimate noncommercial or fair use thereof without intent for commercial gain.

Respondent has not been authorized to use Complainant's AMERIMAX trademark, either as a domain name or in any other way. Also, there is no reason to believe that Respondent's name somehow corresponds with the disputed domain name and Respondent does not appear to have any trademark rights associated with the term "Amerimax" on its own. To the contrary, Respondent, at some point before the filing of the Complaint, used the disputed domain name to run a website at "www.amerimax-shop.com", which prominently displayed Complainant's AMERIMAX trademark and official logo as well as other building materials, offered for online sale at reduced prices, apparently in a fraudulent manner for commercial gain. Such making use of the disputed domain name neither qualifies as *bona fide* nor as legitimate noncommercial or fair within the meaning of the Policy.

Accordingly, Complainant has established a *prima facie* case that Respondent has no rights or legitimate interests in respect of the disputed domain name. Now, the burden of production shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name (see [WIPO Overview 3.0](#), section 2.1). Given that Respondent has not submitted a Response, it has not met that burden.

Therefore, the Panel finds that Complainant has also satisfied paragraph 4(a)(ii) and, thus, the second element of the Policy.

C. Registered and Used in Bad Faith

The Panel finally holds that the disputed domain name was registered and is being used by Respondent in bad faith.

The circumstances to this case leave no doubt that Respondent was fully aware of Complainant's rights in the AMERIMAX trademark when registering the disputed domain name and that the latter is clearly directed thereto. Moreover, using the disputed domain name, which incorporates Complainant's AMERIMAX trademark its entirety, to run a website at "www.amerimax-shop.com", which prominently displayed Complainant's AMERIMAX trademark and official logo as well as other building materials, offered for online sale at reduced prices, apparently in a fraudulent manner for commercial gain, is a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusion with Complainant's AMERIMAX trademark as to the source, sponsorship, affiliation or endorsement of Respondent's website. Such circumstances are evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

In this context, it also carries weight in the eyes of the Panel that Respondent provided false or incomplete contact information in the Whois register for the disputed domain name since, according to the email correspondence between the Center and the postal courier DHL, the Written Notice on the Notification of Complaint dated August 26, 2022, could not be delivered. This fact at least throws a light on Respondent's behavior which supports the Panel's bad faith finding.

Therefore, the Panel concludes that Complainant has also satisfied the third element under the Policy set forth by paragraph 4(a)(iii).

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 <amerimax-shop.com> be transferred to Complainant.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: October 14, 2022