

ADMINISTRATIVE PANEL DECISION

DPDgroup International Services GmbH & Co. KG v. 王若鹏 (Wang Ruo Peng)

Case No. D2022-3309

1. The Parties

The Complainant is DPDgroup International Services GmbH & Co. KG, Germany, represented by Fidal, France.

The Respondent is 王若鹏 (Wang Ruo Peng), China.

2. The Domain Name and Registrar

The disputed domain name <dpd-trackings.com> is registered with Eranet International Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 6, 2022. On September 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 13, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on September 13, 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 amendment to the Complaint on September 13, 2022.

The Center verified that the Complaint together with the amendment to 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 the Respondent of the Complaint, and the proceedings commenced on September 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 6, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 7, 2022.

The Center appointed Ada L. Redondo Aguilera as the sole panelist in this matter on October 21, 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 in this proceeding is the German company DPDgroup International Services GmbH & Co. KG.

The Complainant is one of the world leading package delivery networks, and a leading enabler of e-commerce acceleration.

The Complainant combines innovative technology and local knowledge to provide a flexible and user-friendly service for both shippers and shoppers.

With 120,000 delivery experts operating in nearly 50 countries, and a network of 70,000 Pickup points, the Complainant delivers 8.4 million parcels worldwide each day - 2.1 billion parcels per year – through the brands DPD.

The Complainant is the owner of numerous DPD trademarks in numerous jurisdictions, included but not limited the following:

-The European Union trademark for DPD DYNAMIC PARCEL DISTRIBUTION, no. 006159487, registered on August 19, 2009, in classes 35 and 39;

-The International trademark for DPD (design mark), no. 761146, registered on May 26, 2001, in classes 36 and 39;

-The International trademark for DPD (design mark), no. 1217471, registered on March 28, 2014, in classes 9, 16, 35, 39, and 42; and

-The International trademark for DPDGROUP (design mark), no. 1271522, registered on August 25, 2015, in class 39.

The Complainant operates its main Internet business through the domain name <dpd.com> since March 20, 1991.

The Complainant is the owner of numerous domain names: <dpd.asia>, <dpd.iz>, <dpd.ch>, <dpd.com>, <dpd.net>, <dpd.in>, <dpd.lu>, <dpd.fr>, <dpd.eu>, and <dpd.ru>.

The disputed domain name <dpd-trackings.com> was registered on April 18, 2022, and resolves to a website that contains pornographic and gambling content.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain name is confusingly similar to its trademark DPD. Due to the fact that the trademark is included in its entirety with the addition of the word "trackings". Also, the Complainant argues that the Respondent has no rights or legitimate interests with respect to the disputed domain name and finally, that the Respondent registered and is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has established its trademark rights on the DPD trademark. The test that a panel must do in order to establish if a domain name is confusingly similar to a trademark involves the comparison between the trademark and the domain name.

Regarding whether the disputed domain name is identical or confusingly similar to the DPD trademark, this Panel observes that the disputed domain name is comprised of: (a) the Complainant's trademark DPD; (b) with the addition of the symbol "-" and the word "trackings"; (c) followed by the generic Top-Level Domain ("gTLD") ".com".

The dominant part of the disputed domain name compromises the Complainant's trademark DPD in its entirety. It is well established that where a domain name incorporates a complainant's trademark in its entirety, the domain name will be normally considered confusingly similar to that mark. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

The disputed domain name also comprises the symbol "-" and the word "trackings". 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. See [WIPO Overview 3.0](#), section 1.8.

The addition of the gTLD ".com" does not have any impact on the overall impression of the dominant portion of the disputed domain name and is therefore irrelevant to determine the confusing similarity between the trademark and the disputed domain name.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights or legitimate interests in a domain name by demonstrating any of the following:

(i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or (ii) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers, or to tarnish the trademark or service mark at issue.

Even though the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a domain name, it is well established that, as it is put in section 2.1 of [WIPO Overview 3.0](#) that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests. Once such *prima facie* case is made out, the burden of production shifts to the respondent to come forward with relevant allegations and evidence demonstrating rights or legitimate interests in the domain name. If the respondent does come forward with arguments or evidence proving its rights or legitimate interests, the panel weighs all the evidence, with the burden of proof always remaining on the complainant.

The Complainant contends that the Respondent is not commonly known by the disputed domain name or the trademark DPD. The Respondent has not been authorized by the Complainant to register or use the trademark DPD in any way including the disputed domain name. The website that is displayed on the disputed domain name does not show any *bona fide* offering of goods or services, due to the fact that what is displayed on the website at the disputed domain name is pornographic and gambling content.

The Respondent had the opportunity to demonstrate its rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the *prima facie* case established by the Complainant has not been refuted by the Respondent.

In the present case, the Panel has the view that the Respondent, by using the trademark DPD in the disputed domain name for pornographic and gambling content affects in a negative way the trademark DPD. Such use does not constitute a *bona fide* offering goods or services or legitimate noncommercial or fair use within paragraphs 4(c)(i) and (iii) of the Policy. Regarding paragraph 4(c)(ii) of the Policy, the Panel notes that there is no evidence that the Respondent has been commonly known by the term “dpd” or the disputed domain name.

In conclusion, in this case, the Panel finds that the Complainant has made out a *prima facie* case. The Respondent has not submitted any arguments or evidence to rebut the Complainant’s *prima facie* case. Furthermore, the Complainant has not authorized, licensed, or otherwise permitted the Respondent to use the DPD trademark. That the Complainant does not have any type of business relationship with the Respondent. Based on the use made of the disputed domain name to resolve to a website that contains pornography and gambling, the Panel finds that the Respondent is not making a *bona fide* offering of goods or services nor making a legitimate noncommercial or fair use of the disputed domain name. On the contrary, the Respondent is using the DPD trademark in the disputed domain name to promote its website for illegitimate commercial gain. In the present case, the Respondent intentionally attempted to create a likelihood of confusion by using the disputed domain name incorporating the DPD trademark to increase Internet user traffic to its pornographic and online gambling website. Other UDRP panels have found that use of a domain name identical or confusingly similar to a trademark to attract or divert Internet traffic to a website featuring pornographic content is not a *bona fide* use and does not confer rights or legitimate interests in the domain name, see *Nintendo of America Inc. v. Baltic Consultants Limited*, WIPO Case No. [D2002-0449](#) (finding use of the domain name not *bona fide*, as it was for distinctly commercial purposes, namely, for marketing of pornography and gambling).

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the disputed domain name. In light of the above, the Complainant has complied with the second element of the Policy. Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

This Panel finds that, based on the record, the Complainant has demonstrated the existence of the Respondent’s bad faith pursuant to paragraph 4(b) of the Policy. In order to prevail under the Policy, the Complainant must show that the disputed domain name has been registered and is being used in bad faith, accordingly it is a cumulative requirement.

The Panel is satisfied that the Respondent must have been aware of the trademark DPD when it registered the disputed domain name as the disputed domain name contains the trademark DPD in its entirety, together with the word “trackings”, a term related to the Complainant’s area of commercial activity.

The Panel finds that the evidence in the case shows that the Respondent registered and has used the disputed domain name in bad faith.

On the issue of registration, the trademark DPD is known for delivery services that it would be inconceivable that the Respondent might have registered the disputed domain name unaware of it. On the other hand, it is

important to note that the disputed domain name was registered on April 18, 2022, many years after the registration of the Complainant's DPD trademark. In light of the reputation of the Complainant, and the scope of its operations, for this Panel it is evident that the Respondent had knowledge of both the Complainant and its trademark at the time the disputed domain name was registered. Furthermore, it is well established that when the disputed domain name is so obviously connected with a well-known trademark such as the trademark DPD, it can be concluded that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a confusion with the Complainant's trademark.

Furthermore, the Panel finds that the use of the disputed domain name is also in bad faith due to the fact that the contents are pornographic and gambling. Other UDRP panelists have concluded the same: see *VIVENDI v. Guseva Svetlana*, WIPO Case No. [D2018-2631](#); and *CHRISTIAN DIOR COUTURE v. Paul Farley*, WIPO Case No. [D2008-0008](#). Such conduct is known as "pirouetting", the practice whereby confusion with a trademark is used to divert Internet users to a website with pornographic content. Here the Respondent created the disputed domain name that incorporated the DPD trademark to attempt to attract the Complainant's customers to its pornographic and online gambling website by creating a likelihood of confusion with the Complainant's DPD trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and thus generate revenue through the unauthorized use of the DPD trademark. See [WIPO Overview 3.0](#) section 3.1.4. In addition, the Respondent's registration and use of the disputed domain name indicate that such registration and use had been done for the specific purpose of trading on the name and reputation of the Complainant and its DPD trademark.

For all the foregoing reasons, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) 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 <dpd-trackings.com> be transferred to the Complainant.

/Ada L. Redondo Aguilera/

Ada L. Redondo Aguilera

Sole Panelist

Date: November 4, 2022