

ADMINISTRATIVE PANEL DECISION

GQA Qualifications Limited v. kari butke

Case No. D2022-4170

1. The Parties

The Complainant is GQA Qualifications Limited, United Kingdom, represented internally.

The Respondent is kari butke, Algeria.

2. The Domain Name and Registrar

The disputed domain name <gqaonline.net> is registered with Web Commerce Communications Limited dba WebNic.cc (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 3, 2022. On November 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 9, 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 (Domain Admin, Whoisprotection.cc) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 14, 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 14, 2022.

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 November 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 6, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 7, 2022.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on December 15, 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 an Awarding Body for technical qualifications in 16 sectors that include glass, fenestration, and construction, accredited and regulated by the Office of Qualifications and Examinations Regulation (Ofqual) of England.

The Complainant is allowed to issue a Construction Skills Certification Scheme (CSCS) card known as the “Q-card” that indicates that the card holder has demonstrated knowledge and skills in accordance with English occupational standards.

The Complainant, in addition to the domain names <gqaonline.info> and <gqaqualifications.com>, used in connection with the Complainant’s activities, is the owner of the United Kingdom Trademark Registration No. UK00002498139 for the word and device mark GQA QUALIFICATIONS, filed on September 19, 2008, and registered on February 25, 2011, in classes 16, 35, and 41.

The disputed domain name <gqaonline.net> was registered on January 29, 2022, and presently does not resolve to an active webpage, it has however been used in connection with fraudulent CSCS cards in an attempt to impersonate the Complainant.

5. Parties’ Contentions

A. Complainant

According to the Complainant, CSCS cards have become a de facto right-to-work card for constructions site workers in the United Kingdom, and as such are highly sought after and are subject of fraud especially in the entry level roles.

Also according to the Complainant, employers and contractors can scan the QR-code on the front of the CSCS card issued by the Complainant, directing them to the Complainant’s website available at <gqaonline.info> where the cardholders record of achievements, and any related accredited training are displayed for verification.

The Complainant states that a total of 93 false records of CSCS cards have been discovered in the website that resolved from the disputed domain name and which also cloned the Complainant’s website, reproducing the Complainant’s website layout, logos and style, in an attempt to pass off as the Complainant.

The Complainant contends that the disputed domain name is confusingly similar to its registered trademark, as well as is identical to its prior <gqaonline.info> domain name, only differing by the extension.

As to the absence of rights or legitimate interests, the Complainant argues that the Complainant has not authorized the Respondent to use its trademark in a domain name or to use its trademark on the website that resolved from the disputed domain name.

The registration and use of the disputed domain name in bad faith, according to the Complainant, arises from the Respondent’s use of the disputed domain name to impersonate the Complainant in connection with fraudulently obtained and fake CSCS cards which may enable unqualified workers to gain access to construction sites where they may be a risk to themselves, others working alongside them and members of the public.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

- (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 Complainant must prove in this administrative proceeding that each of the aforementioned three elements is present in order to obtain the transfer of the disputed domain name.

In accordance with paragraph 14(a) of the Rules, if the Respondent does not submit a Response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

A. Identical or Confusingly Similar

The Complainant has established rights in the GQA QUALIFICATIONS trademark.

The disputed domain name includes the dominant feature of the Complainant's trademark. It is well accepted that the first element functions primarily as a standing requirement and that the threshold test for confusing similarity involves a "reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name". And, in cases "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" (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, [\(WIPO Overview 3.0\)](#), section 1.7).

The first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a non-exclusive list of circumstances that may indicate a respondent's rights to or legitimate interests in a domain name. These circumstances are:

- (i) before any notice 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 (as an individual, business, or other organization) has been commonly known by the domain name, even if it has not acquired 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.

The Respondent, in not responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights to or legitimate interests in the disputed domain name. This entitles the Panel to draw any such inferences from such default as it considers

appropriate pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden of proof is still on the Complainant to make a *prima facie* case against the Respondent.

In that sense, and as the evidence submitted clearly indicates, the Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, given that the Respondent has been using the disputed domain name in connection with fraudulent schemes in an attempt to impersonate the Complainant in connection with fake CSCS cards. Such use cannot be considered a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name.

C. Registered and Used in Bad Faith

The Policy indicates in paragraph 4(b)(iv) that bad faith registration and use can be found in respect of a disputed domain name, where, by using the disputed domain name, a respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

In this case, both the registration and use of the disputed domain name in bad faith can be found in view of the Respondent's webpage, which mimics the Complainant's website in an attempt to impersonate the Complainant and defraud the public.

The Respondent's use of the disputed domain name not only clearly indicates full knowledge of the Complainant's trademark but also an attempt of misleadingly diverting consumers for its own commercial gain.

Other factors corroborate a finding of bad faith, such as the indication of what appears to be a false address in the Whois data and, consequently, the Center not being able to have communications fully delivered to the Respondent, as well as the Respondent's lack of reply to the proceeding, failing thereby to invoke any circumstance which could demonstrate good faith in the registration or use of the disputed domain name.

For the reasons above, the Respondent's conduct has to be considered, in this Panel's view, as bad faith registration and use of the disputed domain name.

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 <gqaonline.net> be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: December 29, 2022