

ADMINISTRATIVE PANEL DECISION

Twiga Minerals Corporation Limited v. Twiga Minerals, Twiga Minerals Corporation Ltd
Case No. D2023-3904

1. The Parties

The Complainant is Twiga Minerals Corporation Limited, United Republic of Tanzania, represented by Adams & Adams Attorneys, South Africa.

The Respondent is Twiga Minerals, Twiga Minerals Corporation Ltd, United Republic of Tanzania.

2. The Domain Name and Registrar

The disputed domain name <twigaminerals.com> (the “Disputed Domain Name”) is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 18, 2023. On September 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On September 21, 2023, the Registrar transmitted by email to the Center its verification response confirming that the 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 the Respondent of the Complaint, and the proceedings commenced on September 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 12, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 13, 2023.

The Center appointed Mariia Koval as the sole panelist in this matter on October 17, 2023. 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 the joint venture between the Tanzanian government and Barrick Gold Corporation, which was founded in 2019 to manage various mining operations in Tanzania. Barrick Gold Corporation is a leading gold and copper producer, operating mines and projects in 18 countries in North and South America, Africa, Papua New Guinea and Saudi Arabia. The Complainant employs nearly 5,868 employees, 54% of whom are Tanzanian contractors and 42% of whom are Tanzanian national employees. About 60% of the senior management at the Complainant's company are Tanzanian citizens.

The Complainant has, since its establishment, been deeply engrained in the local communities in Tanzania, with Tanzanian nationals making up 96% of the mines' workforces, with 45% drawn from the communities surrounding the mines by 2022. Host country nationals account for 58% of the senior management and during the past quarter, the mines spent USD 339 million with Tanzanian suppliers and service providers. The Complainant has also been active in addressing the environmental, land claims and human rights issues that previously led to destruction of the mines. Since its establishment, the Complainant has also invested more than USD 12.5 million in landmark projects to provide access to quality healthcare, educational facilities, potable water and alternative sources of income. Also, the Complainant has been intimately involved in the betterment of the communities in which it has been operating: it has committed USD 30 million to a Future Forward School Programme in partnership with the Tanzanian government.

The Complainant provides a list indicating that in May 2023 it has filed four applications in Tanzania for the TWIGA logo, Nos. TZ/T/2023/001020, TZ/T/2023/001019, TZ/S/2023/000406 and TZ/S/2023/000405 in respect of goods and services in classes 6, 14, 37, and 42; as well as an application for TWIGA MINERALS CORPORATION LIMITED trademark in the United States under No. 98005201 (collectively the "TWIGA Trademark"). None of these applications has been registered at the date of filing of the Complaint.

The Complainant has actively used and promoted its TWIGA Trademark since 2019. The Complainant also established a social media presence and uses the TWIGA Trademark to promote its goods and services on social-media platforms such as Facebook, Instagram, X and LinkedIn. The Complainant created the TWIGA Facebook page in 2019 and the Instagram account in 2020.

The Disputed Domain Name was registered on January 4, 2022. As at the date of this decision and when the Complaint was filed, the Disputed Domain Name resolves to an inactive website.

5. Parties' Contentions

A. Complainant

The Complainant asserts that the Disputed Domain Name is confusingly similar to its TWIGA Trademark. The Complainant has continuously and exclusively been using the TWIGA Trademark and its company name since its inception in 2019, nearly three years prior the registration of the Disputed Domain Name in January 2022, in relation to the mining and distribution of precious metals, as well as related services. The Complainant has invested considerable time, money and effort in the promotion of its TWIGA Trademark in Tanzania. The Complainant has also extensively advertised its services and operations through the various global social media platforms, such as Facebook, X and LinkedIn.

The Complainant notes that natural and inevitable consequence of the Complainant's extensive operations under the TWIGA Trademark and its large-scale promotion and advertisement of its services and operations under the TWIGA Trademark, not only, but specifically, in Tanzania, the TWIGA Trademark has become exclusively associated with the Complainant's mining services and operations and has acquired significant goodwill and reputation. Insofar as mining services and operations are concerned, and through its close association with Barrick Gold corporation, the TWIGA Trademark has also become well known to a substantial number of members of the relevant public and in particular, the international mining communities.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Respondent is based in Tanzania and could not have been unaware of the Complainant and its TWIGA Trademark.

The Complainant has not authorized the Respondent or any person to use the TWIGA Trademark within the Disputed Domain Name or elsewhere. The use of the TWIGA Trademark in the Disputed Domain Name, without the authorization of the Complainant, is not *bona fide* or legitimate. Certainly, the Respondent, who is seemingly a Tanzanian citizen or resident in Tanzania, being the country of origin of the Complainant, ought to have had full knowledge of the Complainant's trading activities and rights in and to the TWIGA Trademark, given the prominence of its activities in Tanzania.

The Complainant asserts that despite the name of the Respondent being "Twiga Minerals Corporation Ltd" and having an address in Tanzania, the Disputed Domain Name is not registered to nor owned by the Complainant. The details provided for purposes of the registration of the Disputed Domain Name, insofar as they purport to be the details of the Complainant, are false. It has come to the attention of the Complainant that an individual was using an email address associated with the Disputed Domain Name as part of a financial scheme (Annex 4 to the Complaint). In this scheme, this individual poses as an employee of the Complainant, and coerces potential vendors into sending him money in exchange for a fake vendor registration and purchase order. Barrick Gold Corporation received an email from an individual alleging that he had been defrauded out of thousands of dollars by a purported "employee" of Barrick Gold Corporation and the Complainant. The Complainant was provided with details of a LinkedIn account, an email address and a mobile telephone number for this individual. On the LinkedIn profile, this individual alleged to be employed as the "Supply Chain Manager of Twiga Minerals", and as the "Procurement Manager at Barrick Gold Corporation" prior to that (Annex 5 to the Complaint). Upon investigation, it was confirmed that this individual was not, and has never been, an employee of either the Complainant or Barrick, and all the information published on the social media profiles and provided to unsuspecting potential vendors was false. The Complainant lodged a take-down request against the LinkedIn profile, which was successful. This individual has also conducted his fraudulent activities via the instant messaging service, WhatsApp, where, in order to legitimize himself, he referred potential vendors to the website "www.barrick.com" and requested them to familiarize themselves with Barrick's onboarding processes (Annex 6 to the Complaint).

In addition to the fraudulent name used by this individual, other potentially fraudulent names are associated with the Disputed Domain Name, all with email addresses ending with the "@twigaminerals.com" handle, as well as generic email addresses. None of these individuals are employees, or have ever been employees, of the Complainant or Barrick (Annex 9 to the Complaint). On March 20, 2023, a potential vendor received a counterfeit "Contractor Registration" document from a purported employee (Annex 10 to the Complaint). This registration document was intended to serve as "proof" that the vendor had successfully registered with the Complainant as an authorized vendor, which would allow it to enter into an equipment lease agreement with the Complainant. In response to this fraud, the Complainant, through Barrick Gold Corporation, issued a Notice of Fraudulent Activity that was provided to the Complainant's potential vendors, warning them about the activities perpetrated through the Disputed Domain Name (Annex 11 to the Complaint).

The Complainant claims that the Respondent's knowledge of the Complainant's rights, and its intention purposefully to mislead consumers to believe that its goods and services are those of the Complainant, or at the very least authorized by the Complainant, is further evidenced through the fact that he posed as an employee of the Complainant and even went so far as to reference Barrick Gold Corporation in his correspondence with unsuspecting vendors.

The Disputed Domain Name resolves to an inactive website. This coupled with the *de facto* use of the Disputed Domain Name to generate fraudulent emails is a deliberate attempt by the Respondent to mislead members of the public and benefit from that confusion. In so doing, the reputation of the Complainant has been tarnished. Consequently, the Respondent is not making legitimate, noncommercial or fair use of the Disputed Domain Name. Rather, the use of the Disputed Domain Name is unlawful.

The Complainant further asserts that the Respondent registered and is using the Disputed Domain Name in bad faith. The registration of the Disputed Domain Name first came to the attention of the Complainant when it was informed by an aggrieved potential vendor that an individual purporting to be an employee of the Complainant had defrauded him of thousands of dollars. At the time, the Complainant was alerted to the email address linked to the Disputed Domain Name, which was used to contact and communicate with the unsuspecting vendors. The details supplied as the name and contact information of the Respondent, and which purport to be the details of the Complainant, are false. The Disputed Domain Name has also been used to deceive unsuspecting persons and defraud them. In addition, the Disputed Domain Name, despite being registered in January 2022, does not resolve to an active website and the only known use of the Disputed Domain Name relates to the incidents of deliberate deception and fraud.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, a complainant to succeed must satisfy the panel that:

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

A. Identical or Confusingly Similar

The Complainant submits that it owns common law rights in the TWIGA Trademark through extensive use of its company name "Twiga Minerals Corporation Limited" and TWIGA Trademark in association with the mining and distribution of precious metals, as well as related services. The Complainant relies upon rights in respect of applications for TWIGA Trademark and the unregistered TWIGA Trademark.

According to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.3, to establish unregistered or common law trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant's goods and/or services. Relevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) includes a range of factors such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys. ... As noted in section 1.1.2, for a number of reasons, including the global nature of the Internet and Domain Name System, the fact that secondary meaning may only exist in a particular geographical area or market niche does not preclude the complainant from establishing trademark rights (and as a result, standing) under the UDRP. Also noting the availability of trademark-like protection under certain national legal doctrines (e.g., unfair competition or passing-off) and considerations of parity, where acquired distinctiveness/secondary meaning is demonstrated in a particular UDRP case, unregistered rights have been found to support standing to proceed with a UDRP case including where the complainant is based in a civil law jurisdiction. The fact that a respondent is shown to have been targeting the complainant's mark

(e.g., based on the manner in which the related website is used) may support the complainant's assertion that its mark has achieved significance as a source identifier. Even where a panel finds that a complainant has UDRP standing based on unregistered or common law trademark rights, the strength of the complainant's mark may be considered relevant in evaluating the second and third elements.

In this case the Panel finds that the Complainant has trademark rights in the TWIGA Trademark by virtue of relatively long use and promotion of its unregistered TWIGA Trademark, its company name, and likeness in association with mining and precious metals distribution. In particular, the Complainant presented the evidence of its significant profit received in 2019-2023 due to its activity under the TWIGA Trademark in Tanzania, as well as the evidence of its TWIGA Trademark advertisement, social networks presence, and the solid investments in landmark projects in Tanzania to provide access to quality healthcare, educational facilities, potable water and alternative sources of income. Therefore, the Complainant's rights have been established through extensive evidence of use of the TWIGA Trademark since 2019. Additional arguments regarding the strength of the TWIGA Trademark will be described under the second and third elements.

The Disputed Domain Name contains the entirety of the Complainant's TWIGA Trademark, as well as the part of the Complainant's company name and the generic Top-Level Domain ("gTLD") ".com". The gTLD ".com" should be disregarded under the confusing similarity test as a standard registration requirement. See the [WIPO Overview 3.0](#), section 1.11,1.

The Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's TWIGA Trademark, and that the Complainant has established the first condition of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Based on the evidence filed in this proceeding, the Panel finds that the Complainant has made out a *prima facie* case with respect to the Respondent's lack of rights and legitimate interests. The Complainant clearly owns rights in the TWIGA Trademark; the Complainant has used its TWIGA Trademark since 2019 and has an established reputation in mining and precious metals distribution, as well as in the provision of related services.

The evidence filed in this proceeding, which was not contested by the Respondent, supports the fact that the Respondent was most likely aware of the Complainant's TWIGA Trademark. The details provided for purposes of the registration of the Disputed Domain Name, insofar as they purport to be the details of the Complainant, are false. Moreover, the Respondent chose to use the Disputed Domain Name for the purposes of fraudulent scheme, which is not a *bona fide* offering of goods and services under the Policy. According to the evidence presented by the Complainant (Annexes 4-6, 8-9, 11 to the Complaint) the Respondent has used, and/or is using, the Disputed Domain Name for the fraudulent scheme, namely, using an email address "[...]@twigaminerals.com", which incorporates the Disputed Domain Name, to impersonate one of the Complainant's employee in order to coerce potential vendors into sending him money in exchange for a fake vendor registration and purchase order. The Respondent sought payment from a vendor for USD 1,872 "per ton," and noted his commission would be based on 360 tons. Therefore, the Respondent was seeking over USD 673,000 from a vendor for supplies and services he never intended on delivering or rendering.

The Respondent has also used the fake LinkedIn profile to justify himself to be the Complainant's employee. In addition, other different potentially fraudulent names are associated with the Disputed Domain Name, all with email addresses ending with the "[...]@twigaminerals.com", as well as generic email addresses (Annex 9 to the Complaint). None of these individuals are employees, or have ever been employees, of the Complainant or Barrick Gold Corporation. In pursuance of section 2.13.1 of the [WIPO Overview 3.0](#), "Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent." With respect to the circumstances of this case, the Panel considers that it is obvious that the Respondent registered the Disputed Domain Name with good awareness of the Complainant and its activity

and with the sole intention of commercial gain by creating a likelihood of confusion with the Complainant's TWIGA Trademark as to the source of the email communication sent using the Disputed Domain Name. The way of use of the Disputed Domain Name also evidences that the Respondent was clearly very well aware of the Complainant's rights in the TWIGA Trademark and the Complainant's activity when registering the Disputed Domain Name.

The Panel agrees with the Complainant that the Respondent has not only sought to, but has, in fact, deceived potential vendors of the Complainant using the Disputed Domain Name and has actively diverted them under pretense causing damage to both the Complainant's reputation as well as to members of the public seeking to do business with the Complainant.

There are also no evidence showing that the Respondent is commonly known by the Disputed Domain Name, nor has it acquired any trademark or other rights. Therefore, the Panel does not consider such use a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use of the Disputed Domain Name.

The Complainant has proven long-standing rights in the TWIGA Trademark, and it is clear that the Respondent was in fact aware of those rights when it acquired the Disputed Domain Name.

The Respondent did not file any response to the Complaint and did not participate in this proceeding, respectively, the Respondent did not present any evidence for supporting any rights or legitimate interests in the Disputed Domain Name.

In view of the foregoing, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and that the Complainant succeeds under the second element of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy indicates some circumstances, without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

“(i) circumstances indicating that you [respondent] have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

The Panel comes to the conclusion that the Respondent was well aware of the Complainant's trademark rights in the TWIGA Trademark when it registered the Disputed Domain Name. This inference is supported by the following factors:

- 1) the Complainant's TWIGA Trademark is distinctive for mining services;

- 2) the Respondent chose to register the Disputed Domain Name that was comprised of the Complainant's TWIGA Trademark in its entirety;
- 3) the registration details provided by the Respondent for the Disputed Domain Name, which purport to be the details of the Complainant, are false;
- 4) the Respondent has used the fake LinkedIn profile to impersonate the Complainant's employee;
- 5) the Respondent has used different email addresses "[...]@twigaminerals.com" that incorporate the Disputed Domain Name, for the fraudulent scheme, which made the impression of the sender's connection with the Complainant;
- 6) the Respondent, having registered and used the Disputed Domain Name that is confusingly similar to the Complainant's TWIGA Trademark, intended to disrupt the Complainant's business and confuse the recipients of the fraudulent emails and messages to believe those emails and messages are connected to or approved by the Complainant.

In accordance with the [WIPO Overview 3.0](#), section 3.4, UDRP Panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending email, phishing, identity theft, or malware distribution (in some such cases, the respondent may host a copycat version of the complainant's website). Many such cases involve the respondent's use of the domain name to send deceptive emails, e.g., to obtain sensitive or confidential personal information from prospective job applicants, or to solicit payment of fraudulent invoices by the complainant's actual or prospective customers. Taking into account the above Respondent's use of the Disputed Domain Name, such behavior cannot be in any way considered to be undertaken in good faith.

Moreover, the Disputed Domain Name, despite being registered in January 2022, does not resolve to an active website and the only known use of the Disputed domain Name relates to the incidents of deliberate deception and fraud.

In addition, the Panel notes that the Respondent has not submitted any response in this proceeding to show its motivations and justifications in the registration and use of the Disputed Domain Name, and it has not rebutted the Complainant's assertions on registration and use of the Disputed Domain Name in bad faith.

The Complainant has therefore satisfied the requirements under 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, <twigaminerals.com>, be transferred to the Complainant.

/Mariia Koval/

Mariia Koval

Sole Panelist

Date: October 31, 2023