Decision for dispute CAC-UDRP-103460

Case number	**CAC-UDRP-103460**
Time of filing	**2020-12-22 10:20:20**
Domain names	**goldmaxxpress.com**

Case administrator

Organization	**Denisa Bilík (CAC) (Case admin)**

Complainant

Name	**Suresh Babu**

Complainant representative

Name	**Dmytro Chyrkin**

Respondent

Name	**Rajasekar V**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant has been using the trade names “GOLDMAX” and “GOLDMAXEXPRESS” since 2013. Under these names, the Complainant is carrying on business and providing its services.

The Complainant also owns a domain names portfolio bearing “GOLDMAX” respectively “GOLDMAXEXPRESS”, such as “GOLDMAX.IN” registered since October 23, 2013, “GOLDMAXEXPRESS.IN” registered since March 31, 2015, “GOLDMAXEXPRESS.COM” registered since October 11, 2020, “GOLDMAXINDIA.COM” registered since December 29, 2017 and “GOLDMAXCHENNAI.COM” registered since July 6, 2020.

The Complainant does not claim to own any registered trademarks or service marks related to the trade names “GOLDMAX” or “GOLDMAXEXPRESS”.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant operates a business that relates to sales of gold and silver. For this purpose, the Complainant holds a website as well as active pages in Facebook, Twitter, Instagram and YouTube. The Complainant made significant efforts to promote especially the name “GOLDMAXEXPRESS”. Further, the Complainant has a physical and permanent place of business located in Chennai, India. The Complainant uses, inter alia, the domain names <GOLDMAXEXPRESS.IN> and <GOLDMAXEXPRESS.COM> for its services and as trade name.

The disputed domain name <GOLDMAXXPRESS.COM> has been registered by the Respondent on August 29, 2020. The disputed domain name points to a website similar to the Complainant’s web presence. In addition, the Respondent is a former employee of the Complainant and therefore knows the business of the Complainant. It also shall be taken into account that the Respondent opened a store just 6 km near the Complainant’s store in Chennai, India.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

As the Respondent did not file an administratively compliant Response, pursuant to paragraph 14(b) of the Rules, the Panel may draw such inferences therefrom as it considers appropriate. Thus, the Panel considers the contentions of the Complainant as conceded by the Respondent.

A. The disputed domain name is confusingly similar to the unregistered trademarks “Goldmax" or "Goldmaxexpress" of the Complainant.

The Complainant has not referred to any registered trademarks.

However, it is undisputed and accepted practice (see e.g. UDRP Case No. 103332, Advanced ChemBlocks Inc v liangliang wang; UDRP Case No. 102204, SANATORIUMS.COM s.r.o. v Book sanatorium s.r.o.; UDRP Case No. 103432, Transport Exchange Group Limited v Martin Miller; UDRP Case No. 101587, Fitness People B.V. v Jes Hvid Mikkelsen), that paragraph 4(a)(i) of the Policy refers only to a “trademark or service mark” in which the Complainant has rights, and does not expressly limit its application to registered trademarks or service marks.

Regarding to the treatment of such unregistered marks, detailed requirements are set by the WIPO Jurisprudential Overview, version 3.0, para 1.3. Accordingly, to establish unregistered trademark rights for UDRP purposes, the Complainant must demonstrate that its mark has become a distinctive sign that consumers associate with the Complainant's goods and/or

ser-vices. Relevant evidence demonstrating such acquired distinctiveness includes various 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.

The Complainant has provided summarised information regarding his business activities and duration of use of the trade mark(s). It follows that, 1) the duration of use of “GOLDMAX” is approximately 7 years, since 2013 (date of registration of the first domain <GOLDMAX.IN>) respectively the duration of use of “GOLDMAXEXPRESS” is at least 5 years, since 2015 (date of registration of the domain <GOLDMAXEXPRESS.IN>); 2) the Complainant made significant efforts to promote his brand and get reputation; 3) the Complainant invested a significant amount in creating the website, social media pages, advertising of the marks “GOLDMAX” and “GOLDMAXEXPRESS”.

Summarised, for the purposes of proceedings under the Policy, all of this evidence is relevant, and the Respondent has not sought to challenge any of it. The Panel therefore concludes that the Complainant has met the requirements and therefore has rights in respect of the unregistered trademarks “GOLDMAX” and “GOLDMAXEXPRESS”.

Lastly, the removal of the letter “E” (for “EXPRESS”) and the addition of the gTLD suffix “.COM” is not sufficient to escape the finding that the disputed domain name is confusingly similar to the Complainant's trademarks and does not change the overall impression of the designation as being connected to the trademark of the Complainant. With respect to “GOLDMAXEXPRESS” this is a case of "typosquatting“, i.e. the disputed domain name contains an obvious misspelling of the Complainant’s trademark.

B. The Respondent has no rights or legitimate interests in respect of the disputed domain name within the meaning of the Policy.

The Complainant has established a prima facie proof that the Respondent has no rights or legitimate interests in the disputed domain name, since the Respondent is not a licensee of the Complainant nor has the Complainant granted any permission or consent to use its trademarks in a disputed domain name.

Moreover, the disputed domain name is a typosquatted version of the trademark “GOLDMAXEXPRESS”. Since typosquatting is a practice of registering a domain name in an attempt to take advantage of internet users’ typographical errors, this circumstance is also evidence that the Respondent lacks rights and legitimate interests in the disputed domain name.

Finally, the fact that the disputed domain name links to a similar page shows, that it is not a bona fide offer of goods or services or a legitimate non-commercial or fair use.

C. The disputed domain name has been registered and is being used in bad faith within the meaning of the Policy.

The Complainant’s trademarks “GOLDMAX” and “GOLDMAXEXPRESS” are commonly known. Given the distinctiveness and reputation of the Complainant's trademarks and taking into account that the Respondent was previously an employee of the Complainant, it can be concluded that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademarks.

Also, the Complainant has, to the satisfaction of the Panel, shown, that the misspelling of the trademark “GOLDMAXEXPRESS” was intentionally designed to be confusingly similar with the Complainant’s trademark. This is also evident from the Respondent's use of a similar website. Therefore, it also follows, that the Respondent attempts to attract internet users by creating a likelihood of confusion with the Complainant’s trademark. Such likelihood of confusion is also evidence of bad faith registration and use.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **GOLDMAXXPRESS.COM**: Transferred

PANELLISTS

Name	**Dominik Eickemeier**

DATE OF PANEL DECISION 2021-01-21

Publish the Decision