



## **CANADIAN INTERNATIONAL INTERNET DISPUTE RESOLUTION CENTRE**

### **DOMAIN NAME DISPUTE**

### **ADMINISTRATIVE PANEL**

### **DECISION**

**CIIDRC case number: 14373-URDP**

**Decision date: January 16, 2021**

**Panel: David L. Kreider, Esq., C. Arb.**

**Domain name in Dispute: tarxys.com**

**Complainant: Traxys North America LLC**

**Respondent: Joao Mota / Joao Mota Inc.**

#### **1. PROCEDURAL HISTORY**

The Complaint was submitted to the Canadian Internet Dispute Resolution Centre (the "Centre" or "CIIDRC") on November 24, 2020. The Centre transmitted by email to the Registrar a request for registrar verification.

On November 25, 2020, the Registrar transmitted by email to the Centre its verification response confirming that the Respondent in this proceeding is the registrant of the disputed domain name and providing the contact details of the registrant. The Registrar of the disputed domain name also confirmed that the domain name **<tarxys.com>** (the "Domain Name") was placed on a Registrar LOCK.

On November 26, 2020, CIIDRC advised the Complainant that the Complaint was not in administrative compliance with the UDRP Rules. In accordance with UDRP Rule 4 (d), the Complainant had five days to correct all instances of non-compliance.

On December 4, 2020, the Complainant submitted its revised Complaint.

On December 7, 2020, the Centre confirmed compliance of the Complaint with the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "URDP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the CIIDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "CIIDRC Supplemental Rules").

Pursuant to Rule 4 of the Policy and Rule 5 of the CIIDRC Supplemental Rules, the Centre notified the Respondent of this administrative proceeding and forwarded a Notice with information for the Respondent on December 7, 2020.

The Respondent failed to file a response by the due date of December 28, 2020.

The Complainant in this administrative proceeding has elected for a Panel consisting of a single member.

The Centre appointed David L. Kreider, Chartered Arbitrator (UK), as a single-member panel in the present matter. He provided a statement of acceptance and declaration of impartiality and independence on January 13, 2020, as required by the Rules.

## **2. FACTS ALLEGED BY THE PARTIES**

The Complaint alleges that the Complainant, Traxys North America LLC, and its European affiliate, Traxys Europe S.A., are engaged in the business of marketing and trading a variety of commodities and raw materials, including, *inter alia*, base metals, industrial minerals, uranium and rare earths, and providing logistical, trade finance, and insurance support services, under the umbrella of the Traxys Sàrl Group.

The "TRAXYS" trade mark was registered with the United States Patent and Trademark Office on May 19, 2020 (Reg. No. 6,059,097).

The Domain Name **<tarxys.com>** was registered by the Respondent on November 16, 2020. The Domain Name differs from Complainant's TRAXYS mark only in that the letters "A" and "R" are transposed.

Complainant avers that a fraudulent scheme targeting the Complainant was executed via an email account associated with the Domain Name. The Complaint alleges: "All of our written communications done with our current/new potential customers and/or suppliers are done via e-mail using [the] domain name TRAXYS.COM and the fact that (fraudulent) e-mails are sent out

using TARXYS.COM (with the letters 'A' and 'R' inversed) not only creates confusion but, mostly, represents a commercial risk to both Traxys and its customers, suppliers and potential new commercial relationships. Someone not used to working with Traxys might get confused or omit to see the inversion of the letters 'A' and 'R' in the domain name, especially when corresponding."

The fraud, Complainant alleges, was implemented in a series of steps, outlined in the Complaint as follows:

1. On November 13, 2020, an employee of Traxys Europe S.A. (the "Employee"), sent a legitimate email to several representatives of one of Complainant's customers to inquire whether a particular invoice issued to the customer (which was due to be paid on November 14, 2020), would be paid on time;
2. At 9:27AM on November 17, 2020, a fraudulent email was sent to various representatives of Complainant's same customer from the email account of [Employee]"@tarxys.com", an email address associated with the Domain Name (Fraudulent email #1). The fraudulent email, purported to have been sent by Employee, misrepresented to Complainant's customer that, due to an ongoing tax regulatory audit, Complainant's usual bank accounts for commercial purposes would be unavailable for a period of some 8-to-12 weeks. Fraudulent email #1 asked the Customer to provide its payment schedule for the outstanding invoice "so we can forward our alternative bank account details for the payments";
3. At 9:24PM on November 17, 2020, a second fraudulent email (Fraudulent email #2) was sent to many of the same representatives of Complainant's same customer, again from the email account of [Employee]"@tarxys.com". This fraudulent email stated that its purpose was to "bring you up to speed with the current ongoing Annual Local Government tax audit/reconciliation being carried out in our company bank accounts." Fraudent email #2 misrepresented: "Please note that we will not acknowledge any payment made to our usual bank account at this time and such payment will not apply. Do be so kind to confirm your payment date so we can forward our alternative bank account details for the payments";
4. Also, on November 17, 2020, Complainant's customer alerted Complainant that it had received a suspicious email (e.g., Fraudulent email #2) from the email address "@TARXYS.COM" associated with the Domain Name <tarxys.com>, which the customer

observed was a different email address than the Complainant's usual email address "@TRAXYS.COM".

Thus, the Complaint summarizes, "The fraudster is asking payment of one of our TRAXYS Europe S.A. invoices (dated June 3rd, 2020 and due 14/11/2020) to a different bank account and is using [a] fake e-mail address with @TARXYS.COM domain name instead of @TRAXYS.COM."

On its part, the Respondent, Joao Mota / Joao Mota Inc., defaulted and failed to submit a Response timely, or at all, in these proceedings.

### **3. CONTENTIONS OF THE PARTIES**

- **Complainant**

Complainant alleges that the Domain Name **<tarxys.com>** is identical or substantially similar to its TRAXYS mark and differs only in that the letters "A" and "R" have been transposed. The Respondent is not commonly known by the TRAXYS name and Complainant has never agreed with the Respondent to allow use of the TRAXYS mark in any manner whatsoever.

The Respondent is not making a legitimate use of the Domain Name. The primary purpose of registering the Domain Name is clearly for attracting for commercial gain payments of funds that should be going to the Complainant. The Domain Name was registered on or about the same day that Fraudulent e-mail #1, which purported to have been sent by Employee, was sent to Complainant's customer. Complainant had sent an invoice to this same customer prior to the fraudster's e-mails. The same e-mail subject header and same employee name and signature (but of course with fraudulent domain name TARXYS.COM in the e-mail address) was thereafter used by the fraudster.

All the evidence and circumstances, Complainant avers, reflects that the Respondent is using the domain in bad faith to attract commercial gain on the back of Complainant's TRAXYS mark.

- **Respondent**

As noted above, the Respondent, Joao Mota / Joao Mota Inc., defaulted and failed to submit a Response.

- **Remedy Sought**

Complainant requests the transfer of the Domain Name to the Complainant.

#### **4. DISCUSSION AND FINDINGS**

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

In view of the Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(e), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true, unless the evidence is clearly contradictory. See *Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc.*, FA 95095 (Nat. Arb. Forum July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the Complaint to be deemed true); see also *Talk City, Inc. v. Robertson*, D2000-0009 (WIPO Feb. 29, 2000) ("In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.")

##### **4.1 Requirements**

In accordance with Paragraph 4 of the Policy, the onus is on the Complainant to prove:

- 1) That the Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- 2) That the Respondent has no rights or legitimate interests in the Domain Name; and
- 3) That the Domain Name has been registered and is being used in bad faith.

The Panel will consider each of these requirements in turn.

##### **4.2 Analysis**

###### **4.2.1 That the Domain Name is Identical or Confusingly Similar to a Mark in which the Complainant has Rights**

It is well established in UDRP jurisprudence that a domain name consisting of a common, obvious, or *intentionally misspelled* trademark (a practice of infringement known as “typosquatting”), will be considered by panels to be confusingly similar to the relevant mark for purposes of satisfying the first element of the Policy. This stems from the fact that the domain name contains sufficiently recognizable aspects of the relevant mark. *See, WIPO UDRP Overview 3.0* at paragraph 1.9 and the decisions cited therein; *see also, The McElhanney Group Ltd v. Aaron Kunzer*, CIIDRC Case No. 14351-UDRP (January 12, 2021) (holding that a conclusion of identical or confusing similarity “may be drawn without further elaboration” where the sole difference between the disputed domain name <mcelhanneey.com> and the complainant’s MCELHANNEY mark “is an inconspicuous ‘e’ near the end of the name”); *Fuji Photo Film U.S.A., Inc. v. LaPorte Holdings*, WIPO Case No. D2004-0971 (January 19, 2005) (“Numerous panels in the past have found similarity to be present in the case of a deliberate misspelling of a mark (so-called “typo-squatting”), by adding, deleting, substituting or reversing the order of letters in a mark”. The panel found the first element of the Policy to be satisfied where the disputed domain name <fuijifilm.com> infringed upon the complainant’s protectible goodwill in the FUJIFILM name.)

The present case is a blatant example of “typosquatting”, where the Respondent has intentionally transposed the letters “A” and “R” in Complainant’s registered TRAXYS mark to form the confusingly similar Domain Name **<tarxys.com>**.

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

#### **4.2.2 That the Respondent has No Rights or Legitimate Interest in the Domain Name**

The Panel finds from Complainant’s evidence that the Respondent uses the email address associated with the Domain Name to impersonate and attempt to pass itself off as the Complainant, without any authorization to do so. The Respondent has not responded to the Complainant’s contentions and cannot be heard to claim any rights or legitimate interests in the Domain Name. Such use of a Domain Name to mislead Internet users does not represent a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the Domain Name.

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

### **4.2.3 That the Respondent has Registered and Used the Domain Name in Bad Faith**

The clear evidence is that, within hours of registering the Domain Name, emails impersonating Complainant's legitimate Employee were sent to one of Complainant's current customers for the apparent purpose of misleading and defrauding the customer into making payment for goods or services that had been rendered and invoiced by the Complainant into a bank account under the sole control of the Respondent or an unidentified third-party, a practice known as "spear phishing". That is to say, the Domain Name is being used to send fraudulent "spear phishing" emails targeting customers or associates of the Complainant in an attempt to steal money from the Complainant or its customer. See, *Gamesys Limited v. Andrew Thomasson*, WIPO Case No. D2018-1331 (August 7, 2018) ("The Disputed Domain Name does not resolve to any website but it is the subject of an MX record which is being used to send emails which include "@gamesys-uk.com" to employees and affiliates of the Complainant. Since the Disputed Domain Name appears designed to deceive recipients of emails from that domain name into making unnecessary payments, the requirements of paragraph 4(c)(i) of the Policy are not met. Nor can phishing be regarded as a *bona fide* offering of goods or services".)

Had the recipient of the fraudulent emails not promptly notified the Complainant of its receipt of the suspicious emails purporting to have been sent by Complainant's Employee, but originating from the "@TARXYS.COM" address, and the fraudulent scheme succeeded, funds intended by the customer to be transferred to Complainant in payment of Complainant's outstanding invoice could have been diverted to a bank account controlled by the Respondent or a third-party, thereby depriving the Complainant of the funds owed to it.

As is noted in the WIPO UDRP Overview 3.0 at paragraph 1.9, under the second and third Policy elements, panels will normally find that employing a misspelling of a famous and distinctive mark "signals an intention on the part of the respondent (typically corroborated by infringing website content) to confuse users seeking or expecting the complainant". Respondent's "typosquatting" on Complainant's strong and distinctive mark, standing alone, is sufficient to establish Respondent's bad faith intention to confuse Internet users.

Based on the evidence adduced, moreover, in particular: (1) the legitimate emails issued to Complainant's customer from the Complainant's actual email address "@TRAXYS.COM", (2) the fraudulent emails issuing to the same customer from the "@TARXYS.COM" email address associated with the Domain Name seeking to impersonate the Complainant, and (3) the email from Complainant's customer alerting it to the suspicious email from the misspelled email

address, this Panel concludes that the Respondent registered and used the Domain Name to engage not only in "typosquatting", but in the fraudulent activity of "spear phishing", as well.

As the panel determined in *Pfizer Inc. v. Michael Chucks / Whoisguard Protected, Whoisguard Inc*, WIPO Case No. D2014-0887 (July 28, 2014), "phishing" is a *per se* violation of the Policy. No explanation can bring it into the ambit of paragraph 4(c).

The Complainant has satisfied paragraph 4(a)(iii) of the Policy.

## 5 DECISION and ORDER

For the above reasons, in accordance with Paragraph 4 of the Policy, Paragraph 15 of the Rules, and Rule 10 of the Supplemental Rules, the Panel orders that relief shall be GRANTED and the Domain Name **<tarxys.com>** TRANSFERRED to the Complainant in these proceedings.

Made as of January 16, 2021.

SIGNATURE OF PANEL



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David L. Kreider, Esq., C. Arb.

