

ADMINISTRATIVE PANEL DECISION

Proctor.io Incorporated v. 杨智超 (Yang Zhi Chao)
Case No. D2022-2747

1. The Parties

The Complainant is Proctor.io Incorporated, United States of America (“United States”), represented by Dorsey & Whitney, LLP, United States.

The Respondent is 杨智超 (Yang Zhi Chao), China.

2. The Domain Name and Registrar

The disputed domain name <gettproctorio.com> is registered with eName Technology Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on July 26, 2022. On July 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 28, 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 July 28, 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 in English on July 29, 2022.

On July 28, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On July 29, 2022, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on August 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 23, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 25, 2022.

The Center appointed Rachel Tan as the sole panelist in this matter on August 29, 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 a technology company located in Arizona in the United States. It offers fully automated proctoring software platform used to proctor the administration of tests and exams remotely. Its products are used by colleges, universities, corporations, and government agencies throughout the United States and internationally.

The Complainant operates its business, and advertises and sells its products, under the PROCTORIO mark since at least as early as 2013. The Complainant is the owner of the PROCTORIO mark in different jurisdictions, including United States Trade Mark Registration No. 5,722,338, registered on April 9, 2019, in class 42; European Union Trade Mark Registration No. 018034721, registered on July 31, 2019, in class 42; and United Kingdom Trade Mark Registration No. UK00918034721, registered on July 31, 2019, in class 42.

The Complainant promotes and advertises its business and software products on its website at <proctorio.com>. It also owns and operates the domain name <getproctorio.com> as a landing page for the downloads required for consumers to access and use the Complainant's software services.

The Respondent is 杨智超 (Yang Zhi Chao), China.

The disputed domain name was registered on June 2, 2022. It resolves to an active pay-per-click ("PPC") webpage that lists out multiple third-party links related to different advertisements covering content such as "Proctorio Chrome Extension", "Proctorio Extension" and "Install Proctorio Chrome Extension".

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is nearly identical and confusingly similar to the Complainant's PROCTORIO mark. It only differs from the PROCTORIO mark by the addition of four letters "gett" at the beginning of the disputed domain name. The Respondent's use of the disputed domain name only differs by a single letter "t" from the Complainant's owned domain name <getproctorio.com>. Further, the inclusion of the general Top-Level Domain ("gTLD") ".com," does nothing to eliminate the likelihood of confusion.

The Complainant further alleges that the Complainant enjoys exclusive rights in the PROCTORIO mark, and the Respondent cannot demonstrate it has any rights or legitimate interests in the disputed domain name.

The Respondent is not a franchisee, affiliated business, or licensee of the Complainant, nor has the Complainant otherwise authorized the Respondent to register the disputed domain name or otherwise use the Complainant's mark. Further, the Respondent cannot show use of, or demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services.

The Complainant finally asserts that the disputed domain name contains a landing page with advertising links titled in a manner as to create confusion with the Complainant's PROCTORIO mark e.g., ""Proctorio Chrome Extension". These links direct to secondary URLs that display advertising links for unaffiliated party sponsored or PPC websites. None of these third-party websites are affiliated with, sponsored, or endorsed by the Complainant, and some of them relate to competitors of the Complainant. As evidenced by the Complainant's use of the <getproctorio.com> domain name, it is of tantamount importance that the Complainant delivers its software to its consumers via a URL designed to direct users to install a browser extension. If a hurried consumer accidentally entered the disputed domain name, the website at the disputed domain name contains a link to "Proctorio Chrome Extension," which will redirect the consumer to third-party websites that offer competing services instead of those offered by the Complainant. The Respondent's use is intended to lure users of the Complainant's services into clicking on links that presumably generate revenue for the Respondent by trapping users into clicking on PPC links in bad faith. In addition, the Respondent is a repeated cybersquatter with a history of registering domains that are confusingly similar to many well-known brands.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

Initially, the Panel must address the language of the proceeding. Paragraph 11(a) of the Rules provides that the language of the administrative proceeding shall be the language of the Registration Agreement unless otherwise agreed by the parties, subject to the authority of the panel to determine otherwise, having regard to the circumstances of the administrative proceeding. The panel may choose to write a decision in either language, or request translation of either party's submissions.

In this case, the Registrar has confirmed to the Center that the language of the Registration Agreement as used by the registrant for the disputed domain name is Chinese. However, the Complainant has requested that English be adopted as the language of the proceeding for the reasons summarized below:

- (a) the Respondent has demonstrated a clear grasp of the English language, as is evident from the fact that the website for the disputed domain name is entirely in English;
- (b) the Registrar provides its Domain Registration Service Agreement in both English and Chinese; and
- (c) the Complainant would incur substantial expense if the Complaint must be translated into Chinese.

It is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burdens being placed on the parties and undue delay to the proceeding. The Panel has considered the above circumstances, and finds that English shall be the language of this proceeding. The reasons are set out below:

- (a) the Complainant is a company based in the United States. Requiring the Complainant to submit documents in Chinese would lead to delay and cause the Complainant to incur translation expenses;
- (b) the Respondent's choice of English letters for the disputed domain name and the website with links in English which the disputed domain name resolves to indicate that the Respondent is familiar with the English language;

(c) even if the Respondent does not possess a sufficient command of English to understand the Complaint, there were ample opportunities for the Respondent to raise an objection. The Center notified the Parties in English and Chinese of the Complainant's request for English to be the language of the proceeding, but the Respondent did not protest against this request;

(d) the Respondent has failed to participate in the proceeding even though the Center sent the notification in English and Chinese of the Complaint, and has been notified of his/her default; and

(e) the Complaint has been submitted in English. No foreseeable procedural benefit may be served by requiring Chinese to be used. On the other hand, the proceeding may proceed expeditiously in English.

Accordingly, the Panel will proceed with issuing this Decision in English.

6.2 Substantive Issues

A. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has adduced evidence to demonstrate its established rights in the PROCTORIO mark.

The Panel notes the disputed domain name is comprised of the PROCTORIO mark in its entirety. The positioning of the PROCTORIO mark in the disputed domain name is instantly recognizable. In cases where a domain name incorporates the entirety of a trade mark, or 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 for purposes of UDRP standing. See section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Further, it is accepted by previous UDRP panels that the addition to the complainant's trade mark of other words or terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element of the Policy. Accordingly, the additional element "gett" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's PROCTORIO mark. See section 1.8 of the [WIPO Overview 3.0](#).

Lastly, it is permissible for the Panel to ignore the gTLD, in this case ".com". See section 1.11.1 of the [WIPO Overview 3.0](#).

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

B. Rights or Legitimate Interests

In circumstances where the Complainant possesses exclusive rights to the PROCTORIO mark whereas the Respondent seems to have no trade mark rights, and considering the facts and arguments set out above, the Panel is satisfied that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and the burden of production shifts to the Respondent. See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent has not provided evidence of a legitimate use of the disputed domain name or reasons to justify the choice of a domain name that is confusing similar to the Complainant's PROCTORIO mark. Further, there is no indication to show that the Respondent is commonly known by the disputed domain name or otherwise has rights or legitimate interests in it. In addition, the Complainant has not granted the Respondent a license or authorization to use the Complainant's PROCTORIO mark or register the disputed domain name. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name in the terms of paragraph 4(c)(iii) of the Policy since at the time of filing the Complaint and, at the date of this Decision, the disputed domain name resolves to a PPC website with links to third-party websites,

some of which are related to or compete with the Complainant's business. Such usage may reasonably be assumed to be commercial in its intent and effect. Prior UDRP panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering of goods or services where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users. See section 2.9 of the [WIPO Overview 3.0](#).

Therefore, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name. Accordingly, the Panel finds that the Complainant has satisfied the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Complainant's PROCTORIO mark has been registered across different jurisdictions. The disputed domain name was registered after the registration of the Complainant's PROCTORIO mark. Through extensive use and advertising, the Complainant's PROCTORIO mark is known throughout the world. Search results using the key word "proctorio" on Internet search engines direct Internet users to the Complainant and its business, which indicates that an exclusive connection between the PROCTORIO mark and the Complainant has been established. Moreover, the disputed domain name differs from the Complainant's domain name <getproctorio.com> by a single added letter "t". As such, the Respondent either knew or should have known of the Complainant's PROCTORIO mark when registering the disputed domain name, and has exercised "the kind of willful blindness that numerous panels have held support a finding of bad faith". See *Barclays Bank PLC v. Andrew Barnes*, WIPO Case No. [D2011-0874](#).

Section 3.1.4 of the [WIPO Overview 3.0](#) states that "[...] mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith". In this case, the disputed domain name is confusingly similar to the widely known PROCTORIO mark and was registered by the Respondent who has no relationship with the Complainant, which means that a presumption of bad faith can be created.

Section 3.5 of the [WIPO Overview 3.0](#) states that "[p]articularly with respect to 'automatically' generated pay-per-click links, panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name (nor would such links ipso facto vest the respondent with rights or legitimate interests)". The Panel notes that the disputed domain name resolves to a parked page comprising PPC advertising links that divert Internet users to various content, some of which are related to and competing with the Complainant's business. The Panel finds the use of the confusingly similar disputed domain name to lure Internet users to third-party websites is evidence of bad faith. See *Sodexo v. 杨智超 (Zhi Chao Yang)*, WIPO Case No. [D2020-1171](#).

The Panel also notes that the Respondent appears to be engaged in a pattern of abusive registration having registered multiple domain names comprising third-party trade marks. The Panel finds this case is a continuation of that bad faith pattern. See *Asurion, LLC v. 杨智超 (Zhichao Yang)*, WIPO Case No. [D2021-4231](#). Such constitutes evidence of bad faith registration and use as contemplated under paragraph 4(b)(ii) of the Policy.

The Respondent has kept silent in the face of the Complainant's allegations of bad faith. Taking into account these circumstances, the Panel finds that the Respondent must have known of the Complainant before registering the disputed domain name and, considering the Respondent's lack of rights or legitimate interests, and by registering and using the disputed domain name as discussed above, the Panel is led to conclude that the disputed domain name was registered and is being used in bad faith.

Accordingly, the Panel finds that the Complainant has satisfied the third element under paragraph 4(a) 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 <gettproctorio.com> be transferred to the Complainant.

/Rachel Tan/

Rachel Tan

Sole Panelist

Date: September 12, 2022