

ADMINISTRATIVE PANEL DECISION

Calmino group AB v. Domain Administrator, DomainMarket.com
Case No. D2024-1579

1. The Parties

The Complainant is Calmino group AB, Sweden, internally represented.

The Respondent is Domain Administrator, DomainMarket.com, United States of America (“United States”), represented by Brian Leventhal, Attorney at Law, P.C., United States.

2. The Domain Name and Registrar

The disputed domain name <proibs.com> is registered with eNom, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 15, 2024. On April 17, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 17, 2024, 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 (DomainMarket Holdings, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 18, 2024, 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 amendment to the Complaint on April 22, 2024.

The Center verified that the Complaint together with the amendment to 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 April 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 16, 2024. The Complainant sent a communication on May 13, 2024. The same day, the Respondent required an automatic extension of the Response due date. The Center granted the automatic four calendar day extension for response under paragraph 5(b) of the Rules. The new due date for Response was May 20, 2024. The Complainant sent other communications on May 13, 14, and 15, 2024. The Response was filed with the Center on May 21, 2024.

The Center appointed John Swinson as the sole panelist in this matter on May 29, 2024. 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 company located in Sweden. It is a healthcare company with focus on gut health.

According to the Complainant's website, the Complainant "was founded in 2003 and in 2010 we launched a product for the dietary management of IBS under the brand PROIBS". IBS is an acronym for "irritable bowel syndrome" which is a common functional bowel disorder affecting the large intestine.

The Complainant owns a portfolio of trademark registrations for PROIBS including Swedish Registration No. 403803, with a registration date of May 15, 2009, and United States Registration No. 4570968, with a filing date of June 21, 2013, and a registration date of July 22, 2014.

The Complainant markets its PROIBS product on its websites located at "www.proibs.eu" and "www.proibs.se".

The disputed domain name was registered by the Respondent on April 3, 2011.

The Respondent is a corporation located in Florida, United States. The Respondent is in the business of creating, buying, and selling domain names. The Respondent offers domain names for sale through a secondary marketplace website located at "www.domainmarket.com". The Respondent also lists its domain names for sale with third party sales channels, including Afternic and GoDaddy.

According to the Respondent, the Respondent has bought and sold over 350,000 domain names over the past ten years, currently holds a portfolio of over 200,000 domain names, and sells over 1,000 domain names per year.

The Respondent states: "It often takes years to sell a domain name, during which we pay the nominal annual renewal fee each year until sold, many times for hundreds or even thousands of times the initial cost. During that time, we often change the price for a particular domain name multiple times in both directions."

The disputed domain name currently resolves to a landing page that displays the disputed domain name, a "request price" button, information about the Respondent and a search function to look for other domain names that the Respondent is selling. At the time the Complainant was filed, the website at the disputed domain name listed the disputed domain name for sale at a proposed price of USD 194,888.

The website at the disputed domain name does not include advertising (other than for the Respondent's domain name business) or pay-per-click links ("PPC").

According to the Respondent, a representative of the Complainant contacted the Respondent and made inquiries about purchasing the disputed domain name in September 2011. Supposedly, the price at that time was USD 8,000. No sale took place. According to the Respondent, the Complainant's representative did not mention the Complainant's PROIBS trademark during this interaction. No further contact was received from the Complainant until the present proceedings were filed.

The Respondent owns approximately 50 domain names that start with "pro", such as <proall.com>, <protelco.com>, <prosewer.com>, and <probeds.com>.

The Respondent has been a respondent in approximately 16 cases decided under the UDRP over a long period of time. The Respondent has been successful in about half these cases.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is identical to the trademark in which the Complainant has rights. The only possible intent for registering the disputed domain name is for the Respondent to make commercial gain misleadingly to divert consumers or to tarnish the trademark or service mark at issue.

In respect of the third element of the Policy, the Complainant's submission paraphrases paragraphs 4(b)(i) and (ii) of the Policy.

B. Respondent

The Respondent contends that the Complainant has not satisfied the second and third elements required under the Policy for a transfer of the disputed domain name. The Respondent asserts that the Complainant has provided no support for statements made by the Complainant in the Complaint.

The Respondent provides a signed declaration from the owner of the Respondent.

In summary, the Respondent submits that "IBS" is a common acronym for "irritable bowel syndrome", and provided examples of health products (apparently not associated with the Complainant) called or advertised using the terms PRO IBS.

The Respondent contends that the Respondent registered the disputed domain name in connection with its legitimate business of reselling premium domain names, which is a bona fide offering of goods and services that has an accepted place in the domain name industry.

The Respondent asserts that because the Respondent is using the disputed domain name in connection with a landing page to offer the disputed domain name for sale and has been doing so for over 13 years without any complaint or other action taken by the Complainant, the Respondent has a right and legitimate interest in the disputed domain name.

The Respondent states that the Respondent registered the disputed domain name in order to sell it in the ordinary course of its legitimate business in good faith and without any knowledge of the Complainant's existence; the mere offering of a domain name for sale does not establish that the domain name was registered for the purpose of targeting the Complainant or its competitors.

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the 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 has been registered and is being used in bad faith.

The onus of proving these elements is on the Complainant.

An asserting party needs to establish that it is more likely than not that the claimed fact is true. An asserting party cannot meet its burden by simply making conclusory statements unsupported by evidence. To allow a party to merely make factual claims without any supporting evidence would essentially eviscerate the requirements of the Policy as both complainants and respondents could simply claim anything without any proof. For this reason, UDRP panels have generally dismissed factual allegations that are not supported by any bona fide documentary or other credible evidence. *Snowflake, Inc. v. Ezra Silverman*, WIPO Case No. [DIO2020-0007](#); *Captain Fin Co. LLC v. Private Registration, NameBrightPrivacy.com / Adam Grunweg*, WIPO Case No. [D2021-3279](#).

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

Prior to the due date for the Response, the Complainant sent two emails to the Respondent's representative copied to the Center which responded to an email from the Respondent's representative, and a third similar email to the Center enclosing a copy of a Swedish trademark registration. The Panel has considered the contents of these emails when reviewing the case file. The contents of these emails do not affect the ultimate outcome of this case.

The Respondent's Response was received by the Center one day after the due date for the Response. The Panel has considered the Response based on the principles set out in *Soluciones Contables S.A. v. Banco Nacional de Mexico*, WIPO Case No. [D2014-0594](#).

A. Identical or Confusingly Similar

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

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. The Respondent does not dispute this.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

In view of the findings made below in respect of the third element of the Policy, the Panel does not need to decide whether the second element of the Policy has been met.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that the Complainant must establish that the Respondent registered and subsequently used the disputed domain name in bad faith.

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by the complainant. *Fifth Street Capital LLC v. Fluder (aka Pierre Olivier Fluder)*, WIPO Case No. [D2014-1747](#).

The Complainant provided no factual evidence or arguments to support the Complainant's assertion of bad faith.

Dealing in domain names in the secondary market is a legitimate trading activity. By its very nature, it is speculative. A domainer usually has the intention of reselling domain names at a price in excess of the purchase price. Some domain names sell, and some sit on the shelf unsold; in either event, trying to make a profit by reselling domain names is not bad faith *per se*. *Sage Global Services Limited v. Narendra Ghimire, Deep Vision Architects*, WIPO Case No. [DAI2023-0010](#).

The following factors in this case demonstrate that the Complainant has not shown that Respondent registered or used the disputed domain name in bad faith:

1. The Respondent asserts that the Respondent registered the disputed domain name "without any knowledge of Complainant's existence or alleged rights". This presupposes little or no due diligence on Respondent's part but is believable. The Respondent is in the United States and the Complainant is in Sweden. The Complainant has a Swedish trademark registration from 2009. It is plausible that the Respondent was not aware of this registration at the time that the Respondent registered the disputed domain name in 2011. The Complainant had no trademark rights in the United States at the time the Respondent registered the disputed domain name. It is unclear when the Complainant first used its trademark, and there is no evidence before the Panel as to use or reputation of the PROIBS trademark in 2011 when the disputed domain name was registered. It is believable on the evidence before the Panel that the Respondent had not heard of the Complainant. The Panel cannot conclude that the Respondent was aware or should have been aware of the Complainant or the PROIBS trademark at the time of registration of the disputed domain name.
2. The Respondent appears to claim that the disputed domain name was selected because of its potential association with irritable bowel syndrome, or potentially other "IBS" related terms.
3. The Respondent states that it registered approximately 50 domain names starting with "pro". Although the Respondent provided no evidence of when these domain names were registered or the list price for these domain names, the fact that the Respondent registers domain names with a "pro" prefix suggests that the Respondent may not have been targeting the Complainant but registered the disputed domain name due to the Respondent's interest in "pro" domain names.
4. Despite owning the disputed domain name for over 10 years, the Respondent did not approach the Complainant to sell the disputed domain name to the Complainant.
5. The Complainant approached the Respondent to inquire about buying the disputed domain name more than 10 years ago, but never informed the Respondent of its trademark rights.
6. The Respondent did not use the disputed domain name to advertise products competitive with the Complainant's products (and in fact, it was not used to promote any products at all.)

In short, the Complainant has not shown with evidence why the Respondent would have known of and targeted it. *So Bold Limited v. TechOps, VirtualPoint Inc.*, WIPO Case No. [D2022-1100](#); and *Sütaş Süt Ürünleri Anonim Şirketi v. Privacy Administrator, Anonymize, Inc. / Independent Digital Artists*, WIPO Case No. [D2022-0615](#).

There are two additional factors that require further consideration, namely the price at which the disputed domain name was offered for sale, and whether the Respondent has engaged in a pattern of bad conduct in the past that should be considered in this case.

In recent times, the Respondent offered the disputed domain name for sale for USD 194,888. An argument could be made that only the Complainant would be prepared to pay such a price, and so the Respondent is in fact targeting the Complainant. A particular price may be evidence of bad faith under the Policy where the

domain name in question contains another person's trademark and the value of the domain name derives primarily from that trademark.

In some circumstances, the price of the disputed domain name could be a factor that may allow the panel to infer that because only a business of the size of the complainant could or would pay that price, the respondent is targeting the complainant. On the other hand, if the disputed domain name in fact is registered without knowledge of the complainant and otherwise in good faith, then setting a high price would be a matter purely for the respondent in view of its business plans.

In the present case, if any such inference could arise, the Respondent provided credible evidence and a signed declaration to rebut any such inference that the Respondent was aware of the Complainant when registering the disputed domain name. *Sage Global Services Limited v. Narendra Ghimire, Deep Vision Architects*, WIPO Case No. [DAI2023-0010](#). The Panel also notes that the sales price of the disputed domain name was initially USD 8,000, which does not suggest that in 2011 (about the time the disputed domain name was registered) the Respondent considered that the value of the domain name derived primarily from the Complainant's trademark rights.

Here, based on the evidence before the Panel and the factors discussed above, the Panel cannot conclude that the Respondent registered the disputed domain name in 2011 because the value of the disputed domain name primarily derived from the Complainant's trademark.

The Respondent has been unsuccessful in approximately 8 prior decisions under the Policy over a 12-years period.

In a prior case involving the same Respondent as the present case (*Supermac's (Holdings) Limited v. Domain Administrator, DomainMarket.com*, WIPO Case No. [D2018-0540](#)), the panel stated:

"As can be seen from the above previous cases involving the Respondent, there is substance to the Complainant's assertion that the Respondent engages in a pattern of conduct of registering a domain name for the purpose of selling it to the person whose trademark is contained in the domain name. That is not to say that all domain name registrations by the Respondent are for this purpose. The Panel acknowledges that many of the Respondent's domain name registrations will be for bona fide purposes, where the value of the domain name derives primarily from its generic or descriptive meaning. However, the situation is different where (as in this case) the domain name contains another person's trademark and the value of the domain name derives primarily from that. In the latter situation, it is correct to say, as did the panel in *Pullmantur*: '[T]he most likely explanation for the registration and holding of the Domain Name was to take some form of unfair advantage of the association of the term embodied in the Domain Name with the Complainant's trade marks'."

The Panel considers it inappropriate to make a finding that in the present case, based upon mixed outcomes in prior cases, that the Respondent was engaged in bad conduct in respect of the disputed domain name here simply because the Respondent has both lost or won prior cases involving other domain names. Of course, losing in a prior UDRP or court case would not mean one is always in bad faith and prevailing in a prior UDRP or court case does not immunize a respondent from a bad faith finding in a later case, as the facts of each case must be considered on their own. *TranScrip Partners LLP, TranScrip Limited v. Abstract Holdings International Ltd, Domain Admin*, WIPO Case No. [D2021-2220](#). Moreover, the Complainant has not provided evidence that the Respondent has a practice of registering the trademarks of others as domain names or that the Respondent currently owns other domain names that correspond to third party brands.

The evidence in the case file as presented does not indicate that the Respondent's aim in registering the disputed domain name was to profit from or exploit the Complainant's trademark.

On the balance of probabilities, there is no evidence presented by the Complainant to conclude that the Respondent intentionally targeted Complainant and its PROIBS trademark when the Respondent registered the disputed domain name in 2011.

The Panel wishes to clarify that this finding is not intended to suggest that speculation in domain names is always legitimate and in good faith, nor is it always in bad faith; where the case circumstances point to a speculative registration for the specific purpose of targeting existing brand owners, this would run afoul of good faith. *So Bold Limited v. TechOps, VirtualPoint Inc.*, WIPO Case No. [D2022-1100](#).

The Panel finds the third element of the Policy has not been established.

D. Reverse Domain Name Hijacking

Paragraph 15(e) of the Policy provides that, if after considering the submissions, the Panel finds that the Complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or to harass the domain-name holder, the Panel shall declare in its decision that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding. The mere lack of success of the complaint is not, on its own, sufficient to constitute reverse domain name hijacking. [WIPO Overview 3.0](#), section 4.16.

The Respondent has requested that the Panel make a finding of Reverse Domain Name Hijacking in this case.

The Panel declines to do so.

The Panel does not find that the Complaint was brought in bad faith. In the present case, and due to the price of the disputed domain name and that the disputed domain name is identical to the Complainant's trademark, the Complainant could reasonably have believed that the Respondent registered the disputed domain name in bad faith.

7. Decision

For the foregoing reasons, the Complaint is denied.

/John Swinson/

John Swinson

Sole Panelist

Date: June 12, 2024