

ADMINISTRATIVE PANEL DECISION

Proctor.io Incorporated v. 杨智超 (Zhichao Yang)
Case No. D2022-0197

1. The Parties

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

The Respondent is 杨智超 (Zhichao Yang), China.

2. The Domain Name and Registrar

The disputed domain name <geproctorio.com> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on January 20, 2022. On January 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 24, 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 January 25, 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 January 27, 2022.

On January 25, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On January 27, 2022, the Complainant submitted 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 February 1, 2022. In accordance with

the Rules, paragraph 5, the due date for Response was February 21, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default in English and Chinese on February 22, 2022.

The Center appointed Francine Tan as the sole panelist in this matter on March 1, 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 was founded in 2013. It is a technology company located in the State of Arizona, U.S.. The Complainant states that it offers state-of-the-art technology in its highly sophisticated, fully automated proctoring platform used to proctor the administration of tests and exams remotely. The Complainant's fully-automated platform eliminates the needs for human proctors, and includes a number of advanced security features. The Complainant's products are used by colleges, universities, corporations, and government agencies throughout the U.S. and internationally.

The Complainant operates its business and advertises and sells its products in the U.S. and throughout Europe under the PROCTORIO trade mark. Use of the PROCTORIO trade mark began since 2013. The Complainant states that since then, it has expended extensive amounts of time, effort, and money in advertising and promoting its products and services under the PROCTORIO mark. The Complainant asserts that consequently, it has extensive common law trade mark rights in the PROCTORIO mark.

The Complainant owns the following trade mark registrations for PROCTORIO:

- (i) U.S. Trade Mark Registration No. 5722338, registered on April 9, 2019;
- (ii) European Union Trade Mark No. 018034721, registered on July 31, 2019; and
- (iii) United Kingdom Trade Mark No. UK00918034721, registered on July 31, 2019.

The Complainant further states that it actively promotes and advertises its business and software products on its website with the domain name <proctorio.com> (registered on April 27, 2013). The Complainant also owns and operates the domain name <getproctorio.com> (registered on January 25, 2014) as a landing page for downloads required for customers to access and use the Complainant's software services.

The disputed domain name <geproctorio.com>, was registered on December 17, 2021, and resolves to a parking page with third-party pay-per-click ("PPC") links.

5. Parties' Contentions

A. Complainant

The disputed domain name is nearly identical and confusingly similar to the Complainant's PROCTORIO mark. The only difference between the disputed domain name and the PROCTORIO trade mark is the addition of the letters "ge" at the beginning of the disputed domain name before the word "proctorio". The Respondent's registration of the disputed domain name is an attempt to "typosquat" by misleading Internet users looking for the Complainant's official download website to land on the Respondent's page. Additionally, the disputed domain name only differs from the Complainant's domain name <getproctorio.com> by a single letter, namely the omission of the letter "t". The disputed domain name is likely to create consumer confusion due to the intentional misspelling of "get". The addition of the generic

Top-Level Domain (“gTLD”) “.com” is without significance and does nothing to remove the likelihood of confusion.

The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not in any way associated with the Complainant nor authorized by the Complainant to use the disputed domain name. There is no evidence that the Respondent has ever used or demonstrated preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services.

The Complainant’s use of the PROCTORIO mark predates the registration of the disputed domain name by at least eight years. The Complainant’s domain name <proctorio.com> was registered nearly nine years before the disputed domain name was registered.

The disputed domain name was registered and is being used in bad faith. The PPC links are titled in such a manner as to create confusion with the Complainant’s PROCTORIO trade mark and divert Internet users to unaffiliated party-sponsored or PPC websites.¹ The disputed domain name was registered in an attempt to intentionally attract, for commercial gain, Internet users to the Respondent’s website by creating a likelihood of confusion with the Complainant’s PROCTORIO mark as to the source, sponsorship, affiliation, or endorsement of the disputed domain name by the Complainant. The Respondent’s use of the disputed domain name to derive revenue from PPC links as well as to divert potential customers to the Respondent’s website for commercial gain by capitalizing on the goodwill associated with the Complainant’s PROCTORIO mark and confuse unsuspecting Internet users into clicking PPC links and purchasing competitive products is not a legitimate commercial or fair use of the disputed domain name. The Respondent had actual knowledge of the Complainant’s PROCTORIO mark at the time it registered the disputed domain name and/or constructive knowledge by virtue of the Complainant’s trade mark registrations and longstanding use of the PROCTORIO mark.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Chinese.

The Complainant requested that the language of the proceeding be English. The reasons are that:

- (i) the website to which the disputed domain name resolves is in the English language which shows that the Respondent has a good grasp of the English language; and
- (ii) the Complainant would incur substantial expense if Chinese were made the language of the proceeding, which would be higher than the overall cost of the administrative proceeding.

The Respondent did not comment on the language of the proceeding.

Paragraph 11 of the Rules provides that:

“(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to

¹ The link titles include “Getproctorio”, “Install Proctorio Chrome Extension”, and “Proctoru Extension Chrome”.

the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.”

The Panel applies the principles which have been applied in many earlier UDRP panel decisions, an example of which is encapsulated in *Groupe Auchan v. xmxzl*, WIPO Case No. [DCC2006-0004](#):

“Thus, the general rule is that the parties may agree on the language of the administrative proceeding. In the absence of this agreement, the language of the Registration Agreement shall dictate the language of the proceeding. However, the Panel has the discretion to decide otherwise having regard to the circumstances of the case. The Panel’s discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time, and costs. It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her abilities to articulate the arguments for the case.”

Having considered the relevant factors and interests of the respective parties, the Panel determines that it would be appropriate for English be the language of the proceeding. The Panel agrees that the Respondent appears to be familiar and comfortable with the English language, taking into account its selection of the disputed domain name which comprises letters of the English alphabet. In the absence of an objection by the Respondent, the Panel does not find it procedurally efficient to have the Complainant translate the Complaint and evidence into Chinese.

6.2 Substantive Issues

A. Identical or Confusingly Similar

The Complainant has established it has rights in the PROCTORIO mark. The PROCTORIO mark is reproduced in its entirety in the disputed domain name and identifiable. The Panel agrees that the addition of the letters, “ge”, does not result in avoiding confusing similarity with the Complainant’s trade mark. Further, the gTLD “.com” is a technical requirement for domain name registrations and not relevant to the issue of the identity or confusing similarity between the disputed domain name and the Complainant’s trade mark.

The Panel accordingly finds that the first element of paragraph 4(a) of the Policy has been satisfied.

B. Rights or Legitimate Interests

The Panel finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant’s registrations of the PROCTORIO trade mark and first use of the mark, long predate the registration date of the disputed domain name. The Complainant did not license or authorize the Respondent to use the PROCTORIO mark as a trade mark or in a domain name. Neither is there evidence that the Respondent is commonly known by the name “Proctorio” or the disputed domain name. The use of the disputed domain name which incorporates the Complainant’s PROCTORIO mark for a website containing PPC links, which target or explicitly refer to the Complainant’s trademark and services, does not constitute a legitimate noncommercial or fair use of the disputed domain name.

Having established a *prima facie* case, the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name. The Respondent failed to respond to or rebut the Complainant’s assertions in this proceeding, from which the Panel draws an adverse inference. In the circumstances, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel therefore finds that the second element of paragraph 4(a) of the Policy has been satisfied.

C. Registered and Used in Bad Faith

Taking into account the fact that the disputed domain name (which features a misspelling of “get”) betrays an attempt by the Respondent to typosquat on the Complainant’s <getproctorio.com> domain name, and the Respondent has not provided any explanation as to how the disputed domain name was derived and why it was selected. The Panel is persuaded that the Respondent selected the disputed domain name with the Complainant and its PROCTORIO trade mark in mind. The “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 trade mark by an unaffiliated entity can by itself create a presumption of bad faith” (see section 3.1.4 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition).

The Panel concludes from (i) the Respondent’s absence of rights or legitimate interests in the disputed domain name, (ii) its failure to respond in this proceeding, and (iii) the use of the disputed domain name to provide PPC links leading to competing products and services, that the disputed domain name was registered and is being used in bad faith. The Respondent has made no attempt whatsoever to dispute the Complainant’s allegations, which is certainly not surprising.

The Panel therefore finds that the third element of paragraph 4(a) of the Policy has been satisfied.

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 <geproctorio.com> be transferred to the Complainant.

/Francine Tan/

Francine Tan

Sole Panelist

Date: March 10, 2022