

ADMINISTRATIVE PANEL DECISION

PragmaticPlay Ltd v. Domains By Proxy, LLC / su gang
Case No. D2022-1793

1. The Parties

The Complainant is PragmaticPlay Ltd, Malta, represented by Wiley Rein LLP, United States of America (“United States”).

The Respondent is Domains By Proxy, LLC, United States / su gang, China.

2. The Domain Name and Registrar

The disputed domain name <ppgames.bet> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 18, 2022. On May 19, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 19, 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 May 20, 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 on May 24, 2022.

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 of the Complaint, and the proceedings commenced on May 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 16, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 20, 2022.

The Center appointed Luca Barbero as the sole panelist in this matter on July 4, 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 Maltese corporation founded in 2014 and is a leading provider of mobile and desktop casino games for the online gaming industry.

In 2016, the Complainant was issued a license by the Malta Gaming Authority to develop and supply games and has, since then, been actively developing, offering, and supplying games under the trademark PRAGMATIC PLAY to operators in various jurisdictions.

Since receiving its first license in 2016, the Complainant has acquired licenses in numerous regulated markets, including Gibraltar, Romania and United Kingdom.

The Complainant has provided evidence of ownership of the European Union trademark registration No. 017891041 for PRAGMATICPLAY (word mark), filed on April 23, 2018 and registered on September 1, 2018, in classes 9 and 41; and 017887401 for PRAGMATIC PLAY (figurative mark), filed on April 13, 2018 and registered on September 1, 2018, in classes 9 and 41.

The Complainant is also the owner of the domain name <pragmaticplay.com>, registered on October 29, 2014 and used by the Complainant to promote its services; and <ppgames.net>, registered on June 7, 2021, used for the Complainant's business operations, including hosting an administrative website at "backoffice.ppgames.net/admin", using the Complainant's trademarks.

The disputed domain name <ppgames.bet> was registered on February 13, 2022 and is currently pointed to an error page. According to the screenshots submitted by the Complainant as Annex 19 to the Complaint, the disputed domain name was previously pointed to a website displaying the Complainant's figurative trademark PRAGMATIC PLAY and offering online casino games.

5. Parties' Contentions

A. Complainant

The Complainant contends that it owns registered trademark rights in PRAGMATIC PLAY as well as common law rights in PRAGMATIC PLAY and PPGAMES.

The Complainant asserts that the disputed domain name is confusingly similar to the trademark PRAGMATIC PLAY as it reproduces the acronym of the trademark "pp" in combination with the descriptive term "games". The Complainant also submits that the disputed domain name is confusingly similar to the trademark PPGAMES in which the Complainant claims common law trademark rights as it reproduces such trademark in its entirety with the mere addition of the generic Top-Level Domain ("gTLD") ".bet".

With reference to rights or legitimate interests in respect of the disputed domain name, the Complainant states that the Respondent used the disputed domain name to offer a cloned version of the Complainant's online casino games, also using the Complainant's registered marks, thus undoubtedly intending to impersonate the Complainant.

The Complainant further highlights that the Respondent is not commonly known by the disputed domain name and that the Respondent's deliberate attempt to pass itself off as the Complainant and benefit from its intellectual property, evidences the Respondent's lack of rights or legitimate interests in the disputed domain name.

With reference to the circumstances evidencing bad faith, the Complainant submits that the Respondent offered pirated versions of the Complainant's software, provided false contact information when registering the domain name and availed of a privacy shield to conceal its identity in the public Whois records. The Complainant also claims that the Respondent has a history of registering domain names with the intent to

mislead the public as the email address associated with the disputed domain name is also associated with two other domain names, <aklottery.us> and <hawaiilottery.us>, which suggest an affiliation with the United States lottery services.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules: "A Panel shall decide a 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." Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- (i) that the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has established rights over the trademarks PRAGMATICPLAY and PRAGMATIC PLAY based on the European Union trademark registrations cited under section 4 above.

The Complainant has also claimed common law rights on PPGAMES since, for the last 18 months, the Complainant has used the sign PPGAMES for its business operation and administration, including to facilitate offering of its gaming services, by and through its numerous PPGAMES formative domain names, such as the domain name <ppgames.net>, pointed to a website used by the Complainant for internal administration purposes. The Complainant also provided screenshots of posts published on social media by third parties who used the hashtag #ppgames to identify the Complainant's online gaming services in order to demonstrate consumer recognition of PPGAMES as a source indicator.

As stated in Section 1.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition "[WIPO Overview 3.0](#)", "To establish unregistered or common law trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant's goods and/or services. Relevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) includes a range of 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. [...] Specific evidence supporting assertions of acquired distinctiveness should be included in the complaint; conclusory allegations of unregistered or common law rights, even if undisputed in the particular UDRP case, would not normally suffice to show secondary meaning."

Whilst the limited evidence submitted in this case is not sufficient, in this Panel's view, to demonstrate that the Complainant has common law trademark rights on "PP" or "PPGAMES" or "PPGAMES.NET", the Panel finds that the Complainant has standing on the basis of its registered trademarks PRAGMATICPLAY and PRAGMATIC PLAY and that the disputed domain name is confusingly similar to the Complainant's registered trademarks for the purposes of paragraph 4(a)(i) of the Policy for the following reasons.

Many prior panel decisions, including the following, have found confusing similarity where a domain name incorporates an acronym of the complainant's mark, and the content of the website to which the domain name resolves makes clear that the acronym was intended to refer to that trademark:

- *BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft v. Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) / Lavanda Ducarti*, WIPO Case No. [D2021-1415](#) (<ebk-france.com>): "The Domain Name incorporates an abbreviation of Complainant's trademark EASYBANK. Taking the broader circumstances into account, this is enough to find confusing similarity (*Harness Racing Australia v. Acronym Wiki Pty Ltd*, WIPO Case No. [DAU2011-0007](#), where the domain name <hra.com.au> was found to be confusingly similar to the name "Harness Racing Australia"). The Panel also takes into account that on the Website, Complainant's mark EASYBANK, logos, and colours were prominently displayed next to the words "EasyBK Online", therefore making it clear that EBK is the abbreviation of EASYBANK / "EasyBK". As mentioned in more detail under section C below, the Website assimilated that of Complainant and in the fraudulent emails that were offering to sell shares, were attached forms including the Website address and an email composition including the Domain Name on at least one occasion. Complainant has demonstrated that consumers were confused and defrauded and it appears *prima facie* that the Respondent sought to target Complainant's trademark through the Domain Name (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") section 1.15)";

- *Hero MotoCorp Limited v. Domain by Proxy, LLC / Marrie Clark*, WIPO Case No. [D2018-2903](#) (<hmcld dealership.com>): "The Complainant is a company incorporated in India with the name of Hero MotoCorp Limited. The acronym of the said corporate name is "HMCL". According to the information submitted by the Complainant, in India the name HERO MOTOCORP is registered as a trademark on nine occasions, the earliest registration being in May 2011. The Complainant's corporate name abbreviation "HMCL" is not specifically registered as a trademark. The present dispute pertains to the domain name <hmcld dealership.com>. The Complainant possess a number of other domain names incorporating the term "HMCL", as indicated above in section 5A. Most of these domain names and all of the relied upon trademarks were created or registered by the Complainant long before the date of creation of the disputed domain name by the Respondent. The Panel notes that the disputed domain name resolved to a website reproducing the HERO trademarks and information from the Complainant's own website, which supports a finding of confusing similarity. Given the Respondent's website replicated material from the Complainant's own website instructing users on the dealership/franchise process, the Panel can assume the disputed domain name is intended to play off of the confusing similarity of the disputed domain name with the Complainant's mark and indicates targeting of the Complainant's mark. In addition, disputed domain name is very much similar or identical to other domain names and the trademarks of the Complainant";

- *Gravity Co., LTD. and Gravity Interactive, Inc. v. Domain Privacy Service FBO Registrant / Junior Silva*, WIPO Case No. [D2021-2648](#) (<roorigin.com>): "the Complainant owns registered trademarks for RAGNAROK and RAGNARÖK ORIGIN. The disputed domain name includes the word "origin" in its entirety and the addition of the letters "ro". The Complainant asserts that "ro" could represent the initials of "RAGNARÖK ORIGIN" or could signify "Ragnarok Online". However, the Complainant has not presented evidence that it is known by or has common law trademark rights in respect of the term "ro". [...] Previous UDRP panels have consistently held that domain names are identical or confusingly similar to a trademark for purposes of the Policy when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name. See, for example, *Consumer Reports, Inc. v. Wu Yan, Common Results, Inc.*, WIPO Case No. [D2017-0371](#). Previous UDRP panels have also found domain names confusingly similar to a trademark for the purposes of the Policy where the domain name includes a dominant part of the trademark in the domain name. See, for example, *8848 Altitude AB v. Constance Siddiqui*, WIPO Case No. [D2017-2001](#). It is unclear whether "origin" is the dominant part of the Complainant's trademark. It is well established that the content of the Respondent's website is an irrelevant factor when assessing confusing similarity under the first element of the Policy. The test is to be conducted by way of a side-by-side comparison of the Complainant's trademark and the disputed domain name. *Harry Winston Inc. and Harry Winston S.A. v. Jennifer Katherman*, WIPO Case No. [D2008-1267](#). However, in rare and limited circumstances, it is permissible for the Panel to consider the website at the disputed domain

name to gain an indication of the meaning of the dispute domain name. See *Zippo Manufacturing Company v. Domains by Proxy, LLC and Paul Campanella*, WIPO Case No. [D2014-0995](#), cited with approval in *VF Corporation v. Vogt Debra*, WIPO Case No. [D2016-2650](#). In the present case, the Panelist reviewed the website at the disputed domain name and can draw the conclusion that the first letter in the disputed domain name is a reference to the Complainant's trademark RAGNAROK. In the circumstances, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's RAGNARÖK ORIGIN trademark. This is admittedly a close call".

In addition to the above, as stated in section 1.8 of the [WIPO Overview 3.0](#), "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element". Moreover, as indicated in section 1.11.1 of the [WIPO Overview 3.0](#), "The applicable Top Level Domain ("TLD") in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test".

In the present case, the disputed domain name includes the two letters "pp", which can be interpreted as an acronym of the Complainant's trademark PRAGMATIC PLAY, along with the term "games" and the gTLD ".bet", both of which are descriptive of the Complainant's area of business, and do not prevent a finding of confusing similarity. The fact that the added term, and the gTLD, refers to the Complainant's business sector serves in the Panel's opinion to support a finding that the two letters "pp" were chosen as an acronym targeting the Complainant's trademark PRAGMATIC PLAY. Furthermore, the Complainant has demonstrated that other members of the gaming community, not just the Respondent, consider the combination of the acronym "pp" and the descriptive term "games", i.e. PPGAMES, as referring to the Complainant's online games, and the Complainant itself is using the domain name <ppgames.net>, almost identical to the disputed domain name, for one of its official websites. Furthermore, according to the evidence submitted by the Complainant, which has not been challenged by the Respondent, the disputed domain name has been pointed to a website displaying the Complainant's registered trademarks and offering online casino games, which the Complainant claims to be copied from the Complainant's website.

In view of the above, the Panel finds that the Complainant has proven that the disputed domain name is confusingly similar to trademarks in which the Complainant has established rights according to paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant must show that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent may establish rights or legitimate interests in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

"(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

In the case at hand, by not submitting a Response, the Respondent has failed to invoke any circumstance that could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain name.

The Panel notes that there is no relation, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant's trademarks.

Furthermore, there is no indication before the Panel that the Respondent is commonly known by the disputed domain name or a name corresponding to the disputed domain name.

As mentioned above, the Complainant claimed that the disputed domain name, currently redirected to an error page, was pointed to a website offering a cloned version of the Complainant's online casino games. The Complainant also submitted screenshots showing the use of the Complainant's registered trademarks on the online gaming website to which the disputed domain name resolved. Based on the records, the Panel finds that Internet users could be misled into believing that the Respondent's website was indeed operated by the Complainant.

In view of the above, the Panel finds that the Respondent has not used the disputed domain name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's trademarks.

Therefore, the Panel finds that the Complainant has proven that the Respondent has no rights or legitimate interests in the disputed domain name according to paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the Complainant prove that the disputed domain name was registered and is being used by the Respondent in bad faith.

As to the bad faith at the time of the registration, the Panel notes that, in light of the prior registration and use of the Complainant's trademarks PRAGMATIC PLAY and PRAGMATICPLAY in connection with the Complainant's online casino games, of the substantial identity of the disputed domain name with the Complainant's domain name <ppgames.net> – from which it differs only by the first letter of the gTLD, “b” – and the gTLD “.bet” selected by the Respondent, directly referring to the Complainant's business field, the Respondent's registration of the disputed domain name cannot amount to a mere coincidence.

Moreover, in view of the Respondent's redirection of the disputed domain name to a website offering online casino games and where the Complainant's trademarks were displayed, the Panel finds that the Respondent was indeed well aware of the Complainant and its trademarks at the time of registration of the disputed domain name.

In view of the above-described use of the disputed domain name, the Panel finds that the Respondent intentionally attempted to attract users to its website, for commercial gain, by creating a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of its website and the services promoted therein, according to paragraph 4(b)(iv) of the Policy.

As indicated above, the disputed domain name is currently pointed to an error page. As also established in a number of prior cases the concept of “bad faith use” in paragraph 4(b) of the Policy includes not only positive action but also passive holding. See the landmark case *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

Therefore, the Panel finds that the Complainant has also proven that the Respondent registered and is using the disputed domain name in bad faith according to paragraph 4(a)(iii) 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 <ppgames.bet> be transferred to the Complainant.

/Luca Barbero/

Luca Barbero

Sole Panelist

Date: July 18, 2022