

ADMINISTRATIVE PANEL DECISION

Enodo v. Perfect Privacy, LLC / Golden, Mitchell, Mitchell Golden
Case No. D2022-1966

1. The Parties

The Complainant is Enodo, France, represented by LS Avocats, France.

The Respondent is Perfect Privacy, LLC, United States of America (“United States”) / Golden, Mitchell, Mitchell Golden, United States.

2. The Domain Name and Registrar

The disputed domain name <enodo.com> is registered with Register.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 31, 2022. On June 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 3, 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 June 8, 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 June 10, 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 June 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 6, 2022. The Response was filed with the Center on June 18, 2022 and the amended Response on June 21, 2022.

The Center appointed Steven A. Maier as the sole panelist in this matter on June 28, 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 simplified joint stock company registered in France with an incorporation date of April 7, 2021, and a date of commencement of its activities of March 15, 2021, offering software and computer related services.

The Complainant is the owner of France trademark registration number 4779663 for a figurative mark ENODO, registered on October 15, 2021 with a filing date of June 24, 2021.

The disputed domain name was registered on January 22, 2000.

The disputed domain name does not appear to have resolved to any active website.

5. Parties' Contentions

A. Complainant

The Complainant submits that the disputed domain name is identical to its trademark ENODO.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that it has never licensed or authorized the Respondent to use the ENODO trademark and that the term ENODO has no objective meaning in English or any other language. The Complainant contends that the Respondent has never used the disputed domain name for the purpose of any *bona fide* website or business.

The Complainant submits that the disputed domain name has been registered and is being used in bad faith. It contends that the Respondent's only purpose in registering the disputed domain name can have been to deprive the relevant trademark owner of that name. The Complainant repeats that the term ENODO has no meaning and that the Respondent has not made any use of it. It contends that the passive holding of a domain name does not preclude a finding of bad faith in all the circumstances of the case (see *e.g. Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

The Complainant contends that the disputed domain name is "the most effective domain name" for its own use. It states that, while it contacted the Respondent concerning the disputed domain name, the Respondent gave only brief responses and showed no willingness to come to an agreement with the Complainant. The Complainant speculates that it may be the Respondent's intention to sell the disputed domain name to the Complainant or a competitor for valuable consideration on excess of its out-of-pocket costs associated with the domain name (paragraph 4(b)(i) of the Policy). The Complainant submits that, in any event, the non-use of the disputed domain name harms the image of its company in the eyes of customers, prospects and competitors.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

The Respondent submits that he registered the disputed domain name in January 2000 in connection with a proposed business venture involving services to bond traders. He states that that business did not ultimately proceed.

The Respondent disputes the Complainant's submission that the term ENODO has no meaning in any language and provides evidence that it is a Latin word meaning to untangle, unknot or elucidate, which he states had relevance to his proposed business venture.

The Respondent submits that the disputed domain name has resolved to a website, although not to any homepage. He states that he has used that website for professional purposes including demonstrations and email.

The Respondent states that, despite having been approached over the years by a number of potential buyers including the Complainant, he has no particular interest in parting with the disputed domain name. He exhibits the following correspondence between the Complainant and himself:

- (a) An email from the Complainant dated April 27, 2021 stating: "Hi, I'm interested in using Enodo.com for a side project. Is it available for sell?"
- (b) A reply from the Respondent dated April 28, 2021 stating: "I'm not interested in selling right now."
- (c) A response from the Complainant of the same date stating: "OK, let me know if you change your mind."
- (d) A further email from the Complainant (the date of which is not shown) stating: "I want to know if you are now available for sale enodo.com? I can offer you \$500 for it."

The Respondent emphatically disputes the submission that he registered the disputed domain name in bad faith with the intention of depriving the Complainant of it. He points out that he registered the disputed domain name in 2000, some two decades before the Complainant even came into existence.

The Respondent submits that, not only must the Complaint inevitably fail, but this is case of attempted Reverse Domain Name Hijacking. He relies in particular upon the Complainant's misstatement that the term ENODO has no objective meaning in any language, as well as its attempts to purchase the disputed domain name for the supposed purpose of a "side project". He submits that this is "Plan B" case, in which the Complainant has brought the administrative proceeding in bad faith, having first attempted and failed to purchase the disputed domain name from the Respondent.

6. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (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.

A. Identical or Confusingly Similar

The Complainant has established that it is the owner of a registered trademark rights for the figurative mark ENODO. The disputed domain name is identical to the textual element of that trademark. It is irrelevant for the purposes of paragraph 4(a)(i) of the Policy that the disputed domain name may have been registered before the relevant trademark and the Panel therefore finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Panel accepts the Respondent's submissions that the name ENODO is a Latin word meaning to untangle, unknot or elucidate and that he registered it in January 2000 connection with a proposed business venture. It is impossible for the Respondent to have registered the disputed domain name with the purpose of targeting the Complainant's trademark, since the Complainant did not exist until April 2021 and did not file for its ENODO trademark until June 2021. The Respondent is not required to demonstrate any active use of a domain name which he legitimately registered and has passively held without any bad faith intent. The Panel finds therefore that the Complainant has failed to establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

While the above finding is sufficient to dispose of the proceeding, the Panel will also briefly consider the aspect of bad faith. In order to establish this element, the Complainant must meet the conjunctive test of showing both that the disputed domain name was registered, and that it has been used, in bad faith. The Complainant can establish neither such factor in this case. In particular, as alluded to above, it is impossible for the Respondent to have registered the disputed domain name with the Complainant or its trademark in mind, and with the objective of taking unfair advantage of that trademark, since the disputed domain name was registered over two decades before the Complainant was incorporated or any application for its relevant trademark was filed. Nor is there anything in the Respondent's subsequent passive holding of the disputed domain name that is suggestive in any manner of bad faith intent. The Complainant cannot therefore establish that the disputed domain name has been registered and is being used in bad faith.

7. Reverse Domain Name Hijacking

Under paragraph 15(e) of the Rules: "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 was brought primarily 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."

In the light of the fact that the disputed domain name was registered over 20 years before the Complainant came into existence or applied for an ENODO trademark, the Complainant's misrepresentation that the term ENODO had no meaning in any language (being a matter the Complainant could certainly have verified before making that submission and certifying it as true), and the clear evidence of its approaches to the Respondent seeking to buy the disputed domain name, the Panel is in no doubt that the Complainant has brought this proceeding in bad faith, in what is known as a "Plan B" scenario, having failed in its attempts to negotiate a purchase of the disputed domain name from the Respondent. Furthermore, given that the Complainant is legally represented, the Panel finds this to be a particularly egregious case of attempted Reverse Domain Name Hijacking.

8. Decision

For the foregoing reasons, the Complaint is denied. The Panel finds that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: July 8, 2022