

ADMINISTRATIVE PANEL DECISION

Prodware SA v. Jlnsoo Yoon
Case No. D2022-2098

1. The Parties

The Complainant is Prodware SA, France, represented by Parot Avocats, France.

The Respondent is Jlnsoo Yoon, Republic of Korea.

2. The Domain Name and Registrar

The disputed domain name <myprodware.com> is registered with DropCatch.com LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 9, 2022. On June 10, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 10, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 June 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 5, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 6, 2022.

The Center appointed Steven A. Maier as the sole panelist in this matter on July 12, 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 company registered in France. It is a provider of software solutions.

The Complainant is the owner of registrations for the trademark PRODWARE, including French trademark registration number 4461203 for the word mark PRODWARE, filed on June 13, 2018, for goods and services in a variety of International Classes.

The disputed domain name was registered on November 25, 2019.

The Complainant provides evidence that, on March 22, 2022, the disputed domain name resolved to a website which offered the disputed domain name for sale at an unspecified price. The website also offered links to a variety of software-related services.

5. Parties' Contentions

A. Complainant

The Complainant submits that the disputed domain name is confusingly similar to its PRODWARE trademark. It states that the disputed domain name incorporates that trademark together with the possessive term "my", which does not distinguish it from the trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that the Respondent has not commonly been known by the disputed domain name and has demonstrated no intention to make any *bona fide* use of it. The Complainant states that it itself owned the disputed domain name between 2011 and 2016 and asserts that the Respondent bought it from a "dropcatch.com" website with the intention only of selling it to the Complainant or its competitors.

The Complainant submits that the disputed domain name was registered and is being used in bad faith. It exhibits a webpage offering the disputed domain name for sale for a "minimum offer" of USD 4,950. It provides evidence that it approached the Respondent with an offer of EUR 5,000 for the disputed domain name, to which the Respondent replied that it had paid USD 6,751 for the disputed domain name at auction, had already been offered USD 10,000 for the disputed domain name and was prepared to sell it to the Complainant for EUR 17,500.

The Complainant submits in the circumstances that the Respondent acquired the disputed domain name primarily for the purpose of selling it to the Complainant or a competitor of the Complainant for valuable consideration in excess of the Respondent's out-of-pocket costs directly related to the disputed domain name (paragraph 4(b)(i) of the Policy).

B. Respondent

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

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 has registered trademark rights in respect of the mark PRODWARE. The disputed domain name incorporates that trademark in full, together with the additional term “my”, which does not prevent the Complainant’s trademark from being recognizable within the disputed domain name. 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

In the view of the Panel, the Complainant’s submissions set out above give rise to a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. However, the Respondent has failed to file a Response in this proceeding and has not submitted any explanation for its registration and use of the disputed domain name, or evidence of rights or legitimate interests on its part in the disputed domain name, whether in the circumstances contemplated by paragraph 4(c) of the Policy or otherwise. As discussed below, the Panel finds that the Respondent acquired the disputed domain name in the circumstances contemplated by paragraph 4(b)(i) of the Policy, which represents a targeting of the Complainant’s trademark and cannot give rise to rights or legitimate interests in respect of the disputed domain name. The Panel finds therefore that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

In order to succeed in the Complaint, it is necessary for the Complainant to demonstrate to the Panel, on the balance of probabilities, that the Respondent had the Complainant’s trademark in mind when it registered the disputed domain name. It is therefore the responsibility of a complainant to establish that the respondent was likely to have been aware of its trademark. Typically, a complainant will do so by providing details such as its business profile and history, geographical presence, numbers of employees and customers, sales revenue and promotional spend, industry and media recognition, presence on social media and/or other factors pertaining to public knowledge and recognition of the trademark in question. In this case, however, despite being legally represented, the Complainant has provided no such information, stating only that “[...] the Complainant makes serious use of the marks it owns, in particular for the software solutions services it offers, as evidenced by its website www.prodware.com”.

While the Panel considers the above approach to be less than desirable, it notes from the website referred to that the Complainant claims to have been founded in 1987, to be “Microsoft’s leading partner in Europe”, and to have generated revenue of EUR 175 million in 2018. In the light of these matters and the apparently distinctive nature of the trademark PRODWARE, the Panel considers it reasonable to infer that the Respondent was aware of the Complainant and its trademark PRODWARE when it registered the disputed domain name. The Respondent has not replied to the Complainant’s contentions and has therefore made no denial of having such knowledge. Nor has the Respondent argued that the Complainant’s trademark is not distinctive, or provided any reason of its own for its choice of the disputed domain name. For these reasons, the Panel finds, on the balance of probabilities, that the Respondent registered the disputed domain name with the Complainant’s trademark in mind and with the intention of targeting that trademark.

The Panel notes that the Respondent appears to have made no use of the disputed domain name other than for the purpose of offering it for sale and providing links to software services as described above. The Panel has also found that the Respondent registered the disputed domain name with the Complainant’s trademark in mind, and notes that there is no submission by the Respondent, or other evidence before the Panel, of any party other than the Complainant that could legitimately make use of the disputed domain name. The Panel further accepts that the Respondent offered to sell the disputed domain name to the Complainant for EUR 17,500, having asserted that its acquisition cost was USD 6,751. The Panel therefore infers, as the Complainant submits, that the Respondent acquired the disputed domain name primarily for the purpose of

selling it to the Complainant or a competitor of the Complainant for valuable consideration in excess of the Respondent's out-of-pocket costs directly related to the disputed domain name (paragraph 4(b)(i) of the Policy).

The Panel also notes the inclusion of (presumably) sponsored links on the Respondent's website and therefore finds, in addition, that the Respondent has used the disputed domain name to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trademark (paragraph 4(b)(iv) of the Policy).

The Panel therefore finds that the disputed domain name has been registered and is being used in bad faith.

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, <myprodware.com>, be transferred to the Complainant.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: July 26, 2022