

## **ADMINISTRATIVE PANEL DECISION**

Duracar B.V. v. DuraCar LTD Inc

Case No. D2022-3585

### **1. The Parties**

The Complainant is Duracar B.V., Netherlands, represented by Fifth Advocaatuur, Netherlands.

The Respondent is DuraCar LTD Inc, Republic of Korea.

### **2. The Domain Name and Registrar**

The disputed domain name <duracar.com> is registered with Megazone Corp., dba HOSTING.KR (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on September 28, 2022. On September 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 29, 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.

On September 30, 2022, the Center notified the Parties in both English and Korean that the language of the registration agreement for the disputed domain name is Korean. On September 30, 2022, the Respondent requested for Korean to be the language of the proceeding. On October 3, 2022, the Complainant filed the Complaint translated in Korean and on October 7, 2022, requested for English to be the language of the proceeding.

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, in English and Korean, and the proceedings commenced on October 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 31, 2022. The Response was filed with the Center on October 29, 2022.

The Center appointed Kathryn Lee as the sole panelist in this matter on November 17, 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 Dutch electric automobile established in November 2021. It owns a trademark registration for the mark DURACAR before the EUIPO, registered on July 5, 2022 (Registration Number 018650851).

The Respondent appears to be an entity with an address in the Republic of Korea.

The disputed domain name was registered on January 2, 2002, and as of filing of this Complaint, resolves to a website with pay-per-click links.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that the disputed domain name is identical to the DURACAR trademark in which the Complainant has rights.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain name and confirms that it has not authorized or licensed rights to the Respondent in any respect. The Complainant further contends that the disputed domain name has never been in use in connection with a legitimate noncommercial or fair use, and there has never been a *bona fide* offering of goods and services, nor demonstrable preparations of such an offering. In addition, the Complainant contends that the website at the disputed domain name started to display pay-per-click links to goods and services related to cars after the Complainant's filing of its trademarks that are in connection with cars, and that this misleads Internet users to believe that the disputed domain name is connected to the Complainant. The Complainant also contends that the Respondent is capitalizing on the reputation and goodwill of the Complainant's mark through such use.

Finally, the Complainant contends that the disputed domain name was registered and is used in bad faith. The Complainant explains that the Respondent acquired the disputed domain name in August 2022 when the DURACAR mark of the Complainant had already been registered and become well known and easily discoverable on Google. The Complainant also states that it had been very active on social media and its website and was preparing to launch a new product. In addition, the Complainant states that the disputed domain name has not been actively used, and that all this suggests that the Respondent registered the disputed domain name for the purpose of selling it to the Complainant for a profit which constitutes bad faith.

The Complainant considers that it is also likely for the previous registrant and the Respondent to be the same entity. Specifically, the Complainant states that it offered to buy the disputed domain name from the prior registrant in August 2022 with an offer of EUR 2,000, and the previous registrant counteroffered with EUR 17,500. When the Complainant offered EUR 2,500, the previous registrant stated that it had sold the disputed domain name to another buyer and the name on the disputed domain name registry was changed to that of the Respondent. The Complainant suspects that this was an attempt to push the Complainant to increase its offer and the prior registrant simply made another account to appear as though the disputed domain name had been transferred to someone else.

The Complainant asserts that even if the previous registrant and the Respondent are the same entity, there is sufficient bad faith. Specifically, the Complainant contends that based on the Whois registry, the previous

registrant acquired the disputed domain name on January 30, 2022, when there were many DURACAR trademarks registered outside the European Union by various entities, and that the previous registrant must have acquired the disputed domain name in order to sell it to one these trademark owners. Further, the Complainant asserts that for many years, the website at the disputed domain name had statements indicating that the disputed domain name might be or was for sale, with no actual content, which shows that the Respondent acquired it primarily for the purpose of selling it. In addition, the Complainant states that the EUR 17,500 price that the Respondent demanded was excess, and shows that the Respondent registered the disputed domain name in order to resell it for valuable consideration in excess of his out of pocket costs directly related to the disputed domain name.

## **B. Respondent**

The Respondent contends that it registered the disputed domain name in 2002, well before the Complainant established its business and registered its DURACAR trademark, and as such, the disputed domain name was not registered in bad faith.

## **6. Discussion and Findings**

### **A. Language of Proceedings**

Paragraph 11(a) of the Rules provides that the language of the proceeding shall be the language of the registration agreement, unless otherwise agreed to by the parties, subject to the authority of the panel to determine otherwise. In this case, the language of the Registration Agreement is Korean, and both Parties have had an opportunity to argue their positions on this point. The Complainant submitted the Complaint in English and then a Korean translation of the Complainant. The Respondent thereafter submitted a Response in Korean.

The Panel finds it proper and fair to render this decision in English. Given the fact that the Complainant is based in the Netherlands and the Respondent is based in the Republic of Korea, English would appear to be the fairest neutral language for rendering this decision. Moreover, both Parties were permitted to and in fact did present their cases in the language of their preference, so it appears that fairness has been maintained in view of the overall circumstances. Besides, evidence indicates that the prior registrant and the Respondent are the one and the same and the emails from the prior registrant to the Complainant demonstrates sufficient knowledge of English to be able to understand this decision in English; specifically, the prior registrant signed one of its emails as “Jinsoo”, the same name that the Respondent used in corresponding with the WIPO, and the name on the prior registrant’s email address is “Boosting Inc”, the same as the name on the Respondent’s email address.

### **B. Identical or Confusingly Similar**

The Complainant owns trademark registrations for the term DURACAR. The disputed domain name solely consists of the term “duracar”, and is therefore, identical to the Complainant’s trademark.

For the reason mentioned above, the Panel finds that the first element has been established.

### **C. Rights or Legitimate Interests**

In view of the Panel’s decision in respect of the third element of the Policy, the Panel does not need to decide whether the Complainant succeeds on the second element of the Policy.

### **D. Registered and Used in Bad Faith**

Section 3.1 of the [WIPO Overview 3.0](#) provides that bad faith under the UDRP is “broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark”. Here, the

record in this case does not support a finding of bad faith. Rather, on the basis of the present record, there is no evidence that the Respondent improperly registered or obtained the disputed domain name with knowledge of the Complainant.

The case records suggest that the Respondent and the prior registrant are the same entity. The Complainant has claimed without evidence that the registration of the disputed domain name may have been as late as January or August 2022. There is no evidence demonstrating any change of ownership over the disputed domain name or a change in the Whols other than the emails exhibited by the Complainant wherein there is a mention of the disputed domain name being sold. Otherwise, the Respondent attests to having registered the disputed domain name in January 2002 and provides a couple screen captures of the Whols and the registration records of the January 2002 date as evidence. Accordingly, if the Respondent registered the disputed domain name in 2002, this would be about twenty years prior the establishment of the Complainant's business and registration of its mark. Prior UDRP panels have found where a respondent registers a domain name before the complainant's trademark rights accrue, panels will not normally find bad faith on the part of the respondent. See section 3.8 of the [WIPO Overview 3.0](#). The offer to sell the disputed domain name or the Respondent's use of the disputed domain name to display pay-per-click links, without additional supporting factors, do not in the circumstances indicate bad faith. See section 3.1.1 of the [WIPO Overview 3.0](#).

Lastly, the Complainant argues there are various third-parties with prior rights in DURACAR-formative trademarks as compared to the Complainant, so the Respondent may have acted in bad faith upon registration of the disputed domain name. However, on the present record, there does not appear to be any indication of an intent by Respondent to target the Complainant.

Therefore, the Panel does not find sufficient evidence of bad faith in this case.

## 7. Decision

For the foregoing reasons, the Complainant is denied.

*/Kathryn Lee/*

**Kathryn Lee**

Sole Panelist

Date: December 15, 2022