

ADMINISTRATIVE PANEL DECISION

The Posture Lab Pte Ltd. v. Privacy Administrator, Anonymize, Inc.
Case No. D2022-4181

1. The Parties

The Complainant is The Posture Lab Pte Ltd., Singapore, represented by Sparke Helmore Lawyers, Australia.

The Respondent is Privacy Administrator, Anonymize, Inc., United States of America.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 4, 2022. On November 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 4, 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 November 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 28, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 29, 2022.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on December 5, 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 private company incorporated in Singapore on July 17, 2017. Its principal activities are the provision of fitness centers, gymnasiums, and related fitness and health training.

The Complainant explains that, in about mid-2021, it created and adopted the “Bodynetic” mark for use as a trading name and primary brand for its global business including in Singapore, Australia, and Viet Nam.

The Complainant has applied for various trademarks in respect of the BODYNETIC mark, namely Singapore Trademark Application No. 40202254897H, and Australian Trademark Application Nos. 2308480 and 2308481. None of these applications appear to have proceeded to grant. The Complainant notes that it has also registered the domain name <bodynetic.com.au> although it has not specified the date on which this was done.

The disputed domain name was registered on December 16, 2018. Little is known regarding the Respondent, which has not participated in the administrative proceeding. The Respondent’s details remain hidden behind a privacy service. The disputed domain name has been listed for sale in the sum of USD 2,175. The associated website, which appears to be an aftermarket service named “BrandBucket”, describes the term “bodynetic” as “a combination of ‘body’ and ‘kinetic’ that suggests activity, health, and movement. Possible uses: A heart rate monitor. A fitness class. A personal trainer. An activity tracker. A running program”.

5. Parties’ Contentions

A. Complainant

In summary, the Complainant’s contentions are as follows:

Identical or confusingly similar

The disputed domain name consists of the essential feature of the Complainant’s mark. For the purpose of assessing identity or confusing similarity, the Top-Level Domain (“TLD”) “.com” may be disregarded. From a side-by-side comparison, the disputed domain name is identical to the trademark in which the Complainant has rights.

Rights or legitimate interests

The Complainant has not authorized the Respondent to use its BODYNETIC trademark. The disputed domain name is being used for the sole purpose of holding and selling it for commercial gain. There is no evidence that the Respondent has any rights to or legitimate interests in the disputed domain name, or that it satisfies any of the criteria set out in paragraph 4(c) of the Policy. There is no evidence of use or preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. There is no evidence that the Respondent is commonly known by the disputed domain name or is using it for a legitimate noncommercial or fair purpose. The disputed domain name is being offered for sale and therefore with intent for commercial gain. The non-use of a domain name is evidence of a lack of rights or legitimate interests. Parked pages comprising pay-per-click (“PPC”) links do not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the Complainant’s mark. Any perceived nexus between the disputed domain name and the Complainant’s mark will damage the Complainant’s goodwill and reputation. Consumer diversion is likely because the disputed domain name contains the entirety of the Complainant’s mark.

Registered and used in bad faith

The disputed domain name was acquired and is being used in bad faith pursuant to paragraph 4(b)(i) of the Policy and the additional bad faith factors in section 3.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). According to section 3.3 thereof, non-use of the disputed domain name would not prevent a finding of bad faith under the doctrine of passive holding.

In terms of bad faith registration, the Respondent uses the disputed domain name containing the Complainant's mark for the purpose of selling it for commercial gain and there is no conceivable good faith use that the Respondent could make of the disputed domain name. The Respondent's use of a privacy or proxy registration service supports a finding of bad faith as the Respondent is operating a commercial or trademark-abusive website, and is concealing its location and contact information, including to avoid being contacted in relation to a domain name dispute.

Since September 13, 2022, the disputed domain name has not resolved to an active website. Use of a domain name for an "immature website template" is a form of passive holding to which the passive holding doctrine may apply, per section 3.3 of the [WIPO Overview 3.0](#). The relevant factors are that the Whois information is hidden, that there is no evidence of use of the disputed domain name for a legitimate noncommercial or fair use, and it is highly implausible that the Respondent could make any such use given that there is no evidence that it is known by the name "Bodynetic". There is also a substantial risk that the Respondent may be using or intending to use the disputed domain name to take advantage of it for purposes other than hosting a website, such as sending phishing emails to obtain personal information or solicit payment.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied:

- (ii) 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 first element assessment under the Policy is typically conducted in two parts. In the first place, the Complainant requires to show that it has UDRP-relevant rights in a trademark. In the second place, a comparison process is undertaken whereby the disputed domain name is compared to such trademark in order to determine the question of identity or confusing similarity. This comparison usually takes the form of an assessment on a relatively straightforward side-by-side basis, excluding the TLD as being required for technical purposes only. If the Panel considers that the disputed domain name appears to be identical to the trademark, identity will generally be found. If the Panel finds that the trademark is otherwise recognizable in the disputed domain name, confusing similarity will usually be found.

In the present case, the Complainant does not possess UDRP-relevant rights in a registered trademark. The Complainant has put forward various pending trademark applications for the mark BODYNETIC but these by themselves are insufficient to establish rights in a trademark for the purposes of the first element under the Policy (see, for example, *UBUX Pty Ltd. v. Domains By Proxy, LLC / Jeffrey DeWit, Revasser Ventures LLC*, WIPO Case No. [D2018-2290](#), and section 1.1.4 of the [WIPO Overview 3.0](#)). The Complainant might have sought to establish unregistered trademark rights in such mark, given its submission that it adopted it in mid-2021 (see, for example, section 1.3 of the [WIPO Overview 3.0](#)) but has chosen not to do so.

As the Complainant has been unable to establish the threshold issue that it has rights in a trademark within the meaning of the Policy, it follows that it has not carried its burden in terms of paragraph 4(a)(i) of the Policy, and the Complaint must fail.

B. Rights or Legitimate Interests

The requirements of paragraph 4(a) of the Policy are conjunctive. A consequence of this is that failure on the part of a complainant to demonstrate one element of the Policy will result in failure of the complaint in its entirety. Accordingly, in light of the Panel's findings in connection with the first and third elements under the Policy, no good purpose would be served by addressing the issue of the Respondent's rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides four, non-exclusive, circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out of pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

Although the Complaint has already failed on the first element assessment above, the Panel notes for completeness that subject to certain scenarios involving nascent, usually as-yet unregistered trademark rights, panels under the Policy will not normally find bad faith on the part of a respondent where it registers a domain name before the complainant's trademark rights accrue (see section 3.8 of the [WIPO Overview 3.0](#)). That is the situation in the present administrative proceeding. The disputed domain name was registered on December 16, 2018. By its own admission, the Complainant only adopted the BODYNETIC mark in mid-2021, namely over two and a half years later. The Complainant filed its earliest trademark application on September 15, 2022. There is no suggestion on the present record that the Respondent knew of the Complainant's plans to adopt the “Bodynetic” brand when the disputed domain name was registered in December 2018 and that it therefore effected the registration of the disputed domain name in anticipation of the Complainant's then-nascent trademark rights. In these circumstances, the disputed domain name does

not appear to have been registered with the Complainant or its rights in mind, or with intent to target these. The fact that the disputed domain name is being offered for general sale does not alter this position. What is more, it may be seen from the Complainant's historic Whois report for the disputed domain name that the term "bodynetic" has been adopted by various third parties in the past, also independently of the Complainant, in that the disputed domain name has been registered on at least three previous occasions, in 2011, 2016, and 2017.

In these circumstances, had it been necessary to go beyond the question of the Complainant's standing in the first element assessment, the Complaint would also have failed on the third element in that the disputed domain name does not appear to have been registered in bad faith. For that reason, the Panel does not consider it appropriate to indicate that the Complainant may consider refiling the present Complaint if it should be able to overcome the threshold issue, namely its lack of trademark rights, in future (see the discussion in *CEMEX UK Operations Ltd. v. Privacy Service Provided by Withheld for Privacy ehf / Cargo Logistics Transportation Services, Cargo Logistics Transportation Services; South Coast Shipping Company, South Coast Shipping Company; and Cargo Logistics, Cargo Logistics Transportation Services*, WIPO Case No. [D2022-1445](#)).

7. Decision

For the foregoing reasons, the Complaint is denied.

/Andrew D. S. Lothian/

Andrew D. S. Lothian

Sole Panelist

Date: December 19, 2022