

## **ADMINISTRATIVE PANEL DECISION**

Presonate Zrt. v. Abhijit Mhetre  
Case No. D2023-1106

### **1. The Parties**

The Complainant is Presonate Zrt., Hungary, represented by Széles Law Office, Hungary.

The Respondent is Abhijit Mhetre, India, represented by Cylaw Solutions, India.

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

The disputed domain name <presonate.com> (the “Domain Name”) is registered with Name.com, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 10, 2023. On March 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 14, 2023, 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 March 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 11, 2023. On April 4, 2023, the Respondent requested four days extension to file its Response. On the same day, the Center granted the four calendar day extension for filing of the Response under paragraph 5(b) of the Rules. The due date for Response was extended to April 15, 2023. The Response was filed with the Center on April 14, 2023.

The Center appointed Jeremy Speres as the sole panelist in this matter on April 27, 2023. 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.

On May 3, 2023, the Complainant submitted an unsolicited supplemental filing to the Center, which the Respondent objected to in an email reply on May 4, 2023.

#### **4. Factual Background**

The Complainant is a Hungarian company based in Budapest. No further information concerning the Complainant's business is provided in the Complaint, however, based on the Complainant's website, the Complainant offers presentation development and consulting services. The Complainant owns trade mark registrations for the mark PRESONATE in numerous jurisdictions, the earliest of which is Hungarian Trade Mark Registration No. 231437 for PRESONATE, in class 42, with registration date May 28, 2020.

The Respondent is an Indian individual who conducts business as a speaker and presenter on entrepreneurship, business modelling, marketing, and product positioning, having a passion for presentation.

The Domain Name was registered on February 20, 2011, and currently resolves to a parked page featuring pay-per-click advertisements unrelated to the Complainant's business.

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

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

The Complainant contends that the Domain Name is identical to its registered PRESONATE mark, that the Respondent has no rights or legitimate interests in the Domain Name, and the Domain Name was registered or used primarily for the purpose of disrupting the Complainant's business given that the Respondent allegedly expressed an intention to trade in the same industry, and the Domain Name has resolved to pornographic content in the past.

The Complainant contends in its supplemental filing that although the Domain Name was registered on February 20, 2011, the Domain Name was up for renewal every year since 2011. The Complainant is convinced that the Respondent's continuous renewal of the Domain Name, not taking into consideration that the Complainant has the cited trade marks, evidences a bad faith registration, even if the original registration may not have been in bad faith.

##### **B. Respondent**

The Respondent contends as follows. The Complaint is fatally flawed given that the Complainant does not allege conjunctive bad faith use and registration of the Domain Name. The Complainant's trade mark applications were all filed, and the Complainant's company was only incorporated, years after the Respondent registered the Domain Name in 2011. Thus, the Respondent could not have targeted the non-existent Complainant when it registered the Domain Name.

The Respondent filed an affidavit, signed before a notary, in which he explains that he conceived of the Domain Name for use in relation to resonating presentations, with the Domain Name consisting of a portmanteau of "presentation" and "resonate". The Respondent claims to have used the Domain Name for his personal blog relating to communication, presentation, entrepreneurship, and presentation skills, and therefore he enjoys rights and legitimate interests in the Domain Name. As regards the Complainant's allegation on the prior use of the Domain Name for pornography, the Respondent states that the Domain Name did resolve to pornographic content for a period of four days in 2021 due to a technical glitch that has since been resolved following the Respondent's abuse report to the concerned Registrar.

The Respondent requests a finding of Reverse Domain Name Hijacking ("RDNH") because the Complainant lodged the Complaint after having failed to convince the Respondent to sell the Domain Name to it, with the

Complainant being represented by legal counsel who should have known that the Complaint could not succeed.

## **6. Discussion and Findings**

### **6.1 Preliminary Issues**

#### **A. Parties' Supplemental Filings**

On May 3, 2023, after the panel appointment, the Complainant made an unsolicited supplemental filing. This filing contains contentions regarding the registration and use of the Domain Name in bad faith.

Paragraph 10 of the Rules provides panels with the authority to determine the admissibility, relevance, materiality, and weight of the evidence, and also to conduct the proceedings with due expedition. Accordingly, unsolicited supplemental filings are generally discouraged, unless specifically requested by the panel, pursuant to its general powers under paragraph 12 of the Rules. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.6.

However, in view of the fact that the Response contained allegations of RDNH against the Complainant, and in the circumstances of this case, the Panel finds that it is in the interests of justice for the Complainant to be given an opportunity to respond to the Respondent's allegations, which the Complainant does in its supplemental filing.

In accordance with paragraph 10(d) of the Rules and in the interests of ruling on the basis of the fullest record possible, the Panel will admit the Complainant's supplemental filing of May 3, 2023, and take it into consideration according to its relevance, materiality, and weight.

On May 4, 2023, the Respondent replied to the Complainant's unsolicited supplemental filing, objecting to its consideration by the Panel, and requesting additional time within which to provide a reply.

Since the Panel finds that it can proceed to a Decision on the available case file, and in view of the Decision outcome, the Panel need not consider the Respondent's supplemental filing or the request for additional time in which to file one.

### **6.2 Substantive Issues**

#### **A. Identical or Confusingly Similar**

The Domain Name is plainly identical to the Complainant's registered PRESONATE mark. The Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

#### **B. Rights or Legitimate Interests**

In light of the Panel's findings below in relation to bad faith, it is not necessary to consider the issue of rights or legitimate interests.

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

The Respondent's evidence conclusively establishes that the Respondent registered the Domain Name in 2011, and that the Complainant was only formed as a business in 2019 (a fact which the Complainant neglected to include in the Complaint). Given that the registration of the Domain Name predates the formation of the Complainant's business and all of the Complainant's trade mark registrations, and in the absence of any other evidence suggesting any targeting of the Complainant, there is no basis for claiming

that the Respondent registered the Domain Name in 2011 with the Complainant in mind (who did not exist at the time).

The Complaint must therefore fail given the conjunctive nature of the bad faith element, requiring bad faith registration and bad faith use. The Complainant's contentions in its supplemental filing that bad faith registration can be determined at the time of renewals of the Domain Name do not advance the Complainant's case. Firstly, the consensus view amongst panellists is that the mere renewal of a domain name registration by the same registrant is insufficient to support a finding of registration in bad faith ([WIPO Overview 3.0](#) at section 3.9). Secondly, even if bad faith registration could be determined at the time of renewal, there is nothing in the Complaint to support the Complainant's contention that the Respondent acted in bad faith at any stage. The only claim that the Complainant seems to provide to support that the Domain Name might have been used in bad faith is its proven use for pornographic content. However, the Respondent's evidence, on affidavit, convincingly indicates that the redirection to pornographic content was not intentional, with the Respondent immediately taking steps to have the redirect removed upon being informed of it by the Complainant.

#### **D. Reverse Domain Name Hijacking**

The Panel finds that the Complaint was brought in bad faith, and a finding of RDNH is warranted, for the following reasons, all of which have previously been recognised by UDRP panels as grounds for finding RDNH ([WIPO Overview 3.0](#) at section 4.16). The Complainant is represented, it being accepted that represented complainants are held to a higher standard than unrepresented ones (see *Sixsigma Networks Mexico, S.A. DE C.V. v. DYNAMO.COM AUTORENEWAL AND DNS*, WIPO Case No. [D2022-4534](#)). The Complainant clearly ought to have known it could not succeed under any fair interpretation of the facts which were available to the Complainant prior to filing the Complaint; the conjunctive requirement is well-established, the Domain Name was registered long before the Complainant adopted the mark and acquired any trade mark rights in it, and it was accordingly impossible for the Respondent to have registered the Domain Name with the Complainant's mark in mind.

The Respondent's evidence shows that, prior to filing the Complaint, the Complainant had made unsolicited attempts to purchase the Domain Name from the Respondent, and proceeded to file the Complaint after the Respondent declined them. The Complainant also failed to mention, in the Complaint, that it had approached the Respondent in this regard at all. It is clear that this is an improper purpose (see e.g., *BERNINA International AG v. Domain Administrator, Name Administration Inc. (BVI)*, WIPO Case No. [D2016-1811](#)).

#### **7. Decision**

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

*/Jeremy Speres/*

**Jeremy Speres**

Sole Panelist

Date: May 5, 2023