

## ADMINISTRATIVE PANEL DECISION

Perstorp AB v. Ricardo Sotelo

Case No. D2023-1864

### 1. The Parties

The Complainant is Perstorp AB, Sweden, represented by Ports Group AB, Sweden.

The Respondent is Ricardo Sotelo, United States of America.

### 2. The Domain Name and Registrar

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

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 26, 2023. On April 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 26, 2023, 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 (Redaction for Privacy, Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 27, 2023, 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 amendment to the Complaint the same day.

The Center verified that the Complaint together with the amendment to 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 May 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 28, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 1, 2023.

The Center appointed Daniel Peña as the sole panelist in this matter on June 9, 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.

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

The Complainant is a limited company incorporated in Perstorp, Sweden.

The Complainant is the owner of registered trademarks in the European Union and Norway as follows:

- European Union Trademark (“EUTM”) No. 005786348, PERSTORP (logo), registered on January 22, 2008;
- EUTM No 003808681, PERSTORP (logo), registered on August 29, 2005; and
- Norwegian Trademark No. 182449, PERSTORP, registered on June 5, 1997.

The disputed domain name was registered on March 20, 2023. The disputed domain name resolves to an inactive website and the Complainant claims that the disputed domain name has been used in a fraudulent email scheme.

#### **5. Parties’ Contentions**

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

The Complainant is a world leader in several sectors of the chemicals market for a wide variety of industries and applications.

The disputed domain name substantially imitates the Complainant’s trademark PERSTORP.

The disputed domain name and the Complainant’s trademark coincide in all letters. The only difference is a minor variation in the spelling, as the letters “t” and “s” are interchanged.

The disputed domain name is confusingly similar to the Complainant’s trademark PERSTORP.

The Respondent does not have any rights to the PERSTORP trademarks.

The Respondent is not a licensee of the Complainant, and the Complainant has not given the Respondent any permission to register the trademark as a domain name, nor is there any evidence that the Respondent has been commonly known by the disputed domain name.

The Respondent has not used, or prepared to use, the disputed domain name in connection with a *bona fide* offering of goods and/or services or for any legitimate noncommercial or fair purpose.

The disputed domain name is in fact used to send out fraudulent invoice emails to the Complainant’s clients, using the name of one of the Complainant’s employees.

The Complainant sent a cease-and-desist to the Respondent on March 27, 2023. The Respondent did, however, never reply to this letter, despite reminders.

The disputed domain name has been registered and being used in bad faith.

##### **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 listed in paragraph 4(a) of the Policy have been satisfied: (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. Considering these requirements, the Panel rules as follows.

### A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant has provided evidence of its rights in the trademark PERSTORP on the basis of its multiple trademark registrations. A trademark registration provides a clear indication that the rights in the trademark belong to the Complainant (see WIPO Overview on WIPO Panel Views on Selected UDRP Questions, ("[WIPO Overview 3.0](#)"), section 1.2.1). Mere interchange of the letters "t" and "s" does not prevent a finding of confusing similarity with the Complainant's marks.

As noted in [WIPO Overview 3.0](#), section 1.9: "a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element."

Similarly, the generic Top-Level Domain ("gTLD"), in this case ".com", is viewed as a standard registration requirement and as such is disregarded for the purpose of determining whether a domain name is identical or confusingly similar to a trademark (see also section 1.11 of [WIPO Overview 3.0](#)).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademark in which the Complainant has rights, meaning that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

### B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on the Complainant, previous UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element (see section 2.1 of the [WIPO Overview 3.0](#)).

The Panel finds that the Complainant has made a *prima facie* case showing that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Respondent is not commonly known under the disputed domain name. The Respondent is not affiliated with the Complainant in any way and that it never authorized the Respondent to use its trademark as part of the disputed domain name, and moreover given the alleged use for sending fraudulent email to some of the Complainant's clients.

The Panel notes that the Respondent has not filed any response and thus did not deny the Complainant's assertions, nor brought any information or evidence for demonstrating any rights or legitimate interests.

Accordingly, the Panel finds that the Complainant satisfied the requirements of paragraph 4(a)(ii) of the Policy.

### C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration and use of a disputed domain name in bad faith: (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant (the owner of the trademark or service mark) or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; (ii) the respondent has 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 the respondent has engaged in a pattern of such conduct; (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

The Panel finds that the Respondent has registered the disputed domain name and that contains the Complainant's trademark PERSTORP, with the interchange of letter "t" and "s". This kind of conduct is considered as an act of "typosquatting" or registering a domain name that is a common misspelling of a mark in which a party has rights and has often been recognized as evidence of bad faith registration per se. See *Paragon Gifts, Inc. v. Domain.Contact*, WIPO Case No. [D2004-0107](#) (citing *National Association of Professional Baseball Leagues, Inc., d/b/a Minor League Baseball v. John Zuccarini*, WIPO Case No. [D2002-1011](#); and *ESPN, Inc. v. XC2*, WIPO Case No. [D2005-0444](#) (finding that the practice of "typosquatting", by itself, is evidence of the bad faith registration of a domain name)). The Panel concurs with this approach

Furthermore, the Panel finds that the disputed domain name does not resolve to any active website. However, based on the evidence provided by the Complainant, the disputed domain name was still actively used for email services, *i.e.*, for sending emails which impersonate the Complainant. Moreover, the Respondent's fraudulent emails included the PERSTORP trademark and some of the details of the Complainant. Such use of the disputed domain name can only be observed as clear evidence of the Respondent's bad faith (see, in particular, sections 3.1.4 and 3.4 of the [WIPO Overview 3.0](#)). Considering all of the above circumstances, the Panel concludes that the Respondent has used the disputed domain name in an unlawful attempt to impersonate the Complainant, by way of an email fraud. This clearly constitutes evidence of bad faith registration and use.

Accordingly, the Panel finds, based on the evidence presented, that the Respondent registered and is using the disputed domain name in bad faith. Therefore, the Complainant has satisfied paragraph 4(a)(iii) of the Policy.

### 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, <pertsorp.com>, be transferred to the Complainant.

*/Daniel Peña/*

**Daniel Peña**

Sole Panelist

Date: June 20, 2023