

ADMINISTRATIVE PANEL DECISION

Procare USA LLC v. Pythagoras FZE

Case No. D2023-2593

1. The Parties

The Complainant is Procure USA LLC, United States of America (United States), represented by Lerner David LLP (LD), United States.

The Respondent is Pythagoras FZE, United Arab Emirates.

2. The Domain Name and Registrar

The disputed domain name <procareusa.com> is registered with Communigal Communications Ltd. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 3, 2023. On June 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 17, 2023, the Registrar transmitted by email to the Center its verification response:

- (a) confirming the disputed domain name is registered with it;
- (b) confirming the language of the registration agreement is English; and
- (c) 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 29, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 19, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 20, 2023.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on July 26, 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 was established in 2011 in the United States. Its business is to provide healthcare staffing services including the publication of job advertisements for the recruitment of healthcare professionals for hospitals and other healthcare facilities.

According to the declaration of the CEO of the Complainant, the Complainant has recruitment contracts with over 2,000 healthcare facilities across the United States including hospitals, nursing homes, ambulatory clinics, home health and rehabilitation networks.

According to the Complaint, the Complainant has been providing its services continuously since its establishment under or by reference to PROCARE USA in essentially plain type or a slightly stylised logo form. Examples of this use can be seen on its website at “www.procareus.com”. In addition to its website, the Complainant places advertisements under its trademark in job sites and numerous social media including Indeed, Zip Recruiter, Google, Facebook, LinkedIn and Instagram.

Since 2011, the Complainant has had total revenue of USD 66 million. The Complainant’s contracts with New York City (in the United States) between 2013 to 2021 totaled nearly USD 11 million.

Amongst other things, the Complainant has been awarded the Gold Standard in Health Care Staffing services in 2022 in the Joint Commission Certification Quality Report.

According to the Complaint, the disputed domain name was held by the Complainant’s predecessor in title from 1997 until 2010. The registration of the disputed domain name was lost in circumstances which are not clear as, by August 2010, the disputed domain name had begun resolving to a parking page with pay-per-click (PPC) links to businesses at least some of which were providing services in competition with the Complainant and its predecessor.

According to the Whois record included in the Complaint, the Whois database was last updated on May 14, 2023.

On May 26, 2023, the disputed domain name resolved to a website appearing to offer a “spin the wheel” type prize game, on payment through credit cards, Apple Pay or Bitcoin.

On May 30, 2023, the disputed domain name redirected to a website, “www.relatedsearches.info”, which appeared to carry PPC links to businesses apparently called “Procure Solutions – Contactless Check in Solutions”, “Procure Jobs”, “Procure Health”, and “Procure Therapy Positions” – another jobs site. At least some of these links appeared to be to businesses providing services in competition with the Complainant’s services.

Also, on May 31, 2023, the disputed domain name resolved to a website which generated a page headed “Google Chrome Security Check” with the exhortation to “click ‘Allow’ if you are not a robot”.

On May 31, 2023, the disputed domain name resolved to a website which generated a dialog appearing to be from MS Windows Defender warning that access had been blocked for security reasons and urging the user to call a toll-free number.

5. Discussion and Findings

No response has been filed. The Complaint and Written Notice have been sent, however, to the Respondent at the electronic and physical coordinates confirmed as correct by the Registrar in accordance with paragraph 2(a) of the Rules. Bearing in mind the duty of the holder of a domain name to provide and keep up to date correct Whois details, therefore, the Panel finds that the Respondent has been given a fair opportunity to present his or its case.

When a respondent has defaulted, paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint in the absence of exceptional circumstances. Accordingly, paragraph 15(a) of the Rules requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable.

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

In the present case, the Complainant does not rely on a registered trademark. While its trademark is somewhat descriptive, it has been used continuously and consistently over a substantial period of time as the primary, or house, trademark of a business which has generated substantial revenues over a sustained period of time.

In these circumstances, the Panel considers that the Complainant has made a sufficient showing to claim rights in PROCARE USA as an unregistered trademark. See [WIPO Overview 3.0](#), section 1.3.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top Level Domain (gTLD) component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

In addition, while there is some stylisation in the "logo" form of the Complainant's trademark, those elements are not so significant that the verbal element, PROCARE USA, is overborne. As a result that stylisation can be disregarded for present purposes. See for example, [WIPO Overview 3.0](#), section 1.10.

Disregarding the ".com" gTLD, the disputed domain name consists of the Complainant's trademark.

Accordingly, the Panel finds the entirety of the Complainant's trademark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy.

Based on the available record, therefore, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, 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 disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

The Complainant states that it has not authorised the Respondent to use or register the disputed domain name. Nor is the Respondent in any way associated with the Complainant.

The disputed domain name is not derived from the Respondent’s name.

Having regard to the varying pages to which the disputed domain name has resolved after May 14, 2023, it does not appear that the Respondent can claim to be engaged in a legitimate noncommercial or otherwise fair use. For example, the resolution of the disputed domain name to what appears to be a gaming website or a parking page with PPC links which capitalize on the Complainant’s trademark does not qualify as noncommercial.

The varying pages to which the disputed domain name resolved over a short period in May 2023 also raise a strong inference that the disputed domain name is not being used in connection with a good faith offering of services. The use of the disputed domain name to resolve to a page offering PPC links at least some of which are promoting services in competition with the Complainant’s services is not a good faith offering of goods or services as it seeks to divert potential custom from the Complainant or otherwise take advantage of the Complainant’s trademark.

The Complainant further contends that the security warnings indicate that the Respondent is engaged in some sort of phishing exercise, or malware distribution or otherwise seeking to mislead members of the public.

Having reviewed the record, therefore, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

Accordingly, based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Complainant contends that the Respondent has not used the disputed domain name at any time in connection with a legitimate business. The captures of the website to which the disputed domain name has resolved show that the disputed domain name has been used only in connection with PPC advertising that seeks to free ride on the Complainant’s, and its predecessor in title’s, trademark or, more recently, with some sort of information harvesting or malicious software distribution.

In addition, the Panel notes from the Panel's inspection of the Wayback Machine that there were no web captures at all in the period between 2012 and at least 2018 (if not later).

As noted above, the disputed domain name resolved to a page seeking to take advantage of the trademark when in use by the Complainant's predecessor in title. There appears to have been a continuation of that conduct after the Complainant succeeded its predecessor in title. Recently, there has been a brief revival of that conduct and then development in what appears to be more malicious directions. It appears therefore that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location or of a product or service on the Respondent's web site or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

The Respondent has not sought to dispute the Complainant's allegation or otherwise rebut that inference.

The record does not indicate when the Complainant became aware of the disputed domain name or its use, nor does it include any evidence that the Respondent has developed an independent business in good faith in reliance on the delay, if any, by the Complainant or otherwise suffered any prejudice. See e.g., [WIPO Overview 3.0](#), section 4.17.

Based on the available record, therefore, the Panel finds the third element of the Policy has been established.

6. 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, <procareusa.com>, be transferred to the Complainant.

/Warwick A. Rothnie/
Warwick A. Rothnie
Sole Panelist
Date: August 9, 2023