

ADMINISTRATIVE PANEL DECISION

SC Trade Group PTE. LTD. v. Md. Al Sharif Hossain aka Al Sharif Hossain
Case No. D2024-0033

1. The Parties

The Complainant is SC Trade Group PTE. LTD., Singapore, represented by BrandIT GmbH, Switzerland.

The Respondent is Md. Al Sharif Hossain aka Al Sharif Hossain, Bangladesh, self-represented.

2. The Domain Names and Registrars

The disputed domain names <brytesoft.net> and <brytesoft.com> are registered with Purple IT Ltd; and the disputed domain name <brytesoft.org> is registered with NameCheap, Inc. (collectively the “disputed domain names” and the “Registrars”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 5, 2024. On January 5, 2024, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On January 5 and 14, 2024, the Registrars transmitted by email to the Center the verification responses disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Domain Admin, Privacy Protect, LLC and Privacy service provided by Withheld for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 15, 2024 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Respondent sent an email to the Center on January 15, 2024. The Complainant filed an amended Complaint on January 19, 2024.

The Center verified that the Complaint together with the amended 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 January 23, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 12, 2024. The Respondent sent an email to the Center on February 1, 2024. The Center sent an email regarding the possible settlement to the Parties on February 1,

2024. The Complainant did not request for suspension of the proceeding. The Respondent did not submit any formal response. Accordingly, the Center notified the commencement of panel appointment process on February 13, 2024.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on February 19, 2024. 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 incorporated in 2010 in Singapore. According to the Complaint, its primary business is the retail sale of computer software.

Since May 2018, the Complainant has been distributing and reselling Microsoft software under and by reference to the brand name BRYTESOFT. Its main website is "www.brytesoft.com". It now sells products under the BRYTESOFT brand name throughout the world including the United States of America, Canada, the United Kingdom, Australia, Germany, and Singapore.

In 2021, the Complainant had some 80,000 individual customers and generated USD one million in revenues. Google Analytics data shows that the Complainant's website had over 400,000 visitors in the period from November 1, 2018 to December 31, 2019. The top 10 countries where these visitors came from were the United States of America, Australia, the United Kingdom, Canada, Ireland, India, Indonesia, Singapore, Malaysia, and Czech Republic. The Complainant, under the name "Brytesoft", has received over 5,000 customer reviews on Trustpilot with a rating of 4.8 out of 5.

Amongst other things, the Complainant has registered BRYTESOFT as a trademark:

- (a) in Singapore, Registered Trademark No. 40202261967Q, which was registered with effect from October 31, 2022 in respect of a range of advertising and retailing services in International Class 35; and
- (b) International Registration No 1713355, which was also registered on November 29, 2022 for a range of advertising and retailing services in International Class 35. This International Registration designated under the Madrid Protocol Australia, Canada, China, and the European Union, among others.

The disputed domain names were first registered as follows:

- (a) <brytesoft.net>, on May 14, 2022;
- (b) <brytesoft.org>, on November 27, 2022; and
- (c) <brytsoft.com>, on February 28, 2023

When the Complaint was filed, each disputed domain name resolved to a website. All three websites appear to be offering for sale computer software and associated services similar to the products offered for sale from the Complainant's website.

The About us text on each website is in the same, or nearly the same, terms. In addition, the Privacy Policy on each website is in the same terms.

The footer on the website "www.brytsoft.com" includes a list of other domain names claimed to be associated with the operator. The other domain names include the first disputed domain name, <brytesoft.net>, and the Complainant's domain name, <brytesoft.com>. The website "www.brytsoft.com" also includes links to the TrustPilot reviews of the Complainant's business.

The websites to which <brytesoft.net> and <brytsoft.com> resolve both do so by reference to the following logo:



Initially, however, the website at “www.brytesoft.net” displayed the Complainant’s Brytesoft logo and linked through to the TrustPilot reviews of the Complainant’s business.

5. Discussion and Findings

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

- (i) the disputed domain names are 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 names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

A. Consolidation

The Complainant has requested consolidation of the complaints against all three disputed domain names.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant’s request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 4.11.2.

Apart from the formal “Md” abbreviation recorded in the name of the registrant of the disputed domain name <brytesoft.org>, the name of the registrant of each disputed domain name appears to be the same.

Further, the emails received by the Center apparently from the Respondent were sent from the email address which the Registrar has confirmed is the email address for the registrant of the disputed domain names <brytesoft.net> and <brytsoft.com>.

Further still, there are a number of overlaps and correspondences between the three websites as identified in section 4 above.

In these circumstances, the Panel considers that it is most likely all three disputed domain names have been registered by the same person or at least appear to be operating under common control.

Accordingly, the Panel finds it is appropriate to consolidate the disputes against each disputed domain name in the one proceeding. For ease of reference, the Panel will refer to the registrants (if different) as “the Respondent” unless it is necessary to distinguish between the different disputed domain names.

B. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

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 3.0](#), section 1.7.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

The Complainant has proven ownership of at least the two registered trademarks identified in section 4 above. In addition, given the usage and customer access to the Complainant's website identified in the Complaint, the Panel considers it likely that the Complainant also has rights in BRYTESOFT as an unregistered trademark.

In undertaking the comparison of the disputed domain names to the Complainant's trademark, it is permissible in the present circumstances to disregard the generic Top-Level Domain ("gTLD") components of the disputed domain names as functional aspects of the domain name system. [WIPO Overview 3.0](#), section 1.11.

Disregarding the gTLD components, the disputed domain names <brytesoft.net> and <brytesoft.org> are identical to the Complainant's registered trademark.

The other disputed domain name, <brytsoft.com>, consists of an obvious misspelling of the Complainant's trademark. That difference does not avoid a finding of confusing similarity. See e.g. [WIPO Overview 3.0](#), section 1.9. Apart from anything else, the Complainant's trademark remains visually and aurally recognisable within the disputed domain name.

Accordingly, the Panel finds that the Complainant has established that:

- (1) the disputed domain names <brytesoft.net> and <brytesoft.org> are identical with the Complainant's trademark; and
- (2) the disputed domain name <brytsoft.com> is confusingly similar to the Complainant's trademark.

Therefore, the Panel finds the first element of the Policy has been established.

C. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain names.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a bona fide offering of goods or services; or
- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or

(iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a 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 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 first point is that the Complainant’s trademark BRYTESOFT is an inherently distinctive term. The two components of the term can be seen as the ordinary English words “bright” and “soft”. However, in combination they are meaningless. Together, they do not describe any particular thing or person other than their signification as the Complainant’s badge of origin.

Second, the Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it. The Respondent does not dispute this.

Next, the Respondent registered the disputed domain names <brytesoft.org> and <brytsoft.com> after the Complainant began using its trademark (albeit before the Complainant registered its trademark), and also after the Complainant had filed its trademark application in Singapore.

Even the disputed domain name <brytesoft.net> was created several years after the Complainant registered its own domain name <brytesoft.com> and began using its trademark in 2018 albeit before the Complainant registered its trademark. As indicated in section 5B above, therefore, the disputed domain name <brytesoft.net> was registered after the Complainant acquired its unregistered rights in the trademark. In any event, the timing does not preclude the Respondent having notice of the Complainant’s trademark when he registered the disputed domain name. See e.g. [WIPO Overview 3.0](#), section 3.8.2 (in the context of registration and use in bad faith).

Fourth, the disputed domain name is not derived from the Respondent’s name. However, the Respondent states he registered the domain name <brytesoft.co.uk> first as it matches the company name Brytesoft UK Private Limited.

A Whois search shows that the domain name <brytesoft.co.uk> was first registered on July 17, 2021.

The Companies House report for Brytesoft UK Private Limited shows that it was incorporated on November 15, 2021. (The same search also shows that the company was dissolved on January 2, 2024.)

As the company was not incorporated until almost four months after the domain name <brytesoft.co.uk> was registered, it seems unlikely that the domain name was registered because it reflected the company’s name.

In any event, both the domain name and the company name were adopted several years after the Complainant had coined and began using its distinctive trademark on a wide scale. As it is a distinctive term and has no significance in connection with the retailing of computer software products apart from its adoption by the Complainant as its trademark, the inference is plainly open that the Respondent only adopted the domain names (including the disputed domain names) and the company name with knowledge of the Complainant’s trademark and to take advantage of its trademark significance.

This inference is reinforced by the copying of text from the Complainant's website, the links to the Complainant's TrustPilot review, and the inclusion of the Complainant's domain name in the listing of the Respondent's associated domain names. These, particularly the links to the TrustPilot reviews, seem calculated to convey the false impression that the Respondent's business is the Complainant's business or closely associated with it.

The use of the disputed domain names misrepresenting a false association with the Complainant does not qualify as an offering of goods or services in good faith.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent has not rebutted the Complainant's prima facie showing.

Accordingly, the Panel finds the second element of the Policy has been established.

D. Registered and Used in Bad Faith

Under the third requirement of the Policy, the Complainant must establish that the disputed domain names have been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g. *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd*, WIPO Case No. [D2010-0470](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

As discussed in section 5C, the term "brytesoft" is an invented or coined term and not descriptive and it appears that the Respondent has adopted the disputed domain names because of its significance as the Complainant's trademark.

Accordingly, the Panel finds that the Respondent registered each disputed domain name in an intentional attempt to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's trademark. On the record in this proceeding, therefore, the Complainant has established the circumstances set out in paragraph 4(c) of the Policy apply:

"For the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of [the disputed] domain name in bad faith:

...

"(iv) by using the [disputed] domain name, [the Respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent's] 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] website or location or of a product or service on [the Respondent's] web site or location."

Accordingly, the Complainant has established all three requirements under the Policy.

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 names <brytesoft.net>, <brytesoft.org> and <brytsoft.com> be transferred to the Complainant.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: March 5, 2024