

ADMINISTRATIVE PANEL DECISION

Grundfos Holding A/S v. Armen Yarmaloyan
Case No. D2024-2317

1. The Parties

The Complainant is Grundfos Holding A/S, Denmark, represented by Patrade Legal ApS, Denmark.

The Respondent is Armen Yarmaloyan, Dyurlang LLC, Armenia.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 29, 2024. On June 7, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 20, 2024, 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 (Dyurlang LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 21, 2024, 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 amended Complaint on June 24, 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”).

On June 24, 2024, the Respondent sent an email communication to the Center, and on July 25, 2024, the Center acknowledged the receipt of the Respondent’s email. In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 16, 2024. The Respondent did not submit a formal Response. On July 17, 2024, and July 22, 2024, the Respondent sent email communications to the Center.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on July 26, 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 is a Danish company which manufactures pumps and ancillary equipment under the GRUNDFOS mark.

The Complainant is the owner of a variety of registered trademarks in respect of the GRUNDFOS mark, such as, for example, European Union Registered Trademark Number 6654339 for the word mark GRUNDFOS, registered on December 17, 2008, in Classes 7, 9, 11, 12, 19, 37, 39, and 40. The Complainant also owns Armenian Registered Trademark Number 851 for the word mark GRUNDFOS, registered on November 20, 2005 in classes 7, 9, and 11.

The disputed domain name was registered on December 22, 2022. The Respondent, Dyurlang LLC, is a former distributor of pumps in Armenia and Georgia, together with its Executive Director, Armen Yarmaloyan. The website associated with the disputed domain name features the Complainant's trademarks along with the Respondent's "Dyurlang" logo, which contains the wording "Distributor for Grundfos Pumps". The site states that the Respondent is the "Official representative of Grundfos in Armenia and Georgia" and uses the capitalized term "AUTHORISED DISTRIBUTOR". The site provides a listing of the Complainant's products together with a video featuring an executive of the Complainant.

On July 28, 2022, the Complainant issued a letter confirming that the Respondent was at that date a non-exclusive distributor for the Complainant's pumps in Armenia and Georgia and was also authorized by the Complainant to sell genuine spare parts and provide pre and after sales services including commissioning of products. The letter was stated to be valid until July 27, 2023.

On March 23, 2023, the Respondent wrote a letter to the Complainant signed by its said Executive Director stating that the Respondent had acquired the disputed domain name "on my personal initiative". The Respondent added, "Since we are aware of the responsibility of the Grundfos company image all over the world and consider us members of your big family, we ask to you control the content of our site from your side (Marketing Department) and are ready / obliged to strictly comply with the rules established by Grundfos. We ask to you ensure communication with those responsible for this direction".

An email from the Respondent dated April 10, 2023 to three individuals using corporate email addresses of the Complainant, along with a third party brand protection company suggests that said company had objected to the use of the disputed domain name on behalf of the Complainant. In said email, the Respondent notes that it maintains a paid advertising budget for the website associated with the disputed domain name, adding that it wrote to the Complainant regarding its "vision" but that it received no reply.

The Respondent's status as non-exclusive distributor for the Complainant's products does not appear to have been extended beyond the expiration of the letter of authority on July 27, 2023.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name repeats the Complainant's GRUNDFOS trademark, and that the associated website falsely claims that the Respondent is an authorized distributor of the Complainant. The Complainant notes that the Respondent's dealership was terminated as of July 27, 2023, adding that it never authorized the Respondent to register or use the disputed domain name. The Complainant submits that the Respondent is authorized specifically in terms of the letter of July 28, 2022 to "sell genuine spare parts and provide pre and after sales services including commissioning of products", and that the Complainant has not authorized the Respondent to register or use any domain names containing its trademark, "and especially not after July 27, 2023". The Complainant notes that the Respondent registered the disputed domain name on its personal initiative according to its letter of March 23, 2023, pointing out that the Complainant disputed the registration and use of the disputed domain name shortly thereafter.

The Complainant contends that being or having been an official distributor does not grant an entity the right to register another's trademark as a domain name, or to use such trademark on a corresponding website in a manner that may be confused with the trademark owner. The Complainant adds that the Respondent is making a commercial use of the disputed domain name.

The Complainant asserts that the disputed domain name is being used for "a fraudulent webshop" claiming to be, or authorized by, the Complainant. The Complainant contends that the limitation in the Respondent's authorization from the Complainant confirms that the disputed domain name was registered in bad faith and that the Respondent is also acting in bad faith in using the disputed domain name after such authorization was terminated. The Complainant submits that the Respondent is intentionally attempting to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

The Complainant makes reference to four previous decisions under the Policy in which it was found that its trademark was one of the most well-known in connection with pumps and in which no rights or legitimate interests and registration and use in bad faith were found.

B. Respondent

The Respondent did not reply formally to the Complainant's contentions. However, in its communications with the Center, the Respondent argues that it purchased the disputed domain name legally, that it informed the Complainant in the process of making the associated website and that the Complainant was happy with the promotion strategy. The Respondent adds that it was the Complainant's legal partner and invested resources in the business, including in its stock of the Complainant's items. The Respondent indicates that it remains open to direct contact with the Complainant.

6. Discussion and Findings

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.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here, the prefix “my” may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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.

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 name.

The Respondent’s informal case in rebuttal appears to be based upon the fact that it registered the disputed domain name in furtherance of the commercial agreement between the Parties, and that such commercial agreement confers rights and legitimate interests upon it. The Complainant counters that the registration of the disputed domain name exceeds the parameters of the said commercial agreement.

The Panel has not been provided with any distribution agreement between the Parties, which might have listed the Parties’ respective rights and obligations. The Panel therefore proceeds on the basis that the Complainant’s letter of authority of July 28, 2022, constitutes the sole expression of the Parties’ commercial agreement. As the panel noted in *APT Advanced Polymer Technology Corp. v. Matt Arnold, Majestic Capital*, WIPO Case No. [D2019-0824](#), a case similarly involving a distributor (albeit one where a more detailed distribution agreement was available), paragraph 4(a)(ii) of the Policy is formulated in the present tense. The inquiry concerns whether the Respondent “has” rights or legitimate interests “in respect of the Domain Name”. It follows that where the distribution agreement (or, in this case, the letter of authorization) reaches its term, the Respondent must be held to have lost the right, if any, that was conferred thereby.

Accordingly, even if the letter of authority of July 28, 2022 were held to contain an implied authority to register and use the disputed domain name (a matter which the Complainant strongly denies, pointing to its prompt objection to the registration of the disputed domain name during the term of the agreement) this could not be construed as extending beyond the term of the agreement in the absence of an express provision to that effect. The Respondent does not make any claim for the continuation of any such implied authority, nor has it asserted rights on any other basis. It solely argues, without any further exposition, that it registered the disputed domain name “legally”. The Panel notes that if by “legally” the Respondent means “according to the authority conferred upon it”, then such authority appears to have lapsed or to have been terminated by the Complainant.

Where the prior agreement between the Parties does not contain an express prohibition (or express permission) regarding the registration of domain names, panels under the Policy have recognized that resellers, distributors, or service providers using a domain name containing the complainant’s trademark to undertake sales or repairs related to the complainant’s goods or services may be making a bona fide offering of goods and services and thus have a legitimate interest in such domain name, provided that the circumstances meet the requirements of the “Ok! Data test”. [WIPO Overview 3.0](#), section 2.8.1. The four

cumulative requirements are:

- (i) the respondent must actually be offering the goods or services at issue;
- (ii) the respondent must use the site to sell only the trademarked goods or services;
- (iii) the site must accurately and prominently disclose the registrant's relationship with the trademark holder; and
- (iv) the respondent must not try to "corner the market" in domain names that reflect the trademark.

Of these, the Respondent in the present case fails at least the third, in that while the Respondent's logo at the top of the home page contains the words "Distributor for Grundfos pumps", this wording is in small letters, whereas at the bottom of the homepage, in much larger letters, under a representation of the Complainant's GRUNDFOS mark and logo is stated in its default language of Russian, "Официальный представитель Grundfos в Армении и Грузии". This is translated into English on the site itself as "Official representative of Grundfos in Armenia and Georgia". The Complainant has made clear that the Respondent is not the Complainant's official representative for these territories. At best, the Respondent was formerly a non-exclusive representative of the Complainant on the strength of the now-lapsed or terminated agreement. This is therefore not an accurate disclosure of the Respondent's relationship with the Complainant and, given the terms of the Respondent's less prominent logo above, the website is ambiguous in this respect.

The Panel notes that the Respondent's site also somewhat oddly states "Сайт продаётся" at the top of the home page, translated on the site itself as "The site is for sale". This calls into question whether the Respondent is actually offering the goods and services at issue, potentially failing the first requirement of the test. This is reinforced by the fact that the Complainant's products on the site have not been priced and are all listed as EUR 0.00.

The Panel also notes that the website lists both a "yandex.ru" email contact address, and one using the disputed domain name itself. It moreover purports to provide a copyright notice in the name of "MyGrundfos Intelligent".

These observations suggest that the Respondent is no longer acting as a distributor of the Complainant's products, but is nonetheless seeking to give the impression that it is.

The Panel moreover noted that the use of "my" preceding the mark in the disputed domain name gives the impression of being an official site of the mark owner, which it is not. [WIPO Overview 3.0](#) section 2.5.1.

In all of these circumstances, the Panel finds that 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 such as those enumerated in the Policy or otherwise.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

To establish the third element of the Policy, the Complainant must prove on the balance of probabilities both that the disputed domain name has been registered in bad faith, and that it is being used in bad faith (typically described as "the conjunctive requirement"). Each of these two limbs must be demonstrated by the Complainant to the satisfaction of the Panel, and the failure to prove one or other limb results in a failure to establish the third element under the Policy, and therefore failure of the Complaint itself.

The Respondent's website associated with the disputed domain name, as described more fully in the preceding section, contains a misrepresentation regarding the (lack of) relationship with the Complainant. The Respondent is not the "Official representative of Grundfos in Armenia and Georgia" and this statement

seems designed to and would be likely to mislead consumers. Such misrepresentation could not be regarded as a good faith use of the disputed domain name. The Panel therefore turns to the question of whether the disputed domain name was registered in bad faith.

As the panel noted in *Akamai S.r.l. v. Rutherford Audio, Inc. and Robb Niemann, Silicon Cowboys Systems Inc.*, WIPO Case No. [D2023-3725](#), “One effect of the conjunctive requirement is that, where an authorized distributor of trademarked goods registers a domain name in good faith (which the Complainant disputes is the case here) in connection with an existing commercial relationship, the trademark owner may be unable to establish both registration and use in bad faith, even if the distributor uses the domain name in bad faith after the relationship has ended”.

Nevertheless, previous cases under the Policy with a similar factual matrix have described some circumstances in which a domain name has been held to have been registered by a distributor in bad faith, such as, for example, where the domain name is used as negotiating leverage to obtain a distribution agreement, or where the respondent retains the domain name after termination of the distribution agreement even though such agreement expressly requires transfer of the domain name (see the discussion in *APT Advanced Polymer Technology Corp. v. Matt Arnold, Majestic Capital*, WIPO Case No. [D2019-0824](#)). However, these particular features are lacking in the present case.

Panels in similar cases have also expressed the view that the complainant’s contemporaneous attitude to the registration of a domain name by a distributor can be an important factor that must also be weighed in the balance. Sometimes, the complainant is noted to have condoned the registration during the term of the distribution agreement or otherwise to have acquiesced to or tolerated it (see, for example, the discussion in *Adventure SAS v. Mike Robinson, BlackHawk Paramotors USA Inc.*, WIPO Case No. [D2019-2489](#), and in *Akamai S.r.l. v. Rutherford Audio, Inc. and Robb Niemann, Silicon Cowboys Systems Inc.*, *supra*). That is not the case here. The Complainant promptly objected to the Respondent’s registration of the disputed domain name once it became aware of it in April, 2023. Furthermore, as the Complainant indicates, it could not have known of the disputed domain name earlier because the Respondent’s letter of March 23, 2023 affirms the fact that it registered the disputed domain name “on my personal initiative”, i.e., without alerting the Complainant or seeking any authorization before doing so.

The nature and provisions of the agreement between the Parties may also be a relevant factor in assessing the Respondent’s good or bad faith intent. If, for example, there is either an express authorization to register domain names or an express prohibition thereof, subject to potential fair use considerations (as to which see notably the above reference to section 2.5.1 of the [WIPO Overview 3.0](#) and the use of “my” falsely signaling a non-existent status), this would go directly to the question of registration in good or bad faith. In the present case, the Panel has not been provided with any formal distribution agreement between the Parties, which might have listed the Parties’ respective rights and obligations. Accordingly, in the absence of any such more detailed agreement, the Panel must presume that no such express authorization or prohibition was laid down.

Consequently, and as noted in the preceding section, the Panel proceeds on the basis that the Complainant’s letter of authority of July 28, 2022 constitutes the sole expression of the Parties’ commercial agreement. The Panel has therefore asked itself whether this document may reasonably have been interpreted by the Respondent in good faith as conferring an implied authorization upon it to register a domain name, composed in the manner of the disputed domain name, in support of its activities. The letter is addressed “To whomsoever it may concern” and is effectively a general statement of the Respondent’s entitlement to act as a non-exclusive distributor for the Complainant’s pumps in the territory concerned and to sell genuine spare parts with the provision of presales and aftersales services. The letter appears to be intended to be exhibited to third parties rather than being a formal statement of the Parties’ rights and obligations.

Viewing the document objectively, the Panel does not consider it likely that a typical non-exclusive distributor could reasonably have construed it as granting permission to register a domain name such as the disputed domain name. Nevertheless, the Panel must review all of the available evidence to assess whether the

Respondent in this case could reasonably and in good faith have considered itself authorized by such letter to register the disputed domain name. In that context, the Panel notes that the Respondent's own letter to the Complainant of March 23, 2023 provides a window into the level of its commercial sophistication, its likely prior awareness of the strength of the Complainant's rights, and its understanding of the limitations of its own rights. Notably, the letter provides that the Respondent registered the disputed domain name on its own initiative notwithstanding the fact that it is aware of "the responsibility of the Grundfos company image all over the world". The Respondent states that it is ready to "strictly comply with the rules established by Grundfos". The letter demonstrates a good command of English and strong elements of commercial sophistication, using the use of terms such as "effective market promotion" and "competent presence in the market".

Based on the letter of March 23, 2023, the Panel has reached the conclusion that the Respondent must have known when it registered the disputed domain name that it was not entitled as a non-exclusive distributor for two territories to cloak itself in the Complainant's identity without seeking permission in advance. Indeed, the letter appears to be an attempt to subsequently legitimize what is presented as a *fait accompli*. The Respondent was clearly aware of the extent of the Complainant's rights, which it describes as "its company image all over the world" and was conscious that there were certain rules established by the Complainant as to the use of its brand. Yet it did not inquire as to the rules concerned before registering the disputed domain name. The Panel finds it inconceivable that such a sophisticated Respondent would have considered itself legitimately entitled to register a domain name with the composition of the disputed domain name.

It must also be noted that this domain name is composed of the Complainant's well-known mark prefixed with the word "my". As mentioned above, the Respondent appears to have a good command of English and could not have overlooked the fact that such domain name is of the kind that a rights holder typically would reserve to itself. The Respondent must have known that such a domain name would give the impression of being a universal sign for all of the Complainant's customers worldwide, and would not represent that of a non-exclusive distributor for two territories. Even in the case of an exclusive distributor, as the Respondent is likely to have known, a rights holder's permission would typically, and at most, be limited to a formula that is qualified by the name of the territories concerned.

It should be noted that the Respondent has not sought to contradict the Complainant's allegation that the disputed domain name was registered in bad faith in formal terms or in any detail, and has provided no evidence or submissions (beyond its informal communications with the Center, together with its letter of March 23, 2023 which was produced by the Complainant), that would have suggested any defensible motivation to the Panel.

In conclusion, having weighed the evidence in this case, the Panel considers that the Complainant's letter of July 28, 2022 could not be construed as implying its permission for the registration of the disputed domain name. The Panel also considers that the Respondent displayed a degree of commercial sophistication and an understanding at the material time of the fact that there were rules as to its use of the Complainant's brand, whereby it could not have made the registration of the disputed domain name on its own initiative in ignorance of the fact that it was doing so in a manner which created a false impression of affiliation which does not in reality exist. The Respondent appears to have sought to use the disputed domain name to improve its standing with the Complainant. The Complainant's prompt response when it learned of the disputed domain name is consistent with its position that no corresponding authorization had been conferred upon the Respondent, either expressly or by implication, and there is no evidence before the Panel suggesting anything to the contrary. The Complainant's actions were consistent at all times with its interpretation of the limitations on the Respondent's authority.

The Panel finds the third element of the Policy has been established.

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 <mygrundfos.com> be transferred to the Complainant.

/Andrew D. S. Lothian/

Andrew D. S. Lothian

Sole Panelist

Date: August 9, 2024