

ADMINISTRATIVE PANEL DECISION

Polydec SA v. Domain Manager, Knauf Information Services GmbH
Case No. D2024-3456

1. The Parties

The Complainant is Polydec SA, Switzerland, represented by Infosuisse, Switzerland.

The Respondent is Domain Manager, Knauf Information Services GmbH, Germany, internally represented.

2. The Domain Name and Registrar

The disputed domain name <polydec.com> is registered with CSC Corporate Domains, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 21, 2024. On August 23, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 27, 2024, 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 August 28, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 17, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 18, 2024.

The Center appointed Adam Taylor as the sole panelist in this matter on September 20, 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.

The Respondent filed a late Response on September 20, 2024.

The Respondent and Complainant each sent an email on September 23, 2024, and the Respondent sent a further email on September 24, 2024.

4. Factual Background

According to its website at “www.polydec.ch”, the Complainant was founded in 1985 and supplies precision parts for the medical, watchmaking, automotive and electronics industries.

The Complainant owns Swiss trade mark no. 729285 for POLYDEC, filed on November 1, 2018, registered on April 3, 2019, in classes 6, 9, 40, and 42.

The disputed domain name was registered on July 31, 1998, on behalf of the French POLYDEC group of companies that supplied building products. One of the companies in that group, Soc Financière Des Terres Noires, SAS (“Soc SAS”) formerly owned French trade mark no. 4019332 for POLYDEC, in classes 17 and 19, filed on July 12, 2013, expired on July 12, 2023. Another group company, Polydec, SAS, formerly owned an International Registration no. 1191195 for POLYDEC, in classes, 17 and 19, registered on November 20, 2013, expired on November 20, 2023. These companies are collectively referred to below as “the Old Companies”.

In around March 2013, the Respondent’s group, which also supplies building products, acquired the French POLYDEC group. The Old Companies were subsequently dissolved.

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:

- even if did so previously, the Respondent no longer owns any trade mark for POLYDEC and no longer uses this mark;
- the Respondent no longer has any reason to hold the disputed domain name as the Respondent no longer possesses any relevant rights and there is nothing to suggest that it wishes to use the disputed domain name;
- there has been no website at the disputed domain name for “several” years;
- as the Complainant has expressed the wish to “recover” the disputed domain name by virtue of its trade mark rights, the Respondent can be considered as having refused in bad faith to transfer the disputed domain name;
- the Respondent never replied to the Complainant’s letter seeking to recover the disputed domain name, further indicating that the disputed domain name is being held to block the Complainant’s business;
- in the absence of evidence that the Respondent retains any rights in POLYDEC or that any connected company is using this name or intends to do so, the Respondent must be presumed to be keeping the disputed domain name primarily to damage the Complainant’s business; and
- the Respondent is engaged in a pattern of “squatting” on domain names, i.e., not using them, probably with a view to blocking competitors, as evidenced by the Respondent’s ownership of, amongst others, the domain names <fitterfriendly.com>, <alutop.com>, and <insulationmanual.com>.

B. Respondent

The Respondent contends that the Complainant has not satisfied all three of the elements required under the Policy for transfer of the disputed domain name.

Notably, the Respondent contends that:

- the disputed domain name was not registered and used in bad faith as it was first registered in 1998, and acquired by the Respondent in 2013, whereas the Complainant's trade mark only dates from 2018;
- the Respondent could not have refused to transfer the disputed domain name if it never knew that a "new" company was interested in acquiring the disputed domain name;
- the responsible person at the Respondent has no record of receiving correspondence from the Complainant;
- the Respondent had no intention of damaging the business of a company operating in an entirely different industry;
- the Respondent's other domain names are entirely legitimate - for, example, "Alutop" is a well-known product of the Respondent – and keeping unused domain names to avoid cybercrime or reputational damage is standard practice; and
- the Respondent is willing to discuss settlement and has forwarded the disputed domain name to the Complainant's website as a goodwill gesture.

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- the disputed domain name has been registered and is being used in bad faith.

6.1 Preliminary Issues

A. Late Response

The Response was filed two days late.

Paragraph 10(c) of the Rules requires the Panel to ensure that the administrative proceeding takes place with due expedition, adding that the Panel may extend a period of time fixed by the Rules "in exceptional cases".

The Respondent says that the relevant employee was absent through illness when the Complaint arrived and that a colleague was misadvised by the Registrar that no further action by the Respondent was necessary.

In these circumstances, and given that the lack of any prejudice to the Complainant from this short delay, the Panel has decided to admit the late Response.

B. Supplemental Filings

As mentioned in section 3 above, both parties have made supplemental filings.

Paragraph 10(d) of the Rules gives the panel authority to determine the admissibility, relevance, materiality and weight of the evidence. As stated above, paragraph 10(c) requires the Panel to conduct the proceedings with due expedition.

UDRP panels have repeatedly affirmed that the party submitting an unsolicited supplemental filing should clearly show its relevance to the case and why it was unable to provide the information contained therein in its complaint or response, e.g., owing to some "exceptional" circumstance. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.6.

In this case, neither party has sought to justify its supplemental filing. Furthermore, the filings focus mainly on the failure of the Respondent to respond to various communications from the Complainant and to the prospect of settlement of this dispute, neither of which the Panel considers material to its decision.

Accordingly, the Panel declines admit any of the supplemental filings, except that the Panel has taken account of the Respondent's explanation of the reason for its late Response in one of the filings.

6.2 Substantive Issues

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 trade mark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trade mark 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 identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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

B. Rights or Legitimate Interests

It is unnecessary to consider this element in view of the Panel's findings under the third element below.

C. Registered and Used in Bad Faith

Except for limited circumstances involving registration of a domain name to capitalise on nascent trade mark rights, panels will not normally find bad faith on the part of the respondent where a respondent registers a domain name before the complainant's trade mark rights accrue. [WIPO Overview 3.0](#), section 3.8.1.

Here, the Panel will treat July 31, 1998 - when the Respondent's predecessor in title acquired the disputed domain name - as the relevant date for the purpose of assessing registration in bad faith. While it could be argued that the Respondent's acquisition of the disputed domain name in 2013 should be considered as a change in ownership given that the previous owner of the disputed domain name was differently-named entity from the Respondent, the Panel does not consider that the 2013 transfer amounted to a material change in ownership, because this occurred in the context of the Respondent's acquisition of the business to which the disputed domain name related.

In any case, both dates precede the Complainant's registered trade mark rights, which only arose in 2018. Accordingly, in the absence of any assertion, let alone detail or evidence, of earlier unregistered trade mark rights, this is fatal to the Complainant's case - because the Complainant is required to prove both registration and use in bad faith.

Even if the Complainant had invoked and proved its apparent unregistered rights dating back to the 1980s indicated on its website, the Complainant would still have failed to prove that the disputed domain name was registered in bad faith. This is because it is obvious from the undisputed facts that, whether one treats 1998 or 2013 as the material registration date, in either case the disputed domain name was registered legitimately for use in an entirely different industry to that of the Complainant. This is evidenced by the, albeit now-expired, trade marks for POLYDEC owned by the Respondent's predecessors. In the circumstances of this case, the Panel finds it reasonable to conclude that the Respondent did not have the Complainant in mind at the time that the Respondent acquired the disputed domain name. Accordingly, the Complainant's

evidence still falls far short of establishing that disputed domain name was registered in bad faith, and indeed the Complainant does not seriously contend otherwise.

None of the Complainant's assertions below, even if true, can displace the lack of evidence of registration of the disputed domain name in bad faith:

- that the Respondent no longer uses the disputed domain name;
- that the Respondent no longer possesses any rights relating to the disputed domain name;
- that the Respondent does not currently intend to use the disputed domain name;
- that the Complainant "wishes" to obtain the disputed domain name and holds relevant trade mark rights;
- that the Respondent failed for whatever reason to respond to the Complainant's communications and that in doing so the Respondent should somehow be treated as "refusing to transfer" the disputed domain name in bad faith" to the Complainant, or as seeking to block or damage its business (which are in any case unwarranted conclusions for the Complainant to draw);
- that the Respondent owns an allegedly illicit pattern of domain names (and in any event the domain names invoked by the Complainant as belonging to the Respondent have not been proven to be illegitimate); or
- that the Respondent forwarded the disputed domain name to the Complainant's website following notification of the Complaint (whether or not that was done, as Respondent claims, as a goodwill gesture).

The Panel finds the third element of the Policy has not been established.

D. Reverse Domain Name Hijacking ("RDNH")

Paragraph 15(e) of the Rules provides that, if "after considering the submissions the panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding". RDNH is defined under the Rules as "using the UDRP in bad faith to attempt to deprive a registered domain-name holder of a domain name". The mere lack of success of the complaint is not, on its own, sufficient to constitute reverse domain name hijacking. [WIPO Overview 3.0](#), section 4.16.

The reasons articulated by panels for finding RDNH, as set out in section 4.16 of [WIPO Overview 3.0](#), include the following:

1. facts which demonstrate that the complainant knew it could not succeed as to any of the required three elements – such as clear knowledge of respondent rights or legitimate interests, or clear knowledge of a lack of respondent bad faith ... including registration of the disputed domain name well before the complainant acquired trade mark rights;
2. facts which demonstrate that the complainant clearly ought to have known it could not succeed under any fair interpretation of facts reasonably available prior to the filing of the complaint; and
3. unreasonably ignoring established Policy precedent notably as captured in the [WIPO Overview 3.0](#) – except in limited circumstances which prima facie justify advancing an alternative legal argument.

The Panel consider that the above factors apply in this case.

The Complaint acknowledges that the disputed domain name was registered in 1998 and does not contend for a later material registration date, albeit that the Complainant refers to the Respondent's acquisition of the business in 2013. Either way, the Complainant should have realised that both dates predated the Complainant's registered trade mark rights, and the Complainant should have addressed the reasons why such registration or acquisition of the disputed domain name should nonetheless be treated as having been undertaken in bad faith. Furthermore, the Panel considers that the Complainant was well aware that the

disputed domain name had been registered or acquired legitimately in the context of an entirely different industry to the Complainant, even providing evidence of the expired trade marks owned by the Respondent's predecessors. The Complainant, or at least its representatives, must have appreciated that there was no prospect of proving that the disputed domain name had been registered in bad faith, a mandatory requirement of the Policy.

Yet the Complaint made no real effort to establish registration in bad faith, and instead confined itself to claiming use in bad faith. Even here, the Complaint relied on a number of hopeless contentions based principally on the alleged (and, indeed, unproven) "refusal" of the Respondent to comply with the Complainant's request to transfer the disputed domain name to the Complainant.

7. Decision

For the foregoing reasons, the Complaint is denied. Moreover, the Panel finds that the Complaint has been brought in bad faith and constitutes an attempt at Reverse Domain Name Hijacking.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: October 2, 2024