

## ADMINISTRATIVE PANEL DECISION

Proton AG v. Gumundur Sigurur  
Case No. DME2024-0001

### 1. The Parties

The Complainant is Proton AG, Switzerland, represented internally.

The Respondent is Gumundur Sigurur, United Kingdom.

### 2. The Domain Name and Registrar

The disputed domain name <protonswap.me> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 25, 2024. On January 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 27, 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 (Unknown Respondent) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 31, 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 February 1, 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 February 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 7, 2024. The Respondent sent informal email communications to the Center on January 31, 2024, February 1, 2024, February 15, 2024, March 12, 2024, and March 13, 2024. The Center notified the Parties of the Commencement of Panel Appointment Process on March 12, 2024.

The Center appointed Assen Alexiev as the sole panelist in this matter on March 14, 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 established in 2014. It offers privacy-centric services, including Proton Mail, an encrypted email service, and Proton VPN, a virtual private network, provided through the domain names <proton.me> and <protonvpn.com>.

The Complainant is the owner of a number of trademark registrations for “PROTON” (the “PROTON trademark”), including the following:

- the United States trademark PROTON with registration No. 6697096, registered on April 12, 2022 for services in International Classes 38 and 42, with first use in commerce in 2016; and
- the International trademark PROTON with registration No. 1684746, registered on April 20, 2022 for goods and services in International Classes 9, 35, 36, 38, 42 and 45.

The disputed domain name was registered on October 4, 2023. It currently resolves to a parking webpage. At the time of filing of the Complaint, the disputed domain name directed to a website that offered cryptocurrency exchange services and had a design similar to the design of the Complainant’s official website.

#### **5. Parties’ Contentions**

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

The Complainant submits that the term “Proton” is the distinguishing element of its trademarks and the characterizing term of its products, which are renowned and easily identified in the areas of consumer security and encryption. The Complainant points out that its product Proton Mail predates the registration of the disputed domain name by more than nine years.

The Complainant states that the disputed domain name is confusingly similar to its PROTON trademark, because it consists of this trademark in combination with the dictionary word “swap”, which refers to the possibility to exchange cryptocurrencies offered on the website at the disputed domain name, and because it is registered in the same “.me” ccTLD as the domain name <proton.me> of the Complainant. The Complainant adds that the whole brand and graphic identity of the Complainant is copied by the website at the disputed domain name, using the same fonts, page layout and color themes, showing that the Respondent has done this to confuse users and create an impression of affiliation with the Complainant.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it is not commonly known by it and has no relevant trademark rights. The Complainant submits that the Respondent has also never used the disputed domain name in connection with a bona fide offering of goods or services, and is not making a legitimate noncommercial or fair use of the disputed domain name.

The Complainant notes that the website at the disputed domain name appears to offer cryptocurrency exchange services, although it is unclear whether the website is functional or is only an attempt to collect user credentials from the Complainant’s customers by posing as a legitimate service offered by the Complainant. According to the Complainant, there is a risk that Internet users may believe that there is a connection between the disputed domain name and the Complainant and its goods and services, which might lead to dilution and damage of the Complainant’s brand and legitimate trademarks.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. It notes that at the moment of the registration of the disputed domain name by the Respondent in October 2023, the Complainant had already established reputation and goodwill in the United States and the United Kingdom for its end-to-end encrypted email service Proton Mail, and it is impossible that the Respondent was not aware of the Complainant's rights at the time of registration of the disputed domain name. In the Complainant's view, the chances are negligible that the Respondent would independently come up with the same brand identity (logos, fonts, website layouts) as the Complainant, without having known of the rights of the Complainant. The Complainant notes that Internet users seeking the Complainant's business by entering its PROTON trademark in a browser could find themselves at the website at the disputed domain name, facing at best the Respondent's cryptocurrency exchange, at worse a sophisticated phishing attempt to steal their credentials for the Respondent's commercial gain. According to the Complainant, by using the disputed domain name, the Respondent has therefore intentionally attempted to attract, for commercial gain, Internet users to the website at the disputed domain name, by creating a likelihood of confusion with the Complainant's PROTON trademark as to the source, sponsorship, affiliation, or endorsement of the website, either to exploit its own cryptocurrency exchange service posing as the Complainant to gain user trust, or to unlawfully obtain the Complainant's users' credentials, in both cases to generate illicit commercial gain.

## **B. Respondent**

The Respondent did not formally reply to the Complainant's contentions.

With its informal communications to the Center, the Respondent made the following statements:

- that the disputed domain name is "completely shut down" and has "ceased all operations", that it currently redirects to a generic webpage and the content currently displayed on it is "free from any issues";
- that the Respondent is open to selling the disputed domain name if the Complainant is interested in acquiring it, but does not agree to relinquish the disputed domain name without compensation, and that it would be "put up for auction in the near future";
- that the Respondent's website does not offer any services similar to those of the Complainant and does not use a name that could be confused with the Complainant's, and that there was never an intention to infringe upon or cause confusion with the Proton brand; and
- that the Respondent is not a business entity and does not have a legal department, but is an individual who acquired the disputed domain name without any malicious or deceptive intent to impersonate or misrepresent himself as the Complainant or to harm its reputation.

## **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 the PROTON trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the PROTON trademark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the PROTON trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, "swap") 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 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 disputed domain name is confusingly similar to the PROTON trademark of the Complainant and to its domain name <proton.me>, and when the Respondent registered it in 2023, the Complainant had already been providing its encrypted email service Proton Mail for nine years. The undisputed evidence shows that the website at the disputed domain name copied the design, layout, fonts, logos (using the same typography as the one used by the Complainant for its PROTON trademark), and other elements of the Complainant’s website and appeared to offer cryptocurrency exchange services. The email account of the Respondent uses the Complainant’s Proton Mail services. All this is sufficient to support a conclusion that the Respondent was well aware of the Complainant and its PROTON trademark at the time of registration of the disputed domain name, and that it is more likely than not that its registration and subsequent use were made targeting the Complainant and its PROTON trademark in an attempt to attract Internet users for commercial gain. Such conduct cannot give rise to rights and legitimate interests in the disputed domain name. The fact that the Respondent has deactivated its website following the submission of the Complaint cannot change the above conclusion.

Therefore, the Panel finds that 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.

As discussed in section 6.B above, the disputed domain name is confusingly similar to the Complainant’s PROTON trademark and to its <proton.me> domain name, and the evidence shows that the associated website copied the Complainant’s website and offered cryptocurrency exchange services for financial gain.

In view of this, and in the lack of any evidence supporting a different conclusion, the Panel finds as more likely than not that by registering and using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the associated website by creating a likelihood of confusion with the Complainant’s PROTON trademark as to the affiliation of the Respondent’s website and of the cryptocurrency exchange services offered there for commercial gain.

On this basis, the Panel finds that the Complainant has established the third element 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 <protonswap.me> be transferred to the Complainant.

*/Assen Alexiev/*

**Assen Alexiev**

Sole Panelist

Date: March 25, 2024