

ADMINISTRATIVE PANEL DECISION

Pedego, LLC v. Zhangming Li
Case No. D2022-0700

1. The Parties

The Complainant is Pedego, LLC, United States of America (“United States” or “US”), represented by The Law Offices of Steven C. Vondran, P.C., United States.

The Respondent is Zhangming Li, China.

2. The Domain Name and Registrar

The disputed domain name <pedegosb.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 1, 2022. On March 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 2, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on March 3, 2022 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 March 14, 2022.

On March 3, 2022, the Center informed the Complainant and the Respondent that the disputed domain name will expire on April 16, 2022. Following this communication, the Complainant’s representative had liaised with the Registrar to renew the disputed domain name at the Complainant’s expense. On March 17, 2022, the Registrar informed the Complainant that it had renewed the disputed domain name for a period of one year.

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 March 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 4, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 5, 2022.

The Center appointed Christiane Féral-Schuhl as the sole panelist in this matter on April 8, 2022. 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 United States based leading company in the field of electric bikes.

For the purpose of its activities, the Complainant has registered several trademarks (the "PEDEGO Trademarks"), including:

- the US trademark PEDEGO No 3,770,790 registered on April 6, 2010, for products and services in class 12;
- the US trademark PEDEGO No 4,112,995 registered on March 13, 2012, for products and services in class 12.

The Complainant also registered more than 400 domain names containing the word "pedego" and owns the following company incorporation name "Pedego, LLC".

The Complainant has opened more than 200 stores in the United States named "PEDEGO".

The disputed domain name <pedegosb.com> was registered by the Respondent on April 16, 2021.

The disputed domain name resolves to a pay-per-click ("PPC") website aggregating aggressive ads for third parties' products and services and links to pornographic content hosted on third parties' websites.

5. Parties' Contentions

A. Complainant

First, the Complainant contends that it is the rights holder of the PEDEGO Trademarks which are distinctive and famous marks with a strong secondary meaning in the United States. The Complainant underlines that no other entity owns a mark with the name "pedego". The Complainant highlights that the disputed domain name is using the PEDEGO Trademarks in its entirety and that this use is likely to confuse consumers as to whether or not the Complainant operates or endorses, or if the source of affiliation or origin of the website linked to the disputed domain name. The Complainant states that the registration of the disputed domain name is the result of a cybersquatter violating the rights of the Complainant in respect of its PEDEGO Trademarks.

Second, the Complainant states that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant contends that the disputed domain name was acquired in bad faith. The Complainant highlights that it has prior rights on the PEDEGO Trademarks and that the Respondent does not own any trademarks containing the word "pedego". The Complainant also states that the Respondent has no legitimate interests in the disputed domain name given that (i) it has masked its identity by a privacy service when registering the disputed domain name, (ii) the disputed domain name resolves to a pornography website and the Respondent does not provide a *bona fide* offering of goods and services which means it can reasonably be believed in essence that the disputed domain name is just a

parking page with a porn front page, (iii) the Respondent has not been licensed or authorized to use the Complainant's PEDEGO Trademarks, (iv) the Respondent is not known by the name "pedego", and (v) the Respondent was aware of the Complainant's prior rights and use of the PEDEGO Trademarks.

Moreover, the Complainant finds that the disputed domain name was registered in bad faith, considering that it seeks to intentionally divert Internet users from the Complainant's websites across the United States to these parking pages. The Complainant underlines that it often adds the name of a city following the word "pedego" in its domain names. The Complainant therefore finds that potential clients in San Bernardino in the United States could search the disputed domain name in hopes to find the Complainant's store in the above-mentioned city.

Finally, the Complainant contends that additional evidence of bad faith can be found in the fact that: (i) the Respondent is not making any *bona fide* use of the disputed domain name to sell goods or services, (ii) the cybersquatting of the disputed domain name tarnishes and interferes with the Complainant business and marketing efforts, (iii) the Respondent was perfectly aware of the Complainant's prior rights on the PEDEGO Trademarks, (iv) the Respondent has masked its identity by a privacy service when registering the disputed domain name, and (v) the Respondent has registered the disputed domain name primarily for the purpose of selling, renting, tarnishing, seeking to attract an offer to purchase the domain, or otherwise holding for ransom the disputed domain name related to the Complainant's trademark.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that the Complainant shall prove the following three elements:

- (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

According to the Policy, paragraph 4(a)(i), the Complainant shall prove that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

First of all, the Panel finds that the Complainant has provided evidence that it has rights in the PEDEGO Trademarks.

Then, the Panel wishes to remind that the first element of the UDRP serves essentially 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.

This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name. In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of the UDRP (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Regarding the disputed domain name, the Panel finds that it is composed of (i) the PEDEGO Trademarks and (ii) the two letters 's' and 'b' which are not sufficient to prevent a finding of confusing similarity.

The Panel also points out that generic Top-Level Domain ("gTLD") in a domain name is viewed as a standard registration requirement and as such is disregarded for the purpose of determining whether a domain name is identical or confusingly similar to a trademark.

Therefore, the Panel holds that the Complainant has established the first element of paragraph 4(a) of the Policy and that the disputed domain name is confusingly similar to the Complainant's trademark.

B. Rights or Legitimate Interests

According to the Policy, paragraph 4(a)(ii), the Complainant shall demonstrate that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Policy, paragraph 4(c), outlines circumstances that if found by the panel to be proved shall demonstrate the respondent's rights or legitimate interests in the disputed domain name.

These circumstances are:

- before any notice of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or
- the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

According to prior UDRP panel decisions, it is sufficient that the complainant shows *prima facie* that the respondent lacks rights or legitimate interests in the disputed domain name in order to shift the burden of production to the respondent (see *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

Indeed, 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 *prima facie* 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 (see section 2.1 of the [WIPO Overview 3.0](#)).

According to the Panel, the Complainant has shown *prima facie* that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Indeed, it appears that the Respondent has no connection or affiliation with the Complainant and has not received any authorization, license or consent, whether expressed or implied, to use the Complainant's PEDEGO Trademarks in the disputed domain name or in any other manner.

Furthermore, the Panel finds that there is no evidence that the Respondent is known by the term of the disputed domain name or that the Respondent has the intent to use the disputed domain name in connection with a *bona fide* offering of goods and services. Indeed, the disputed domain name resolves to a website whose name displayed is "51788.tv". The disputed domain name also resolves to a PPC website displaying multiple aggressive ads and links to pornographic content hosted on third parties' websites.

Furthermore, the Respondent did not reply to the Complainant's contentions.

Therefore, according to the Policy, paragraphs 4(a)(ii) and 4(c), the Panel considers that the Respondent does not have rights or legitimate interests in the disputed domain name <pedegosb.com>.

C. Registered and Used in Bad Faith

According to the Policy, paragraph 4(a)(iii), the Complainant shall prove that the disputed domain name has been registered and is being used in bad faith.

Thus, paragraph 4(b) provides that any one of the following non-exclusive scenarios constitutes evidence of a respondent's bad faith:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online 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 website or location.

First, the Panel considers that it is established that the Complainant's PEDEGO Trademarks were registered before the registration of the disputed domain name and the Complainant also owns several domain names and company name containing "pedego". It is more likely than not that, the Respondent knew or should have known the PEDEGO Trademarks when registering the disputed domain name. Therefore, there is a presumption of bad faith registration of the disputed domain name, given the fact that the disputed domain name wholly reproduces the PEDEGO Trademarks.

Moreover, the Panel points out that the disputed domain name is linked to a PPC website, featuring aggressive ads to third parties' products and services and pornographic content hosted on third parties' websites.

Prior UDRP panel decisions have recognized that the use of a domain name to divert consumers to a pornographic website is evidence of bad faith (see *Six Continents Hotels, Inc. v. Seweryn Nowak*, WIPO Case No. [D2003-0022](#); *America Online, Inc. v. Viper*, WIPO Case No. [D2000-1198](#); and *V&V Supremo Foods, Inc. v. pxlchk1@gmail.com*, WIPO Case No. [D2006-1373](#))

The Panel finds that the following circumstances reinforce the fact that the Respondent has registered and is using the disputed domain name in bad faith:

- the Complainant has provided evidence that the PEDEGO trademarks are well-known in the United States;
- the Respondent has not demonstrated any rights or legitimate interests in the disputed domain name;
- the Respondent has not provided any response to the Complainant's contentions;
- the disputed domain name resolves to a PPC website aggregating aggressive ads to third parties' products

and services and links to pornographic contents hosted on third parties' websites tarnishing the reputation of the Complainant.

Considering all of the above, it is not possible to conceive any plausible actual or contemplated good faith registration and use of the disputed domain name by the Respondent.

Therefore, in view of all the circumstances of this case, the Panel holds that the Respondent has registered and is using the disputed domain name in bad faith according to the Policy, paragraphs 4(a)(iii) and 4(b).

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, <pedegosb.com>, be transferred to the Complainant.

/Christiane Féral-Schuhl/

Christiane Féral-Schuhl

Sole Panelist

Date: April 21, 2022