

ADMINISTRATIVE PANEL DECISION

Medtronic, Inc. v. Lin Houjie

Case No. D2022-3721

1. The Parties

The Complainant is Medtronic, Inc., United States of America (“United States”), represented by Snell & Wilmer L.L.P., United States.

The Respondent is Lin Houjie, Thailand.

2. The Domain Name and Registrar

The disputed domain name <medtronicmoep.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 October 5, 2022. On October 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 7 2022, the Registrar transmitted by email to the Center its verification disclosing registrant and contact information for the disputed domain name, which differed from the named Respondent (Registration Private, Domains by Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 10, 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 October 10, 2022.

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 October 18, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 15, 2022.

The Center appointed Marilena Comanescu as the sole panelist in this matter on November 29, 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, a United States based corporation, is one of the largest medical device and technology companies in the world offering a wide variety of medical and health technology-related goods and services under its MEDTRONIC trademark.

The Complainant's MEDTRONIC goods are promoted in over 150 countries around the world, generating tens of billions of dollars in revenues annually to the Complainant. The Complainant owns over 75 manufacturing sites worldwide and is employing tens of thousands of people around the world.

Complainant holds more than 100 trademark registrations for MEDTRONIC in over 100 jurisdictions, such as the following:

- the United States word trademark MEDTRONIC, registration No. 1038755 filed on September 29, 1975 registered on May 4, 1976, for goods in International Class 10; and
- the European Union word trademark MEDTRONIC, trademark No. 00156406 filed on April 1, 1996, and registered on May 11, 1998, for goods in International Classes 5, 9, and 10.

The Complainant owns and uses the domain name <medtronic.com>, registered on June 7, 1990.

The disputed domain name <medtronicmoep.com> was registered on July 20, 2022. At the time of filing the Complaint, provided as Annexes 7 and 9 to Complaint, the disputed domain name resolved to a commercial website that purported to offer MEDTRONIC products and was featuring the Complainant's copyright material, *inter alia*, MEDTRONIC products' names and images and the entire content provided on the Complainant's website under the "Who We Are" section. Also, under the name and description of the products, the Respondent provided a post stating "Immediate investment".

When the Panel visited the website under the disputed domain name, an error page was displayed.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to its trademark MEDTRONIC, that the Respondent has no rights or legitimate interests in the disputed domain name, and that the Respondent registered and is using the disputed domain name in bad faith, *i.e.*, on the website under the disputed domain name the Respondent displayed the names and images of several of the Complainant's medical devices; copied the look, feel, and content of Complainant's website, in an effort to deceive consumers into believing that Respondent is Complainant or is somehow affiliated or connected with the Complainant. The Complainant requests the transfer of the disputed domain name to it.

B. Respondent

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

6. Discussion and Findings

In view of the Respondent's default, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent. Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel will further analyze the concurrence of the above circumstances.

A. Identical or Confusingly Similar

The Panel finds that the Complainant holds rights in the MEDTRONIC trademark.

The disputed domain name incorporates the Complainant's trademark MEDTRONIC in its entirety with additional final letters "moep". However, such addition does not prevent a finding of confusing similarity as the Complainant's trademark is clearly recognizable within the disputed domain name.

Numerous UDRP panels have considered that the addition of other terms (whether geographical, descriptive, pejorative, meaningless or otherwise) to trademarks in a domain name does not prevent a finding of confusing similarity. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)).

It is well established in decisions under the UDRP that the generic Top-Level Domain ("gTLD") (e.g., ".com", ".org") may typically be disregarded for the purposes of consideration of confusing similarity between a trademark and a domain name.

Given the above, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark, pursuant to the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Complainant asserts that the Respondent does not hold any trademark rights, license, or authorization whatsoever to use the mark MEDTRONIC, that the Respondent is not commonly known by the disputed domain name, and that the Respondent has not used the disputed domain name in connection with a legitimate noncommercial or fair use or a *bona fide* offering of goods and services.

Under the Policy, "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". See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent has not replied to the Complainant's contentions and has not come forward with relevant evidence to rebut the Complainant's *prima facie* case.

There is nothing in the record suggesting that the Respondent has ever been commonly known by the disputed domain name or that the Respondent has made a *bona fide* offering of goods or services or a legitimate noncommercial or fair use under the disputed domain name.

According to the evidence provided in Annex 7 to the Complaint, the Respondent has used the disputed domain name in connection with a commercial website selling MEDTRONIC goods, with the Complainant claiming that the products sold via the disputed domain name are fraudulent.

In certain cases, UDRP panels have recognized that resellers or distributors using a domain name containing a complainant's trademark to undertake sales related to a complainant's goods may constitute a *bona fide* offering of goods and thus have a right or legitimate interest in such domain name. Accordingly, in this case, the key question under this element is whether the Respondent's use of the disputed domain name amounts to a *bona fide* offering of goods or services under paragraph 4(c)(i) of the Policy.

The current state of UDRP panel consensus in relation to this issue is summarized in section 2.8 of the [WIPO Overview 3.0](#), based on panel decisions such as *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). According to the "Oki Data" test, several cumulative requirements will be applied in the specific conditions of a UDRP case, including the fact that the site must accurately and prominently disclose the registrant's relationship with the trademark holder (the complainant) and that the respondent must use the site to sell only the trademarked goods or services. In this case, according to the available record, on the website corresponding to the disputed domain name there is no indication regarding the relationship between the Parties, or lack thereof, rather the website appears specifically intended to impersonate the Complainant and confuse Internet users into believing a connection exists between the Parties.

This is not an activity falling under the circumstances listed by paragraph 4(c) of the UDRP as demonstrating the Respondent's rights or legitimate interests in the disputed domain name.

Consequently, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name, pursuant to the Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

The Complainant holds registered trademark rights for MEDTRONIC since at least 1975. The Panel finds that the Complainant's MEDTRONIC trademark is distinctive and well-known in the field of medical devices. See also *Medtronic, Inc. v. Registration Private, Domains By Proxy, LLC / Nancy Hopkins*, WIPO Case No. [D2021-2352](#); and *Medtronic, Inc. v. Roohi B Rasheed, Roohi B Rasheed Rasheed*, WIPO Case No. [D2020-1161](#) and cases cited therein.

The disputed domain name was registered in 2022 and reproduces the Complainant's mark with a minor addition, four additional letters at the end.

From the above, the Panel finds that the disputed domain name was registered in bad faith, knowing the Complainant and targeting its trademark.

At the time of filing the Complaint the Respondent was using without permission the Complainant's distinctive trademark in order to get traffic on its web portal and to obtain commercial gain from the false impression created for the Internet users with regard to a potential connection with the Complainant.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt "to attract, for commercial gain, Internet users to [the respondent's] 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" is evidence of registration and use in bad faith.

Given that the disputed domain name incorporates the Complainant's trademark and the website operated under the disputed domain name copies the look and feel of the Complainant's official website, displays the Complainant's product images and descriptions, copies the entire section of the "About/Who We Are" section and has no disclaimer, indeed in this Panel's view, the Respondent has intended to attract Internet users accessing the website corresponding to the disputed domain name who may be confused and believe that

the website is held, controlled by, or somehow affiliated or related to the Complainant, for its commercial gain. This activity may also disrupt the Complainant's business and tarnish its trademark.

Previous UDRP panels have found that the mere registration of a domain name that is identical or confusingly similar to a third party's well-known trademark can, by itself, constitute a presumption of bad faith for the purpose of Policy. See section 3.1.4 of the [WIPO Overview 3.0](#).

The Respondent has not participated in the present proceedings in order to put forward any arguments in its favor. Such facts, together with all the other elements in this case, supports, in the eyes of this Panel, a finding of bad faith behavior.

For all the above reasons, the Panel finds that the Respondent registered and is using the disputed domain name in bad faith, pursuant to the Policy, paragraph 4(a)(iii).

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 <medtronicmoep.com> be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: December 13, 2022