

ADMINISTRATIVE PANEL DECISION

PragmaticPlay International Limited v. Shirley Hilton
Case No. D2023-1127

1. The Parties

Complainant is PragmaticPlay International Limited, Malta, represented by Wiley Rein LLP, United States of America (“United States”).

Respondent is Shirley Hilton, Cambodia.

2. The Domain Name and Registrar

The disputed domain name <pragmaticplay.sbs> is registered with Porkbun LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 14, 2023. On March 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Private by Design, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on March 15, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on March 20, 2023.

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 Respondent of the Complaint, and the proceedings commenced on March 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 13, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on April 14, 2023.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on April 25, 2023. 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

Complainant is a company organized under the laws of the British Virgin Islands and located in Malta which belongs to the larger PragmaticPlay group of companies that is active in the online gaming industry.

Complainant has provided evidence that it enjoys rights in various registered trademarks relating to its company name and brand PRAGMATICPLAY, *inter alia*, but not limited to the following:

- Word mark PRAGMATICPLAY, European Union Intellectual Property Office (EUIPO), registration number: 017891041, registration date: September 1, 2018, status: active;
- word mark PRAGMATICPLAY, United States Patent and Trademark Office (USPTO), registration number: 6848492, registration date: September 13, 2022, status: active.

Moreover, Complainant has evidenced to enjoy rights, *inter alia*, since 2014 in the domain name <pragmaticplay.com> which resolves to Complainant's main website at "www.pragmaticplay.com" used to promote the PragmaticPlay group of companies' products and services in numerous countries worldwide.

Respondent, according to the disclosed Whois information for the disputed domain name, is located in Cambodia and registered the disputed domain name on October 1, 2022. Complainant has demonstrated that, at some point before the filing of the Complaint, the disputed domain name resolved to a website at "www.submitworker.com/webshell/pragmatic/" which prominently displayed Complainant's PRAGMATICPLAY trademark and official logo, appeared to offer cloned and/or stolen versions of Complainant's online casino games and misrepresenting itself as "the Indonesian version of Pragmatic Play provider".

Complainant requests that the disputed domain name be transferred to Complainant.

5. Parties' Contentions

A. Complainant

Complainant submits that the disputed domain name is identical to Complainant's PRAGMATICPLAY trademark, with the mere addition of a Top-level domain ("TLD") which does not diminish identity/similarity. Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Complainant has never authorized or licensed Respondent to make use of its PRAGMATICPLAY trademark or software, and (2) Respondent offers cloned versions of Complainant's online casino games, thereby using numerous trademarks registered in the name of the PragmaticPlay group of companies without any authorization to do so, and falsely representing an affiliation with Complainant and the PragmaticPlay group of companies. Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since (1) Respondent has fraudulently pretended to be Complainant and/or the PragmaticPlay group of companies and also fraudulently represented through the unlawful and deceptive use of Complainant's PRAGMATICPLAY trademark that the cloned games offered under the disputed domain name were being operated by Complainant, and (2) Respondent provided false contact information when registering the disputed domain name as they resolve to a tourist hotel in Cambodia which is an implausible residence for Respondent.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

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

Respondent's default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a Response as it considers appropriate.

A. Identical or Confusingly Similar

The Panel concludes that the disputed domain name <pragmaticplay.sbs> is identical with the PRAGMATICPLAY trademark in which Complainant has rights.

The disputed domain name incorporates the PRAGMATICPLAY trademark entirely and exclusively, with no alterations or additions whatsoever. Numerous UDRP panels have recognized that incorporating a trademark in its entirety is normally sufficient to establish that the disputed domain name is at least confusingly similar, if not identical with a registered trademark (see WIPO Overview on WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7). Moreover, given that the applicable TLD as such is usually disregarded under the first element confusing similarity test (see [WIPO Overview 3.0](#), section 1.11.1), the inclusion of the generic TLD ".sbs" (meaning "side by side") in the disputed domain name does not alter the finding of identity in the case at hand.

Therefore, Complainant has established the first element under the Policy set forth by paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Panel is further convinced on the basis of Complainant's undisputed contentions that Respondent has not made use of the disputed domain name in connection with a *bona fide* offering of goods or services, nor has Respondent been commonly known by the disputed domain name, nor can it be found that Respondent has made a legitimate noncommercial or fair use thereof without intent for commercial gain.

Respondent has not been authorized to use Complainant's PRAGMATICPLAY trademark, either as a domain name or in any other way. Also, there is no reason to believe that Respondent's name somehow corresponds with the disputed domain name and Respondent does not appear to have any trademark rights associated with the terms "pragmatic" and "play" on its own. To the contrary, Respondent, at some point before the filing of the Complaint, let the disputed domain name resolve to a website at "[www.submitworker.com/webshell/pragmatic/](#)" which prominently displayed Complainant's PRAGMATICPLAY trademark and official logo, appeared to offer cloned and/or stolen versions of Complainant's online casino games and misrepresented Respondent as "the Indonesian version of Pragmatic Play provider". Such making use of the disputed domain name neither qualifies as *bona fide* nor as legitimate noncommercial or fair within the meaning of the Policy (not even under the so-called "Oki Data" principles which would have required Respondent to *e.g.* accurately disclose the (non-existent) relationship with Complainant, which Respondent obviously did not, see [WIPO Overview 3.0](#), section 2.8). Moreover, the Panel finds that the disputed domain name is inherently misleading (see [WIPO Overview 3.0](#), section 2.5.1).

Accordingly, Complainant has established a *prima facie* case that Respondent has no rights or legitimate interests in respect of the disputed domain name. Now, the burden of production shifts to Respondent to come forward with appropriate allegations or evidence demonstrating such rights or legitimate interests (see

[WIPO Overview 3.0](#), section 2.1). Given that Respondent has defaulted, it has not met that burden.

Therefore, the Panel finds that Complainant has also satisfied paragraph 4(a)(ii) and, thus, the second element of the Policy.

C. Registered and Used in Bad Faith

The Panel finally holds that the disputed domain name was registered and is being used by Respondent in bad faith.

The circumstances to this case leave no doubts that Respondent was fully aware of Complainant's rights in the PRAGMATICPLAY trademark when registering the disputed domain name and that the latter is clearly directed thereto. Moreover, using the disputed domain name, which is identical with Complainant's PRAGMATICPLAY trademark, to run a website at "www.submitworker.com/webshell/pragmatic/" which prominently displayed Complainant's PRAGMATICPLAY trademark and official logo, appeared to offer cloned and/or stolen versions of Complainant's online casino games and misrepresented Respondent as "the Indonesian version of Pragmatic Play provider", is a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusion with Complainant's PRAGMATIC PLAY trademark as to the source, sponsorship, affiliation or endorsement of Respondent's website. Such circumstances are evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

In this context, it also carries weight in the eyes of the Panel that Respondent obviously provided false or incomplete contact information in the Whois register for the disputed domain names since, according to the case file, the Center could not formally enter a valid postal address provided for Respondent into the DHL system for placing postal courier orders, which is why the Written Notice on the Notification of Complaint dated October 19, 2022 could neither be sent nor delivered to Respondent. This fact at least throws a light on Respondent's behavior which supports the Panel's bad faith finding.

Therefore, the Panel concludes that Complainant has also satisfied the third element under the Policy set forth by 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 <pragmaticplay.sbs> be transferred to Complainant.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: May 8, 2023