

ADMINISTRATIVE PANEL DECISION

Skandia Elevator AB v. Domain Buy Service, GoDaddy Case No. D2023-2394

1. The Parties

The Complainant is Skandia Elevator AB, Sweden, represented by Zacco Sweden AB, Sweden.

The Respondent is Domain Buy Service, GoDaddy, United States of America.

2. The Domain Name and Registrar

The disputed domain name <grainwatch.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 June 2, 2023. On June 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 2, 2023, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 5, 2023, 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 amendment to the Complaint on June 8, 2023.

The Respondent sent an email communication to the Center on June 9, 2023.

The Center verified that the Complaint together with the amendment to 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 proceeding commenced on June 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 5, 2023. The Respondent did not file any formal response. The Center informed the Parties of the commencement of the Panel appointment process on July 10, 2023.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on July 12, 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.

On July 17, 2023, the Complainant submitted an unsolicited supplemental filing, being an English translation of the Swedish language email communications between the Parties included as an Annex to the Complaint.

On July 18, 2023, the Center issued a Procedural Panel Order Email to the Parties, whereby the Panel granted the Respondent the opportunity to submit comments and/or arguments in respect of the Complainant's supplemental filing within 3 days. The Respondent did not submit any comments or arguments.

4. Factual Background

A. Complainant

The Complainant is a company incorporated in Sweden and a leading manufacturer of conveying systems for the grain industry.

In 2021, the Complainant purchased the Swedish company Liros Electronics AB ("Liros"), the developer of a temperature monitoring system for grain, marketed and sold under the trade mark GRAIN-WATCH (the "Trade Mark").

The Complainant is the owner of European registration No. 004894614 for the Trade Mark, with a registration date of April 26, 2007.

Prior to February 14, 2023, the Complainant made an enquiry via the Registrar with respect to the potential purchase of the disputed domain name from the Respondent. Between February 14, 2023 and March 23, 2023, the Parties entered into email correspondence regarding the potential transfer of the disputed domain name from the Respondent to the Complainant (the "Email Correspondence").

Relevant excerpts from the English language translation of the Email Correspondence are as follows (with emphasis added):

"...

[Complainant]:

Hi... Do you own grainwatch.com?...

[Respondent]:

... Yes, I own and control the domain grainwatch.com.

The purchase of the address was made in connection with my being a consultant for the company Liros a number of years ago.

The collaboration has today ended and now I have nothing to do with "grain" or agriculture-related services or products.

However, I chose to keep the domain and continue to forward traffic to their website www.liros.se ...

[Complainant]:

... We have bought and run Liros under our roof now and would like to continue redirecting the domain ...

New page in progress for liros.se which needs to be redirected again.

Would you consider transferring it to us? ...

[Respondent]:

... Okay, I understand ...

It was probably good that you bought Liros, when I worked for them they had a very hard time paying my invoices. 😊

I would consider transferring the domain.

However, I need to think about it, let me come back to you.

[Complainant]:

... We are interested in the domain. However, not to the GoDaddy estimated values.

The domain was used by a company for which you performed consulting assignments and then you kept it? We acquired Liros Electronics AB to continue developing temperature lines and grainwatch has been protected as a trademark through that company. It would be reasonable for us to compensate you for the direct costs you had to manage the domain...

[Respondent]:

... Let me explain, partly how it was back then and how the situation looks like now.

Background

The domain grainwatch.com was purchased and administered by me in connection with doing some consulting services for Liros in 2019. Later when the annual invoice for the domain was due (at GoDaddy), I offered Liros to take over the domain free of charge. Liros confirmed the offer but there was no desire for a transfer. (The correspondence is saved, the request was sent both by letter and e-mail).

Current status

Today, a number of years later, grainwatch.com really has nothing to do with Liros or my previous consulting assignment. Since they didn't want the domain, I decided to keep it. If I hadn't done that, the invoice would have expired and grainwatch.com would probably have ended up with a domain broker, in the worst case with some rogue "domain pirate". Since I now dispose of the domain, you actually have an advantage, you have a Swedish contact and someone by name to conduct direct conversations and negotiate with.

You mention my costs. The traffic I gave Liros is perhaps more interesting to evaluate? Through my forwarding, searches on "grainwatch" and direct URL visits for several years have been directed to Liros, i.e. to your new acquisition and your business.

My understanding is that a domain is something significant. A domain deal can be compared to a transfer of premises, purchase of land, equipment or machinery. What makes it extra special is that there is only one of it. A domain is unique, just like a brand name or a physical address. I hope you have the same opinion, in which case I would like to have a continued dialogue? ...

[Complainant]:

... So what do you think a reasonable price would be for the domain? That is where we end up in discussions...

[Respondent]: ...

... I apologize for the delay in responding. I have been busy with other things, but I also needed a few days to think about the specific question - the value of the domain.

Pricing a domain is not an entirely uncomplicated task. I want to be open with that. In any case, my approach was to start from actual data and established pricing models.

My view is that the price now set is logical, reasonable and corresponds to the actual value, I hope you agree.

I assume that you mostly review the sum itself, but if you have questions or opinions about the background or otherwise you are of course welcome to contact me.

See attached PDF..."

B. Respondent

The Respondent is an individual located in Sweden.

The Respondent has offered to transfer the disputed domain name to the Complainant for SEK 200,000 (approximately USD 20,000).

C. The Disputed Domain Name

The disputed domain name was registered on July 25, 2007. It was purchased by the Respondent in 2019.

D. Website at the Disputed Domain Name

Prior to the commencement of this proceeding, the disputed domain name resolved to the website "www.liros.se" owned and operated by Liros (and subsequently, following its purchase of the business of Liros including the Trade Mark, the Complainant) (the "Liros Website").

Following the filing of the Complaint herein, the Respondent ceased resolving the disputed domain name to the Liros Website, and resolved it to a "this domain may be for sale" page hosted by Afternic.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical to the Trade Mark, 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.

B. Respondent

The Respondent did not file a formal response. In his email communication to the Center dated June 9, 2023, the Respondent stated as follows:

"If necessary, I will respond to this unfair attempt to acquire the domain that I have had since 2019, with no complaints whatsoever until now."

6. Discussion and Findings

6.1 Procedural Issue: Supplemental Filing

Paragraph 12 of the Rules expressly provides that it is for the panel to request, in its sole discretion, any further statements or documents from the parties it may deem necessary to decide the case. Unsolicited supplemental filings are generally discouraged, unless specifically requested by the panel (see WIPO

Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”), section 4.6).

Panels have sole discretion, under paragraphs 10 and 12 of the Rules, whether to accept an unsolicited supplemental filing from either party, bearing in mind the need for procedural efficiency, and the obligation to treat each party with equality and ensure that each party has a fair opportunity to present its case. The party submitting a supplemental filing would normally need to show its relevance to the case and explain why it was unable to provide that information in the complaint or response (for example, owing to some exceptional circumstance).

In the present proceeding, the supplemental filing consists of an English language translation of the Swedish language email negotiations between the Parties regarding the disputed domain name. Although this translation could have been filed together with the Complaint, the Panel considers the following factors are relevant in determining whether or not to allow the supplemental filing – (i) it is clearly relevant to this proceeding; (ii) the language of this proceeding is English; (iii) it would have been relatively straightforward for the Panel to itself obtain an English translation of the email correspondence using readily available online translation tools (see WIPO Overview 3.01, section 4.8 – panels may undertake limited factual research into matters of public record); and (iv) the Respondent has been given the opportunity to make submissions in relation to the supplemental filing, but has chosen not to make any such submissions, and has not opposed the supplemental filing.

Considering the above, to assist the Panel, and for the sake of the completeness of this proceeding, the Panel exceptionally determines that it will admit the Complainant’s supplemental filing.

6.2 Substantive Elements of the Policy

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the Trade Mark acquired through use and registration.

Disregarding the generic Top-Level Domain “.com”, and the hyphen in the Trade Mark, the disputed domain name is identical to the Trade Mark.

The Panel therefore finds that the disputed domain name is identical to the Trade Mark.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a disputed domain name:

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

The Complainant has not authorised, licensed, or permitted the Respondent to register or use the disputed domain name or to use the Trade Mark. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

It is stated in Section 2.12 of WIPO Overview 3.0 as follows:

“2.11 At what point in time of respondent conduct do panels assess claimed rights or legitimate interests?

Panels tend to assess claimed respondent rights or legitimate interests in the present, i.e., with a view to the circumstances prevailing at the time of the filing of the complaint.

Without prejudice to the complainant’s duty to establish that a domain name has been registered and used in bad faith, a respondent claiming a right or legitimate interest in a domain name for example based on a prior agreement or relationship between the parties or based on past good-faith use (thus demonstrating merely a past right or legitimate interest) would not necessarily have rights or legitimate interests in the domain name, at the time a decision is rendered.

...”

The Respondent has failed to show that he has acquired any trade mark rights in respect of the disputed domain name.

To the contrary, the Respondent has claimed, in the Email Correspondence, that he registered and the disputed domain name, and resolved it to the Liros Website, as a consultant for Liros, the previous owner of the Trade Mark.

The Panel finds further that, having commenced negotiations with the Complainant with respect to the potential transfer of the disputed domain name, the Respondent’s subsequent acts of (i) resolving the dispute domain name to, and offering the disputed domain name for sale via, the Afternic platform; and (ii) ceasing to redirect the disputed domain name to the Liros Website, are inconsistent with rights or legitimate interests for the purposes of the Policy.

There has been no evidence adduced to show that the disputed domain name has been used in connection with a *bona fide* offering of goods or services; or that the Respondent has been commonly known by the disputed domain name; or that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

In addition, the Panel notes the nature of the disputed domain name (being identical to the Trade Mark), which carries a high risk of implied association (see WIPO Overview 3.0, section 2.5.1).

The Panel finds that the Respondent has failed to produce any relevant evidence to rebut the Complainant’s *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Panel therefore finds that the Respondent lacks rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

The Respondent has offered to transfer the disputed domain name to the Complainant for the sum of 200,000 SEK (approximately 20,000 USD). This sum is far in excess of the Respondent’s reasonable out-of-pocket expenses incurred in registering the disputed domain name.

It is well-established that, in order to satisfy the third element under paragraph 4(a) of the Policy, complainants must demonstrate (to the standard of reasonable probability) that the relevant domain name has been registered and used in bad faith.

The Panel has carefully considered all the circumstances in this proceeding.

As to registration in bad faith, the Panel notes that the Respondent (i) has not filed a formal response and has not taken any active part in this proceeding; and (ii) has not produced any evidence in support of his asserted consultancy services provided to Liros (despite referring to such evidence in the Email Correspondence).

The Panel does not find the assertion that Liros did not accept the Respondent's offer to transfer the disputed domain name "free of charge" credible.

Although no evidence has been produced to support the contentions of the Respondent in the Email Correspondence, the Panel finds that, in all the circumstances, it is reasonable to infer that, if there was "no desire for a transfer", this is likely because, at the time of registration, the amount requested by the Respondent from Liros in return for the transfer of the registration was excessive (it would stretch logic that the company would turn down an offer to take over its own domain name free of charge); and this may explain why Liros "had a very hard time paying [the Respondent's] invoices".

Having previously resolved the disputed domain name to the Liros Website, the Panel finds that the Respondent's acts of (i) resolving the disputed domain name to a website hosted by, and offering it for sale via, the Afternic platform; and (ii) offering to transfer it to the Complainant for 200,000 SEK, amount to bad faith use for the purposes of the Policy, under paragraph 4(b)(i) 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 <grainwatch.com> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Dated: September 1, 2023