

ADMINISTRATIVE PANEL DECISION

Proctor.io Incorporated v. 杨智超 (Zhi Chao Yang)
Case No. D2022-4330

1. The Parties

The Complainant is Proctor.io Incorporated, United States of America, represented by Dorsey & Whitney, LLP, United States of America (“United States”).

The Respondent is 杨智超 (Zhi Chao Yang), China.

2. The Domain Name and Registrar

The disputed domain names <geftproctorio.com>, <gegproctorio.com>, <gettproctorio.com>, <getproctoriijo.com>, <getproctoriko.com>, <getproctorioi.com>, <getproctoriok.com>, <getproctorioo.com>, <getproctoriou.com>, <getproctorip.com>, <getproctorrio.com>, <getproctoryo.com>, <geyproctorio.com> are registered with Chengdu West Dimension Digital Technology Co., Ltd.; the disputed domain name <getproctoruo.com> is registered with Cloud Yuqu LLC. (“the Registrars”)

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 14, 2022. On November 15, 2022, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On October 16, 2022, the Registrars transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on November 16, 2022, providing the registrant and contact information disclosed by the Registrars, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on November 18, 2022.

On November 16, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On November 18, 2022, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 November 23, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 13, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 15, 2022.

The Center appointed Jonathan Agmon as the sole panelist in this matter on December 19, 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, Proctor.io Incorporated, is a technology company located in Arizona, United States. The Complainant offers a fully automated proctoring software platform used to proctor the administration of tests and examinations remotely. The Complainant's products are used by colleges, universities, corporations and government agencies throughout the United States and internationally. The Complainant states that it has used the PROCTORIO mark in connection with its business and software products since 2013 and has expended extensive amounts of time, effort and money in advertising and promoting its products and services under the PROCTORIO mark.

The Complainant is the registered owner of the trademark PROCTORIO in the following jurisdictions:

- United States Trademark Registration No. 5722338, registered on April 9, 2019;
- European Union Trade Mark Registration No. 018034721, registered on July 31, 2019; and
- United Kingdom Trademark Registration No. UK00918034721, registered on July 31, 2019.

The Complainant also states that it owns the registered domain name <getproctorio.com> since January 25, 2014, to allow its consumers to access and download the Complainant's software services.

The disputed domain names, <geftproctorio.com>, <gegproctorio.com>, <gegtproctorio.com>, <getproctoriyo.com>, <getproctoriio.com>, <getproctorioo.com>, <getproctorijio.com>, <getproctoriko.com>, <getproctorioi.com>, <getproctoriok.com>, <getproctorioou.com>, <getproctoriou.com>, <getproctorip.com>, <getproctorrio.com>, <getproctoryo.com>, <geyproctorio.com> and <getproctoruo.com>, were registered on August 26, 2022. They resolved to active websites which display Pay-Per-Click ("PPC") links to third party websites that offer competing services to those offered by the Complainant under the PROCTORIO mark.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain names are confusingly similar to its PROCTORIO mark as the disputed domain names <geftproctorio.com>, <gegproctorio.com>, <gegtproctorio.com>, <getproctoriyo.com>, <getproctoriio.com>, <getproctorioo.com>, <getproctorijio.com>, <getproctoriko.com>, <getproctorioi.com>, <getproctoriok.com>, <getproctorioou.com>, <getproctoriou.com>, <getproctorip.com>, <getproctorrio.com>, <getproctoryo.com>, <geyproctorio.com> and <getproctoruo.com>, which wholly incorporate the PROCTORIO mark in its entirety or the mark with the addition, subtraction or replacement of single letters, as well as one of the prefixes "geft", "geg", "gegt", "get" and "gey" along with a generic Top-Level Domain ("gTLD") ".com", are insufficient to avoid confusing similarity.

The Complainant also argues that the Respondent has no rights or legitimate interests in respect of the disputed domain names as it has not licensed or permitted the Respondent to use any of its trademarks or register the disputed domain names.

The Complainant further argues that the disputed domain names were registered and are being used in bad faith in order to intentionally attract, for commercial gain, Internet users to the Respondent's websites, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's websites and of products and services represented on the Respondent's websites.

B. Respondent

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

6. Discussion and Findings

6.1 Language of the Proceeding

Paragraph 11 of the Rules provides that:

"(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding."

The language of the Registration Agreement for the disputed domain names is Chinese.

The Complainant requested that the language of the proceeding be English for the following reasons:

- (i) the disputed domain names and the website under the disputed domain names are in the English language; and
- (ii) translating the Complaint into Chinese would cause an undue burden on the Complainant and unnecessarily delay the proceeding.

The Respondent did not comment on the language of the proceeding.

The Panel cites the following with approval: "Thus, the general rule is that the parties may agree on the language of the administrative proceeding. In the absence of this agreement, the language of the Registration Agreement shall dictate the language of the proceeding. However, the Panel has the discretion to decide otherwise having regard to the circumstances of the case. The Panel's discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time, and costs. It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her abilities to articulate the arguments for the case." (See *Groupe Auchan v. xmxzl*, WIPO Case No. [DCC2006-0004](#)).

Having considered the above factors, the Panel determines that English should be the language of the proceeding. The Panel notes that the disputed domain names resolve to websites in English, that the Respondent has not participated in this proceeding, and that all of the Center's communications with the Parties have been sent in English and Chinese. The Panel also needs to ensure the proceeding is conducted in a timely and cost-effective manner. In the absence of an objection by the Respondent, the Panel does not find it procedurally efficient to have the Complainant translate the Complaint into Chinese.

6.2 Substantive Issues

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns the PROCTORIO mark.

The disputed domain names comprise the Complainant's PROCTORIO mark in its entirety with the addition of the prefixes "geft", "geg", "gegt" and "gey" in the disputed domain names <geftproctorio.com>, <gegproctorio.com>, <gegtproctorio.com>, and <geyproctorio.com>; and the addition of the prefix "get" and adding, subtracting or replacing letters in the PROCTORIO mark in the disputed domain names <getproctoriyo.com>, <getproctoriio.com>, <getproctoriok.com>, <getproctorioo.com>, <getproctoriioo.com>, <getproctoriyo.com>, <getproctorip.com>, <getproctorrio.com>, <getproctoruo>, and <getproctoryo.com>.

It is well established that where the trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8. The Complainant's PROCTORIO mark is clearly recognizable in the disputed domain names.

It is also well established that a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element ([WIPO Overview 3.0](#), section 1.9). The disputed domain names <getproctoriyo.com>, <getproctoriio.com>, <getproctoriok.com>, <getproctorioo.com>, <getproctoriioo.com>, <getproctoriyo.com>, <getproctorip.com>, <getproctorrio.com>, <getproctoruo>, and <getproctoryo.com> consist of obvious and intentional misspelling of the Complainant's PROCTORIO mark and are considered confusing similar.

Further, it is well established that the adding of the gTLD ".com", as a standard registration requirement, is disregarded under the first element confusing similarity test ([WIPO Overview 3.0](#), section 1.11.1).

Therefore, the Panel finds that the disputed domain names are confusingly similar to a trademark in which the Complainant has rights and the element under paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Once the complainant establishes a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the domain name ([WIPO Overview 3.0](#), section 2.1).

In the present case, the Complainant has demonstrated *prima facie* that the Respondent lacks rights or legitimate interests in respect of the disputed domain names and the Respondent has failed to assert any such rights or legitimate interests. The Complainant provided evidence that it owned the PROCTORIO trademark registrations long before the date that the disputed domain names were registered, and that it is not affiliated with nor has it licensed or otherwise permitted the Respondent to use the Complainant's trademark (see *LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. [D2010-0138](#)).

The Complainant also provided evidence that the Respondent is not commonly known by the disputed domain names.

Further, the Respondent did not submit a Response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain names sufficient to rebut the Complainant's *prima facie* case.

The Panel is therefore of the view that the Respondent has no rights or legitimate interests in respect of the disputed domain names and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The complainant must show that the respondent registered and is using the domain names in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence that the Respondent registered the disputed domain names long after the Complainant registered its PROCTORIO trademarks. Given that the Complainant's trademarks have been registered for a long time, it is highly unlikely that the Respondent did not know of the Complainant and its PROCTORIO marks prior to the registration of the disputed domain names. The disputed domain names incorporate the Complainant's PROCTORIO mark in its entirety with the additional prefixes "get", "geg", "gey", "geft" and "gegt", as well as the addition and replacement of certain letters in the mark.

Given the circumstances of this case, the Panel finds an attempt by the Respondent to confuse and/or mislead Internet users seeking or expecting the Complainant's website. Previous UDRP panels have ruled that in such circumstances "a likelihood of confusion is presumed, and such confusion will inevitably result in the diversion of Internet traffic from the Complainant's site to the Respondent's site" (see *Edmunds.com, Inc v. Triple E Holdings Limited*, WIPO Case No. [D2006-1095](#)).

The Complainant has also submitted evidence that the disputed domain names resolve to websites which contain PPC links which could cause confusion with the Complainant's PROCTORIO mark, such as, "Getproctorio", "Install Proctorio Chrome Extension", and "Proctoru Extension Chrome". It is the Complainant's evidence that the PPC links redirect Internet users to third party websites which offer competing services to those of the Complainant. This does not constitute good faith registration and use of the disputed domain names.

The Complainant has shown that its PROCTORIO marks appear throughout the websites which the disputed domain names resolve to. Based on the circumstances of the particular case, it is the Panel's view that it is unlikely that the Respondent registered the disputed domain names without sight and knowledge of the Complainant's marks, and it is implausible that there is any good faith use to which the disputed domain names may be put to. It is clear to the Panel that the Respondent specifically targeted the Complainant and its marks and registered the disputed domain names to divert Internet traffic and benefit commercially from unsuspecting Internet users seeking out the Complainant.

It is also the Complainant's evidence that the Respondent could not have registered the disputed domain names without prior knowledge of the Complainant's marks. This is another indication of bad faith on the part of the Respondent (see *Boursorama SA v. Estrade Nicolas*, WIPO Case No. [D2017-1463](#)).

The Complainant also submitted evidence that it is involved with the same Respondent in at least two prior UDRP proceedings involving the same PROCTORIO mark and typosquatting of the disputed domain names. This constitutes a clear pattern of abuse targeted towards the Complainant given the sheer number of domain names consisting of misspelled variations of the Complainant's PROCTORIO mark across several UDRP proceedings (see [WIPO Overview 3.0](#), section 3.1.2). This is another indication of bad faith on the part of the Respondent, which was considered by the Panel.

The Respondent did not submit a Response in this proceeding which is a further indication of the Respondent's bad faith, which was considered by the Panel.

Based on the evidence presented to the Panel, including the confusing similarity between the disputed domain names and the Complainant's mark, the fact that the disputed domain names are used to redirect Internet users to a website which offers competing services to those of the Complainant, the fact that no Response was submitted by the Respondent in response to the Complaint, the Panel draws the inference that the disputed domain names were registered and are being used in bad faith.

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 names, <geftproctorio.com>, <gegproctorio.com>, <gegtproctorio.com>, <getproctorijio.com>, <getproctoriko.com>, <getproctorioi.com>, <getproctoriok.com>, <getproctorioo.com>, <getproctoriou.com>, <getproctorip.com>, <getproctorrio.com>, <getproctoruo.com>, <getproctoryo.com> and <geyproctorio.com> be transferred to the Complainant.

/Jonathan Agmon/

Jonathan Agmon

Sole Panelist

Date: January 3, 2023