

ADMINISTRATIVE PANEL DECISION

NUTRICIA INTERNATIONAL B.V. and N.V. NUTRICIA v. Hasan Bilgi Gumus Case No. D2024-0720

1. The Parties

The Complainants are NUTRICIA INTERNATIONAL B.V. and N.V. NUTRICIA, Netherlands (Kingdom of the), represented by Eversheds Sutherland (France) LLP, France.

The Respondent is Hasan Bilgi Gumus, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <prosyneo.com> is registered with Automattic Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 16, 2024. On February 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 19, 2024, 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 Whois, Knock Knock WHOIS Not There, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 21, 2024, 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 February 22, 2024.

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 proceedings commenced on February 23, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 14, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 15, 2024.

The Center appointed Angela Fox as the sole panelist in this matter on March 22, 2024. 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 Complainants are two Dutch companies within the same global food and beverage group, focused on specialized medical nutrition. They have their origins in a company founded in 1896 and are active in more than 100 countries around the world. One of their major product lines is infant milks, which they market under trademarks including APTAMIL and PROSYNEO. The Complainants say that PROSYNEO has been used extensively in respect of infant milks throughout the world and has acquired considerable consumer recognition and goodwill internationally.

The second Complainant, NV Nutricia, is the registered proprietor of the Complainants' trademark rights in PROSYNEO, details of which were annexed to the Complaint, including in particular International Registration No. 1404897 for PROSYNEO in Classes 5 and 29, registered on March 22, 2018. This International Registration is based on a Benelux registration and designates Australia, Finland, Greece, New Zealand, Singapore, and also Türkiye, where the Respondent is based.

The disputed domain name was registered on August 17, 2020 by the Respondent, Hasan Bilgi Gumus. It is in use for a website in Turkish making use of the Complainant's PROSYNEO and APTAMIL trademarks, including displaying prominent images of the Complainant's APTAMIL and PROSYNEO-branded infant milks and offering them for sale. The Respondent's website lists contact details in Türkiye and does not disclose what if any relationship there is between the operator of the website and the Complainants.

The disputed domain name was registered in the name of a privacy service. When the Respondent's identity was disclosed after the Complaint was filed, the Complainants amended the Complaint to indicate that one or both of the Complainants have taken successful action under the UDRP against the Respondent's unauthorized registration and use of other domain names incorporating trademarks of the Complainants, including in particular in WIPO Case No. [D2019-2499](#), *Nutricia International B.V. v. HBilgi Gumus, Bilgi Gumus and Mustafa Bilgin Gumus*; WIPO Case No. [D2022-3188](#), *Nutricia International B.V., N.V. Nutricia v. CONTACT PRIVACY INC. CUSTOMER 7151571251 / H.Bilgi Gümüş, InternetDomainBorokers.com*; WIPO Case No. [D2018-0253](#), *Nutricia International B.V. and N.V. Nutricia v. Hasan Bilgi Gumus*; and, WIPO Case No. [D2013-1392](#), *Nutricia International B.V. v. Bilgi Gumus*.

5. Parties' Contentions

A. Complainants

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainants contend that the disputed domain name is identical to the PROSYNEO trademark, in which the second Complainant owns registered trademark rights.

The Complainants further submit that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainants have no relationship with the Respondent and have not authorized the Respondent to use the PROSYNEO trademark. The Respondent is using the disputed domain name for commercial gain to offer the Complainants' PROSYNEO infant milks for sale in a manner that misleadingly suggests a relationship with the Complainants, and is therefore not a bona fide offering of goods under the disputed domain name.

Finally, the Complainants submit that the disputed domain name was registered and has been used in bad faith, since it is clear from the contents of the Respondent's website that the disputed domain name was registered in and because of the Respondent's awareness of the Complainants' PROSYNEO trademark. The Complainants argue that the disputed domain name has been used in a manner that has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainants' PROSYNEO mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. The Complainants also submit that the Respondent has engaged in a pattern of conduct involving unauthorized use and registration of the Complainants' trademarks as or as part of domain names.

B. Respondent

The Respondent did not reply to the Complainants' contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the panel finds that:

- (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.

All three elements must be present before a complainant can succeed in an administrative proceeding under the Policy.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily 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. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainants have shown registered trademark rights in respect of PROSYNEO for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the PROSYNEO mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

The Complainants have established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainants' prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Panel takes note that the available record indicates that the Respondent has been using the disputed domain name to offer what appear to be the Complainants' PROSYNEO branded infant milks for sale. The Respondent's website prominently displays the Complainants' PROSYNEO and APTAMIL trademarks throughout and displays prominent images of the products, and, taking account of the identity of the disputed domain name with the Complainants' trademark, the Panel agrees with the Complainants that visitors to the Respondent's website are likely to assume that it is an official website of the Complainants or is in some way affiliated with them. The Respondent's website does not disclose the Respondent's relationship with the Complainants (*Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)), and therefore does nothing to avoid the risk of confusion and deception. The Panel finds that such misleading use is not a bona fide offering of goods in line with para 4(c)(1) of the Policy.

Taking account of all of the above, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Respondent has been using a domain name identical to the Complainants' PROSYNEO trademark for a website purporting to offer the Complainants' PROSYNEO infant milks for sale, which is likely to lead visitors to assume it is an official website of the Complainants or that it is in some way connected to them, and which does not disclose the absence of a relationship with the Complainant. Moreover, the Complainants have shown that the Respondent has engaged in a pattern of registering domain names that are identical and confusingly similar to the Complainants' trademarks, and of using them for inherently misleading commercial websites like the one in question here, and that the Complainants have successfully taken action against the Respondent under the UDRP in at least four prior cases.

Paragraph 4(b) of the Policy sets out a non-exhaustive list of circumstances that may indicate that a domain name was registered and used in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In this case, the Panel is satisfied that the disputed domain name is inherently liable to mislead Internet users into believing that it denotes a website of the Complainants, when in fact it does not, and that the Respondent has intentionally used the disputed domain name to attract Internet users to its website by creating a likelihood of confusion with the Complainants' PROSYNEO mark, with a view to commercial gain through the sale of products through its website (para 4(b)(iv) of the Policy). That the Respondent has engaged in such conduct involving the Complainants' trademarks before, resulting in at least four prior successful UDRP actions against the Respondent, indicates that the Respondent has been targeting the Complainants, and is a strong indication that the Respondent registered the disputed domain name in order to prevent the Complainants from reflecting their PROSYNEO trademark in a corresponding domain name (para 4(b)(ii) of the Policy). Such conduct further demonstrates that the Respondent's registration and use of the disputed domain name was in bad faith.

The Panel finds that the Complainants have established the third element 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 <prosyneo.com> be transferred to the Complainants.

/Angela Fox/

Angela Fox

Sole Panelist

Date: April 14, 2024