

ADMINISTRATIVE PANEL DECISION

Bitdefender IPR Management Ltd. v. Andreas Krybus, PROCELLO
Informationssysteme GmbH
Case No. D2024-4793

1. The Parties

The Complainant is Bitdefender IPR Management Ltd., Cyprus, represented by Baciu Bende IP SRL, Romania.

The Respondent is Andreas Krybus, PROCELLO Informationssysteme GmbH, Germany.

2. The Domain Name and Registrar

The disputed domain name <bitdefender.shop> is registered with Key-Systems GmbH (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 20, 2024. On November 20, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 21, 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 (Doe / REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 27, 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 amended Complaint on December 2, 2024.

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 December 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 25, 2024. The Center received an email communication from an email address associated with the technical contact provided in the registration details of the disputed domain name on November 22 and December 17, 2024. The Center informed the Parties that it would proceed to panel appointment January 6, 2025.

The Center appointed Mihaela Maravela as the sole panelist in this matter on January 9, 2025. 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

According to information in the Complaint, the Complainant is a company doing business in the field of security software and anti-virus applications and support related thereto with a history of more than 20 years on the international market. Since its establishment in 2001, the Complainant and its products have developed into quality recognized and awarded security software, currently used by 500 million customers throughout the world interested in the safety of their data and privacy, both online and offline.

The Complainant has registered several trademarks consisting of or including BITDEFENDER, including the European Union trademark for BITDEFENDER (word) with registration number 002372506 registered as of May 14, 2003, for class 9. The Complainant claims that it has registered the domain name <bitdefender.com> since June 8, 2001, as well as other domain names consisting of the trademark BITDEFENDER.

The disputed domain name was registered on September 26, 2016, and it is used to redirect to a website at the domain name <procello.de> offering competing goods and services with those of the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the Respondent has registered a domain name that entirely includes the Complainant's BITDEFENDER trademark, therefore, the disputed domain name is identical to the Complainant's trademark.

As regards the second element, the Complainant argues that the disputed domain name redirects to the website of the Respondent located at "www.procello.de", where certain antivirus software competing with those of the Complainant are offered for sale, although there is no relationship between the Complainant and the Respondent. The Complainant did not consent to the registration by the Respondent of the disputed domain name. Any Internet user might be led to erroneously believe that they have reached an official website authorized by the Complainant.

With respect to the third element, the Complainant argues that its BITDEFENDER trademark is highly distinctive and well known amongst Internet users and the Complainant did not consent to the registration and use of the disputed domain name by the Respondent. In response to the email communication received by the Center on December 17, 2024, the Complainant specifically confirmed, after reviewing its internal files, that it had never authorized the Respondent to register the disputed domain name. Considering that on the website at which the disputed domain name redirects similar software goods are offered for sale, the Complainant submits that it is most apparent that the Respondent has registered and used the disputed domain name in bad faith, in an attempt to mislead Internet users into believing that their services and goods are authorized by the Complainant which is not the case, while being aware of the existence of the Complainant's earlier trademarks.

B. Respondent

The Respondent did not directly reply to the Complainant's contentions. An informal communication on December 17, 2024 from an email address associated with the technical contact provided in the registration details of the disputed domain name, claiming to be a technical contact for the Respondent, one of its customers, and stating inter alia that it had contacted the Respondent and wished to transmit the following statements on the Respondent's behalf: *"the domain was registered many years ago for a project with Bitdefender. Unfortunately, we never implemented the project and never used the domain. I expressly agree to the deletion or transfer of the domain."* It also asked: *"Can you transfer the domain directly from our account to the complainant's account?"*

6. Discussion and Findings

6.1. Preliminary Issues – Consent to Transfer

According to the email communication described above, the Panel accepts that the Respondent appears to be willing to reach an agreement for the transfer of the disputed domain name.

However, the Panel notes that the consent to transfer was sent from the technical contact provided in the registration details of the disputed domain name. In this regard, the Panel notes that the Registrar confirmed Andreas Krybus, PROCELLO Informationssysteme GmbH as the registrant of the disputed domain name, and the Panel will proceed on the basis that Andreas Krybus, PROCELLO Informationssysteme GmbH is the Respondent.

Section 4.10 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)) considers the following possibilities for the Panel to issue a decision on cases involving a respondent's informal or unilateral consent for the transfer of the disputed domain name:

"Where parties to a UDRP proceeding have not been able to settle their dispute prior to the issuance of a panel decision using the 'standard settlement process' described above, but where the respondent has nevertheless given its consent on the record to the transfer (or cancellation) remedy sought by the complainant, many panels will order the requested remedy solely on the basis of such consent. In such cases, the panel gives effect to an understood party agreement as to the disposition of their case (whether by virtue of deemed admission, or on a no-fault basis).

In some cases, despite such respondent consent, a panel may in its discretion still find it appropriate to proceed to a substantive decision on the merits. Scenarios in which a panel may find it appropriate to do so include (i) where the panel finds a broader interest in recording a substantive decision on the merits – notably recalling UDRP paragraph 4(b)(ii) discussing a pattern of bad faith conduct, (ii) where while consenting to the requested remedy the respondent has expressly disclaimed any bad faith, (iii) where the complainant has not agreed to accept such consent and has expressed a preference for a recorded decision, (iv) where there is ambiguity as to the scope of the respondent's consent, or (v) where the panel wishes to be certain that the complainant has shown that it possesses relevant trademark rights."

In the present case, the Panel finds it appropriate to issue a decision on the merits, noting that the Complainant did not agree to accept the Respondent's consent and settle, and expressly stated it is interested in obtaining a decision in this case. It also appears that the Respondent disclaimed bad faith, see email communication of December 17, 2024. The Panel also considered the way the disputed domain name had been used and considers that it constitutes a clear case of cybersquatting.

6.2. Substantive Issues

The applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”, and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. [WIPO Overview 3.0](#), section 4.2.

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (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 respect of the disputed domain name, and (iii) the disputed domain name has been registered and is being used in bad faith.

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 3.0](#), section 1.7.

The Complainant has shown rights in respect of the trademark BITDEFENDER for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the 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.

It is the consensus view of panels applying the Policy that the generic Top-Level Domains (“gTLD”) (here “.shop”) may be disregarded under the first element test. [WIPO Overview 3.0](#), section 1.11.1.

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.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s 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.

There is no evidence that the Respondent is using the disputed domain name in connection with a bona fide offering of goods or services. Rather, according to the un rebutted evidence put forward by the Complainant, the disputed domain name is used to redirect to a website at the domain name <procello.de> offering services in competition with those of the Complainant. Noting that the redirected to domain name

corresponds to the name of the registrant organization, as confirmed by the Registrar in the registration details for the disputed domain name, the redirected to website seems to be related to the Respondent. In this Panel's view, such use does not confer rights or legitimate interests on the Respondent.

Furthermore, the nature of the disputed domain name carries a high risk of implied affiliation and cannot constitute a fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

There is no evidence that the Respondent is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy.

The Panel also notes that the Respondent has not provided any details, let alone evidence, in support of its statement that the disputed domain name had been registered "for a project" with the Complainant, which was, moreover, refuted by the Complainant.

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

The Complainant's registration and use of the relevant trademarks predate the date at which the Respondent registered the disputed domain name. Given the distinctiveness and well-known status of the Complainant's trademark, and the fact that the disputed domain name is used to redirect to a different website related to the Respondent and offering goods and services in competition with those of the Complainant, it is more likely than not that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademarks, and to target those trademarks. Also, given how the disputed domain name is used by the Respondent, as described above, the Panel finds that the Respondent intentionally attempts to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. [WIPO Overview 3.0](#), section 3.1.4.

The Respondent does not deny in its informal communication its knowledge of the Complainant and its trademarks. It appears to claim that the disputed domain name was registered for a project with the Complainant but, as noted above, failed to provide any evidence in this respect. On balance of probabilities, the Panel gives prevalence to the Complainant's statements that the Respondent was not authorized to register the disputed domain name. The Panel finds that the Respondent has not provided any evidence of actual or contemplated good faith use.

Although at the time of the Decision, the disputed domain name is inactive, considering the circumstances of this case, the Panel finds that such non-use of the disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3.

The Panel finds that the Complainant has 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 <bitdefender.shop> be transferred to the Complainant.

/Mihaela Maravela/

Mihaela Maravela

Sole Panelist

Date: January 22, 2025