

## **ADMINISTRATIVE PANEL DECISION**

Medtronic Australasia Pty Ltd v. WebguideSolutions Pty Ltd  
Case No. DAU2024-0030

### **1. The Parties**

The Complainant is Medtronic Australasia Pty Ltd, Australia, represented by Snell & Wilmer, LLP, United States of America.

The Respondent is WebguideSolutions Pty Ltd, Australia.

### **2. The Domain Name and Registrar**

The disputed domain name <bodyplus.com.au> is registered with Domain Directors Pty Ltd.

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 16, 2024. On October 17, 2024, the Center transmitted by email to Domain Directors Pty Ltd. a request for registrar verification in connection with the disputed domain name. On October 17, 2024, Domain Directors Pty Ltd. 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on October 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 amended Complaint on October 22, 2024.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .au Dispute Resolution Policy (the “Policy” or “.auDRP”), the Rules for .au Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .au Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceeding commenced on October 25, 2024. In accordance with the Rules, paragraph 5(a), the initial due date for Response was November 14, 2024. Upon Parties’ mutual agreement, the due date for Response was extended to November 28, 2024. The Respondent sent several email communications between November 5, 2024, and November 25, 2024. On November 12, 2024, the Complainant filed an unsolicited supplemental filing.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on December 6, 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**

##### **A. Complainant**

The Complainant is an Australian company active in the medical device and technology industry, which markets and sells supportive braces, bandages, and related goods under the trade mark BODY PLUS (the "Trade Mark"). The Complainant is the owner of two registrations in Australia for the Trade Mark - registration No. 702959, with a registration date of February 22, 1996; and registration No. 1609145, with a registration date of March 3, 2014.

##### **B. Respondent**

The Respondent is a company in Australia.

##### **C. The Disputed Domain Name**

The disputed domain name was registered on June 26, 2022.

##### **D. Use of the Disputed Domain Name**

The disputed domain name has not been used in respect of an active website.

#### **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 or subsequently used in bad faith.

##### **B. Respondent**

The Respondent did not file a formal Response, but submitted in his email communications with the Center that:

- (i) The Complainant's claims are outlandish;
- (ii) In the era of the Internet, it has taken the Complainant 28 years to claim rights to the disputed domain name, which has been registered, used and dropped by other entities; and
- (iii) The Complainant will need to substantiate the claim that the Respondent acted in bad faith without ever publishing the disputed domain name.

## **6. Discussion and Findings**

### **6.1. Procedural Issue: Supplemental Filing**

Paragraph 12 of the Rules expressly provides that “in addition to the complaint and the response, the Panel may request or permit, in its sole discretion, further statements or documents from either of the Parties”.

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).

The Complainant’s unsolicited supplemental filing seeks to put forward a new ground as to the Respondent’s alleged bad faith registration and use of the disputed domain name, under paragraph 4(b)(i) of the Policy. The Complainant seeks to rely on the solicitation by its representatives of an offer to sell the disputed domain name, made after the commencement of the proceeding.

The relevant emails from the Complainant’s representatives are produced below as follows:

[First email]

“... Would you be willing to transfer this domain name to my client Medtronic to resolve this proceeding? Please let me know. We would then suspend the proceeding so that a transfer could be completed...”

[Second email]

“... What amount did you have in mind? Please let me know and I will see if my client is interested...”

[Third email]

“... Please give me a specific amount you are asking for the transfer of your domain name...”

The Panel has reservations about accepting this evidence, in particular when the Complainant could have sought to obtain such evidence prior to the filing of the Complaint. The Panel considers in any event it is unnecessary, in all the circumstances and on the facts of this case, and in light of the Panel’s findings below as to bad faith, for this supplemental evidence to be allowed. The Panel does not consider that the Complainant has, in all the circumstances, demonstrated exceptional circumstances in support of its supplemental filing.

Considering the above, the Panel determines that it will refuse 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.

Disregarding the country code Top-Level Domain, 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 for purposes of the Policy.

## **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 bona fide use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with an 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 non-commercial 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.

The Respondent has failed to show that he has acquired any trade mark rights in respect of the disputed domain name or that the disputed domain name has been used in connection with a bona fide offering of goods or services. To the contrary, the disputed domain name has not been used.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain name; and there has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

In light of the above uncontested matters, the Panel finds that the Respondent has failed to produce any evidence to establish genuine rights or legitimate interests in the disputed domain name.

## **C. Registered or Used in Bad Faith**

Given (i) the reputation of the Complainant and of its Trade Mark in respect of supportive braces, bandages and related goods; (ii) the fact the disputed domain name is identical to the Trade Mark; (iii) the lack of any substantiated credible explanation from the Respondent; and (iv) the non-use by the Respondent of the disputed domain name the Panel finds, in all the circumstances, that the requisite element of bad faith has been made out.

The evidence suggests that the Respondent has more likely than not targeted the Complainant in registering the disputed domain name;

Furthermore, in all the circumstances, the Respondent's non-use or passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy (see auDRP Overview 2.0, section 3.3).

For all the foregoing reasons, the Panel concludes that the disputed domain name has been registered 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 name <bodyplus.com.au> be transferred to the Complainant.

*/Sebastian M.W. Hughes/*

**Sebastian M.W. Hughes**

Sole Panelist

Dated: December 20, 2024