

## **ADMINISTRATIVE PANEL DECISION**

Applied Materials, Inc. v. Proxy Protection LLC / John Smith  
Case No. D2022-0026

### **1. The Parties**

The Complainant is Applied Materials, Inc., United States of America (“United States”), represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Proxy Protection LLC, United States / John Smith, United States.

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

The disputed domain name <appliedventuresllc.com> (the “Domain Name”) is registered with DreamHost, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 4, 2022. On January 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 6, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on January 11, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to amend the Complaint. The Complainant filed an amended Complaint on January 14, 2022.

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 January 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 10, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 11, 2022.

The Center appointed A. Justin Ourso III as the sole panelist in this matter on February 15, 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, an American corporation is a leading manufacturer and supplier of semiconductor and display equipment to the global semiconductor industry, with over 100 locations in 18 countries. The Complainant's venture capital business segment, Applied Ventures, LLC, has invested in over 80 start-up companies in 15 countries for more than ten years.

The Complainant owns a United States trademark registration issued on December 4, 2018, No. 5,623,207, for its mark APPLIED VENTURES in Class 36 for venture capital funding and other financial services to start-up companies.

The Complainant owns the domain name <appliedventures.com>, with a creation date of November 20, 2002, which redirects users to the Applied Ventures area on the Complainant's primary web site, "www.appliedmaterials.com". The Complainant has a substantial Internet presence through its domain names and web site.

The Respondent registered the Domain Name on January 20, 2021, using a privacy service, after the Complainant obtained its trademark registration and long after the Complainant's first use of its trademark in 2006. When the Complaint was filed, and when the Panel was preparing this Decision, the Domain Name did not resolve to a functioning web site.

#### **5. Parties' Contentions**

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

In addition to facts set forth in the Factual Background in Part 4 above, the Complainant contends the following. Regarding the element of confusing similarity with a mark in which it has rights, that it owns trademark rights in the mark APPLIED VENTURES; its trademark is recognizable within the Domain Name, which consists merely of the mark and the additional term "llc", which is closely associated with it; and this renders the Domain Name confusingly similar to its trademark.

Regarding the element of rights or legitimate interests in the Domain Name, the Complainant contends that it owns the exclusive rights to the trademark APPLIED VENTURES; the Complainant has not licensed or otherwise authorized the Respondent to use its trademark; the Respondent registered the Domain Name using a privacy service, so the Panel should infer that the Respondent is not known by the Domain Name; the Registrar identified the Registrant as "John Smith", which does not resemble the Domain Name; the Respondent is not operating a web site using the Domain Name; and the Respondent sent emails using the Domain Name, impersonating the Complainant in a phishing scheme, all of which show that the Respondent has no rights or legitimate interests in the Domain Name.

Regarding the element of bad faith registration and use of the Domain Name, the Complainant contends that the Respondent's incorporation of its trademark into the Domain Name, with the addition of the term "llc", demonstrated knowledge of the Complainant's mark and business; the Respondent's impersonating emails evidence actual knowledge of the Complainant, its business, and its trademark; it is not conceivable that the Respondent was unaware of the Complainant's mark when it registered the Domain Name; the Respondent used the Domain Name to impersonate the Complainant in a phishing scheme, constituting fraud; the Respondent is not operating a website using the Domain Name, and is using the Domain Name only to perpetrate a phishing scheme; and the Respondent used a privacy service to hide its identity, all of which

show that it registered and used the Domain Name in bad faith.

The Complainant requested transfer of the Domain Name.

## **B. Respondent**

The Respondent did not submit a response to the Complaint.

## **6. Discussion and Findings**

### **A. The Effect of the Respondent's Default**

If a respondent does not submit a response to a complaint, a panel decides the dispute based upon the complaint. Rules, paragraphs 5(f) and 14(a). Because the Complainant has the burden of proof, Policy, paragraph 4(a), the Complainant must still prove the elements of a claim to obtain the requested relief, notwithstanding the Respondent's default. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3.

In the absence of exceptional circumstances, a respondent's failure to respond to a complaint requires that a panel draw the inferences from this failure that it considers proper. Rules, paragraph 14(b). The Panel finds that no exceptional circumstances exist for the failure of the Respondent to submit a response. Accordingly, the Panel infers that the Respondent does not deny the facts alleged and the contentions urged by the Complainant based upon these facts, and will draw all reasonable inferences that are proper from the evidence and the facts found by the Panel. *Id.*

Although the Panel may draw negative inferences from the Respondent's default, the Complainant may not rely on conclusory allegations and must support its allegations with evidence to prove the three elements. [WIPO Overview 3.0](#), section 4.3.

### **B. Elements of a Claim**

The Complainant must prove three elements to obtain the requested relief: (i) the Domain Name is identical or confusingly similar to a trademark in which the Complainant has rights; (ii) the Respondent has no rights or legitimate interests in the Domain Name; and (iii) the Respondent registered and is using the Domain Name in bad faith. Policy, paragraph 4(a).

#### **(i). Identical or Confusingly Similar**

On the first element, the Complainant must prove that (1) it has rights in a trademark and (2) the Domain Name is identical or confusingly similar to this trademark. Policy, paragraph 4(a)(i).

The Panel finds that the Complainant's United States trademark registration establishes the Complainant's trademark rights in its APPLIED VENTURES mark. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds that the Domain Name is confusingly similar to the Complainant's APPLIED VENTURES trademark. The Domain Name incorporates the entire trademark, and the trademark is easily recognizable within the Domain Name. [WIPO Overview 3.0](#), section 1.7. The addition in the Domain Name of the abbreviation "llc", for the phrase "limited liability company", after the trademark does not prevent a finding of confusing similarity. [WIPO Overview 3.0](#), section 1.8. Unless it contributes to confusing similarity, panels disregard the generic Top-Level Domain in determining confusing similarity. [WIPO Overview 3.0](#), section 1.11.

Accordingly, the panel concludes that the Complainant has proven the first element, namely, that the Domain Name is confusingly similar to a trademark in which it has rights.

**(ii). Rights or Legitimate Interests**

The Policy provides a non-exclusive list of circumstances that, if a panel finds proved, demonstrates that a respondent has rights to, or legitimate interests in, a domain name for the purposes of paragraph 4(a)(ii) of the Policy: (i) before any notice to a respondent of the dispute, its use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or (ii) a respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or (iii) a respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Policy, paragraph 4(c).

The Complainant has alleged that it has not authorized the Respondent to use its trademark. Because the Respondent has not contested this allegation and the Complainant has certified that the information in the Complaint is complete and accurate, the Panel accepts this allegation as proven for the purposes of the Policy. Rules, paragraph 14(b) and 10(d); [WIPO Overview 3.0](#), section 4.3.

Additionally, the Respondent has not claimed that (1) it is using, or has made any preparations to use, the Domain Name in connection with a *bona fide* offering of goods or services; or (2) it is commonly known by the Domain Name; or (3) it is making a noncommercial or fair use of the Domain Name. For the reasons set forth in this paragraph and the preceding paragraph, the Panel finds that the Complainant has shown, *prima facie*, the second element – that the Respondent lacks rights or legitimate interests in the Domain Name.

Where a complainant shows *prima facie* that a respondent lacks rights or legitimate interests, the burden of production on this second element shifts to the respondent to come forward with relevant evidence proving rights or legitimate interests in the domain name. [WIPO Overview 3.0](#), section 2.1. The Respondent here has not submitted any evidence to rebut the *prima facie* showing. Accordingly, the Panel finds that the Complainant has proven that the Respondent has no rights or legitimate interests in the domain name, satisfying the second element. *Id.*

Additionally, the Domain Name does not resolve to a functioning web site on which the Respondent is conducting a business, thereby providing no evidence of a *bona fide* commercial, noncommercial, or fair use of the Domain Name; the Registrar identified the Registrant as “John Smith”, a name that does not resemble the Domain Name; and the Respondent used a privacy service, all of which corroborate that the Respondent is not known by the Domain Name and is not using the Domain Name for a legitimate commercial, noncommercial, or fair use.

Accordingly, the Panel concludes that the Complainant has proven the second element, namely, that the Respondent lacks rights or legitimate interests in the Domain Name.

The Complainant has also alleged, in support of its contention that the Respondent lacks rights or legitimate interests in the Domain Name, that the Respondent registered and used the Domain Name to impersonate it in a fraudulent email scheme. Because the Panel has already concluded that the Complainant has proven the second element, the Panel will defer a discussion of this alleged scheme to section 6(B)(iii) below. [WIPO Overview 3.0](#), section 2.15.

### (iii). Registered and Used in Bad Faith

The Policy provides that the following circumstance is “evidence of the registration and use of a domain name in bad faith: [...] (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor”. Policy, paragraph 4(b)(iii). Because the scenarios enumerated in paragraph 4(b) of the Policy are without limitation, panels have applied the concept of a “competitor” beyond an ordinary business competitor, to include “a person who acts in opposition to another” for commercial gain, directly or indirectly. WIPO Overview, section 3.1.3.

The selection of a domain name that incorporates the Complainant’s trademark, and adds to the trademark the abbreviation “llc”, resulting in the Domain Name being identical to the corporate name of a business segment of the Complainant, Applied Ventures, LLC, demands an explanation. The Respondent’s lack of an explanation coupled with an absence of rights or legitimate interests tends to show bad faith. [WIPO Overview 3.0](#), section 3.2.1. Because the Respondent has not offered an explanation for the Domain Name, the Panel finds that the Respondent was aware of the Complainant’s trademark when it registered the Domain Name and chose the Domain Name deliberately.

The Complainant has alleged that the Respondent used the Domain Name to impersonate the Complainant in a fraudulent email scheme. The Respondent has not denied this allegation. Although the evidence may fall short of fraud<sup>1</sup>, the Panel finds that the Respondent attempted to impersonate the Complainant on at least one occasion, which is *per se* illegitimate activity and a bad faith use of the Domain Name, particularly because the Respondent used a business address of the Complainant in the email. [WIPO Overview 3.0](#), section 3.1.4 and 3.4.

The findings that the Respondent targeted and impersonated the Complainant compel the Panel to conclude that the Respondent (1) intentionally registered the Domain Name in bad faith to impersonate the Complainant; (2) used it in bad faith to impersonate, taking unfair advantage of the Complainant’s trademark; and (3) attempted to mislead a third party, disrupting the business of the Complainant in violation of the Policy, paragraph 4(b)(iii). [WIPO Overview 3.0](#), sections 3.1, 3.1.4, and 3.4.

Moreover, it is common knowledge that owners of web sites customarily use email addresses containing the domain name of a web site in electronic mail communications. The use of a domain name that presents a likelihood of confusion with a trademark in emails that do not originate with the trademark owner presents a risk to the reputation of a trademark and its owner. See, e.g., *Wastequip, LLC v. Withheld for Privacy Purposes, Privacy Service Provided by Withheld for Privacy ehf / charity 222*, WIPO Case No. [D2021-3715](#); *Callery, LLC v. Jay Logs, Jaylogss*, WIPO Case No. [D2019-0693](#); *Caliber Home Loans, Inc. v. Domains By Proxy, LLC / Patrick Scott*, WIPO Case No. [D2018-0524](#); *The Coca-Cola Company v. Marcus Steiner*, WIPO Case No. [D2012-1804](#). Even if the Complainant had not provided any evidence of impersonation, the Respondent has not rebutted that it engages in this practice. Moreover, with evidence of at least one impersonating email, the risk of other deceptive or abusive emails is substantial. *Id.*

Accordingly, the Panel finds that the substantial risk of future deceptive emails associated with the Domain Name is another reasonable basis, given the impersonation already found, from which to infer bad faith use and that the Respondent’s bad faith existed at the time of its registration of the Domain Name.

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<sup>1</sup> “Panels are generally not prepared however to accept merely conclusory or wholly unsupported allegations of illegal activity . . . even when the respondent is in default”. WIPO Overview, section 2.13.2. In the view of this Panel, the better practice, when alleging fraud, is to allege the fraud with particularity and completely, providing all of the available evidence. Cf. *Beam Suntory Inc. v. Name Redacted*, WIPO Case No. [D2018-2861](#) (discussing need for evidence to support allegation of impersonation to perpetrate fraud through e-mails; issuing procedural order to provide additional evidence); see, generally, WIPO Overview 3.0, sections 2.13.2 and 3.1. The Complainant’s allegations here are not merely conclusory or completely unsupported.

## **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 Domain Name, <appliedventuresllc.com>, be transferred to the Complainant.

*/A. Justin Ourso III/*

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Sole Panelist

Date: March 1, 2022