

ADMINISTRATIVE PANEL DECISION

PT Pasarpolis Indonesia v. On behalf of pasarpolis.com, c/o IDPS
International Domain Privacy Services GmbH / Soon
Case No. D2022-2471

1. The Parties

The Complainant is PT Pasarpolis Indonesia, Indonesia, represented by SKC Law, Indonesia.

The Respondent is On behalf of pasarpolis.com, c/o IDPS International Domain Privacy Services GmbH, Germany / Soon, Singapore.

2. The Domain Name and Registrar

The disputed domain name <pasarpolis.com> is registered with CSL Computer Service Langenbach GmbH dba Joker.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 7, 2022. On July 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 8, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant the same day 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 July 26, 2022.

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 August 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 22, 2022. The Respondent sent informal email communications on July 8, and August 2, 2022. The Center informed the Parties of a possible settlement by email on July 11, and August 3, 2022. The Complainant did not request a suspension of the proceeding in order to explore

settlement discussions. The Center proceeded with informing the Parties of its commencement of Panel appointment process on August 29, 2022.

The Center appointed John Swinson as the sole panelist in this matter on August 31, 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 is an Indonesian company established on January 2, 2014. The Complainant operates web portals and digital platforms in Indonesia and is registered with the Indonesian Financial Services Authority as a Digital Financial Investment Operator. The Complainant provides an online insurance comparison platform for individuals.

The Complainant owns registered trademarks for PASARPOLIS, including Indonesian Registration No. IDM000887480 that was filed on June 8, 2020, and registered on September 3, 2021.

The Complainant's current website is at the domain name <pasarpolis.io>.

The disputed domain name was registered on August 23, 2013, by or behalf of the Complainant and was used by the Complainant to promote the Complainant's business.

A former founding director of the Complainant, Mr. Soon Chern, registered the disputed domain name using his personal email address. Mr. Soon Chern was responsible for managing the disputed domain name for the Complainant. Mr. Soon Chern left employment with the Complainant, but continued to manage the disputed domain name.

In 2019, there were changes made in respect of the disputed domain name, such as a transfer of the disputed domain name to a different account at the Registrar; and then it appears there was a change of registrant of the disputed domain name. As a result, the Complainant lost control of the disputed domain name.

There was correspondence between the Parties, and Mr. Soon Chern offered to sell the disputed domain name to the Complainant.

The disputed domain name currently redirects to the Complainant's website located at <pasarpolis.io>.

5. Parties' Contentions

A. Complainant

In summary, the Complainant makes the following submissions:

The Complainant has used the trademarks PASARPOLIS and PASARPOLIS.COM continuously and prominently since at least 2015. These trademarks have widespread use in Indonesia. (The Complaint included many examples of such use.)

The Complainant owns trademark registrations for PASARPOLIS. The disputed domain name is identical to the Complainant's PASARPOLIS trademark.

The Complainant initially owned, controlled, and used the disputed domain name in connection with the Complainant's business.

Mr. Soon Chern registered the disputed domain name using his personal email address. Mr. Soon Chern's job included management of the Complainant's domain names, which included the disputed domain name. Mr. Soon Chern was a former director of the Complainant. After he resigned, he was no longer authorized to manage the Complainant's domain names, however the Complainant suspects he is still managing the disputed domain name.

Changes were made in 2019 that prevented the Complainant from having access to the disputed domain name. These changes were made by Mr. Soon Chern. Mr. Soon Chern has no rights or legitimate interests in the disputed domain name.

The Registrar did not assist the Complainant rectify the situation.

The Respondent is misdirecting Internet traffic intended for the Complainant to the Respondent.

In response to a letter from the Complainant in 2020, Mr. Soon Chern offered the Complainant the opportunity to purchase a company that he owned, that he said owned the disputed domain name.

In 2021, Mr. Soon Chern contacted the Complainant asking the Complainant whether it still needed the disputed domain name,

In relation to the settlement offer received from the Respondent (discussed in paragraph 5B below), the Complainant's representative stated:

"Having responded to various offers of settlement from the Respondent, including a proposal involving acquisition of the company that purportedly owns the domain, and a demand for a cash payment, the Complainant's assessment is that the relationship between the parties is no longer conducive to the conduct of effective settlement negotiations."

B. Respondent

The Respondent did not file a formal response. Mr. Soon Chern sent emails to the Center stating that the Respondent had previously offered to transfer the disputed domain name to the Complainant if the Complainant reimbursed the Respondent the registration costs, and the Respondent made this offer again during the course of this dispute. Mr. Soon Chern also wrote as follows:

"I have tried repeatedly to discuss on how to transfer the domain to the complainant but they have ignored me and refused to respond. I registered this domain before their company was registered. And as they wanted to use the domain name, I allowed them to use it for free. Recently, I contacted them asking whether they would like to keep have the domain name transferred to them, but they instead filed a complaint with WIPO."

The Registrar's records "Soon" as the owner of the disputed domain name, with a registrant email address that includes "SoonChern" as part of that email address. Because Mr. Soon Chern sent emails to the Center in relation to this dispute, the Panel will henceforth consider Mr. Soon Chern to be the Respondent.

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(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.

The *onus* of proving these elements is on the Complainant.

Paragraph 15(a) of the Rules directs the Panel to decide the complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy provides that the Complainant must establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

As set out above, the Complainant owns trademark registrations for PASARPOLIS.

The Panel considers that the disputed domain name is identical to the Complainant's PASARPOLIS trademark.

The Complainant succeeds on the first element of the Policy in relation to the disputed domain name.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

(i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* 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 trademark or service mark rights; or

(iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The *onus* of proving this requirement, like each element, falls on the Complainant.

Previous UDRP panels have recognized the difficulties inherent in proving a negative, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden of production will shift to the respondent to rebut that *prima facie* case.

The Panel concludes that none of the circumstances listed in paragraph 4(c) apply in the present circumstances.

The Complainant asserts that the Complainant originally owned the disputed domain name, or that the disputed domain name was registered by the Respondent on behalf of the Complainant when the Complainant was established. The Complainant also asserts that the Respondent kept control of the disputed domain name after he left employment with the Complainant, and that he changed various registrant details for the disputed domain name, and redirected to disputed domain name to another website. The Complainant further asserts that although the disputed domain name redirected to this website, being for insurance services, this website was only generated for the purposes of these proceedings.

The Complainant has established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the disputed domain names and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the disputed domain names. It is thus incumbent upon the Respondent to come forward with concrete evidence rebutting the Complainant's assertions. *TREDNET, Direct Distribution International Ltd ("DDI") v. WhoisGuard Namecheap / BODYPOWER*, WIPO Case No. [D2012-2001](#).

The Panel finds that the Respondent has failed to produce any evidence to establish any rights or legitimate interests in the disputed domain name. Accordingly, the Panel finds that none of the circumstances listed in paragraph 4(c) of the Policy apply in the present circumstances.

Moreover, the Respondent appears to admit that disputed domain name should be transferred to the Complainant. This suggests that the Respondent does not contest the Complainant's position.

For the reasons set forth above, the Panel concludes the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant succeeds on the second element of the Policy in relation to the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that the Complainant must establish that the Respondent registered and subsequently used the disputed domain name in bad faith.

It is clear that the Respondent is aware of the Complainant and the Complainant's PASARPOLIS trademark because the Respondent was involved in establishing the Complainant and then worked for the Complainant.

The evidence suggests that the Respondent registered the disputed domain name for the Complainant.

In informal communications, the Respondent states that the disputed domain name was registered before the Complainant was established. Usually, this can demonstrate that registrant was not aware of the complainant when the domain name was registered because the complainant did not exist at that time, and thus registration cannot be in bad faith. *Securus Technologies, LLC v. Domain Administrator*, WIPO Case No. [D2021-3383](#).

However, as stated in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, section 3.8.2 "[...] in certain limited circumstances where the facts of the case establish that the respondent's intent in registering the domain name was to unfairly capitalize on the complainant's nascent (typically as yet unregistered) trademark rights, panels have been prepared to find that the respondent has acted in bad faith." One such situation is where the Respondent registered the disputed domain name in anticipation of the establishment of the Complainant or as part of the establishment of the Complainant. See, for example, *Kampachi Worldwide Holdings, LP v. Registration Private, Domains by Proxy, LLC / Robin Coonen, Blue Ocean Mariculture, LLC*, WIPO Case No. [D2021-0371](#).

While it is clear that the above applies here, the Panel notes that the disputed domain name was transferred by the Respondent from the Complainant to the Respondent in 2019, resulting in a new registration for purposes of this decision. At this time, the Complainant did exist, and the Respondent was clearly aware of the Complainant, particularly since the Respondent had just resigned from the Complainant. This is the relevant time to consider the Respondent's bad faith in respect of registration. This transfer, made without permission of the Complainant and after the Respondent was no longer authorized to manage the Complainant's domain names (including the disputed domain name), amounts to a new registration and was clearly done in bad faith.

The subsequent use by the Respondent of the disputed domain name was to attract consumers looking for the Complainant to the Respondent's website.

Thus, for the above reasons, the Panel concludes that the registration and use of the disputed domain names was in bad faith.

The Complainant succeeds on the third element of the Policy in relation to the disputed domain name.

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 <pasarpolis.com> be transferred to the Complainant.

/John Swinson/

John Swinson

Sole Panelist

Date: September 14, 2022