

ADMINISTRATIVE PANEL DECISION

Athleats LLC v. Domain Protection Services, Inc. / Shinjiru International Inc.
Case No. D2022-3108

1. The Parties

Complainant is Athleats LLC, United States of America (“United States”), represented by Proskauer Rose, LLP, United States.

Respondent is Domain Protection Services, Inc., United States / Shinjiru International Inc., Malaysia.

2. The Domain Names and Registrar

The disputed domain names <phoodle.app>, and <phood-le.com> (the “Domain Names”) are registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 23, 2022. On August 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On August 25, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Names, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to Complainant on August 25, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on the same day. Complainant filed a second amended Complaint on August 31, 2022.

The Center verified that the Complaint together with the amended Complaints 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 Respondent of the Complaint, and the proceedings commenced on September 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 26, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on September 28, 2022.

The Center appointed Marina Perraki as the sole panelist in this matter on October 4, 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. Procedural Issue: Addition of Domain Name

The Complaint was originally submitted regarding the First Domain Name <phoodle.app>. Complainant requested to add the Second Domain Name <phood-le.com> to the proceeding. Both shall be henceforth referred to as the Domain Names.

The Panel considers it reasonable to accept the consolidation of the second Domain Name to the Complaint registered by the same domain-name holder (Respondent) on August 25, 2022 (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.12.1). This is the same day the Center provided Complainant with the registrant information from the Registrar as regards the first Domain Name, copying Respondent. The first Domain Name at that time, per Complainant, redirected to the second Domain Name, which lead to a website with content identical to the website to which the first Domain Name lead.

The Panel accepts the consolidation of the Domain Names to the present proceeding.

5. Factual Background

Complainant created a game, officially launched under the name PHOODLE at the domain name <phoodle.net> on May 9, 2022, and used since then. As soon as it was launched, Complainant’s domain name and game attracted substantial media attention, including from Martha Stewart and Food & Wine Magazine. Complainant submits published posts and articles dated May 2022 about Complainant’s PHOODLE game, as well as Internet extracts showing use of the PHOODLE name for Complainant’s game and the respective app.

Complainant filed the United States trademark application No. 97331167 for PHOODLE on March 25, 2022 for goods and services in international classes 9, 41 and 42, which is currently pending and the United States trademark application No. 97331415 for PHOODLE.NET on March 25, 2022 for goods and services in international classes 9, 41 and 42, which is also currently pending

Furthermore, Complainant owns the domain name <phoodle.net> registered on March 17, 2022.

The First Domain Name was registered on June 24, 2022, and the Second Domain Name was registered on August 25, 2022. Initially the First Domain Name lead to a website mimicking that of Complainant and offering an identical online word game as that of Complainant, copying, per Complaint, “concept, game, logo, and content” as well as the player “statistics” pop-up, the “How to Play” pop-up, the “Solution” pop-up and the same daily answer, while the Second Domain Name lead to an identical website (the “Websites”). At the time of registration of the Second Domain Name, the First Domain Name redirected to the Website under the Second Domain Name. Subsequently, the First Domain Name redirected to a third party site and the Second Domain Name lead to a website mentioning “Phoodle is a new Wordle-inspired word game for food-lovers. PHOODLE is similar to Wordle, except that it exclusively uses food-related words”. Currently both Domain Names lead to inactive websites.

6. Parties' Contentions

A. Complainant

Complainant asserts that it has established all three elements required under paragraph 4(a) of the Policy for a transfer of the Domain Name.

B. Respondent

Respondent did not reply to the Complainant's contentions.

7. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Names;

(i) the Domain Names are identical or confusingly similar to a trademark or service mark in which Complainant has rights;

(ii) Respondent has no rights or legitimate interests in respect of the Domain Names; and

(iii) the Domain Names have been registered and are being used in bad faith.

A. Identical or Confusingly Similar

Under the Policy a pending trademark application would not by itself establish trademark rights within the meaning of UDRP paragraph 4(a)(i) ([WIPO Overview 3.0](#), section 1.1.4). Per Complainant, use of the PHOODLE name started recently, namely in March 2022. However, the Panel is satisfied that (in part due to the nature of the services provided under the brand PHOODLE, namely an online and app game, which is easy to spread and use widely through the Internet) the degree of inherent distinctiveness of the name at issue and the immediate media attention it got after the game's launch as demonstrated by Complainant, shows that Complainant has established unregistered trademark rights on the brand PHOODLE, albeit within a short period of time ([WIPO Overview 3.0](#), section 1.3, stating that "Particularly with regard to brands acquiring relatively rapid recognition due to a significant Internet presence, panels have also been considering factors such as the type and scope of market activities and the nature of the complainant's goods and/or services").

Furthermore, the Panel notes the fact that the First Domain Name is identical to Complainant's unregistered trademark and that the generic Top-Level Domain ("gTLD") ".app" describes exactly the nature of Complainant's services, which is a further indication that Complainant's mark has achieved significance as a source identifier ([WIPO Overview 3.0](#), section 1.3). The Panel also notes that the Second Domain Name is highly similar to Complainant's mark PHOODLE. These findings are further reinforced by the fact that the Websites copied Complainant's game and mimicked its website.

In these circumstances, the Panel finds that Complainant has unregistered rights in respect of PHOODLE for purposes of the present proceeding.

The Panel finds that the First Domain Name is identical and the Second Domain Name is confusingly similar to the PHOODLE mark of Complainant. The Second Domain Name incorporates the said trademark of Complainant in its entirety. This is sufficient to establish confusing similarity (*Magnum Piering, Inc. v. The Mudjacks and Garwood S. Wilson, Sr.*, WIPO Case No. [D2000-1525](#)). The addition of the hyphen between the terms "phood" and "le" of the Second Domain Name, does not prevent a finding of confusing similarity ([WIPO Overview 3.0](#), section 1.8).

The gTLDs “app” and “.com” respectively are also disregarded, as gTLDs typically do not form part of the comparison on the grounds that they are required for technical reasons only (*Rexel Developpements SAS v. Zhan Yequn*, WIPO Case No. [D2017-0275](#)).

Complainant has established Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Names, among other circumstances, by showing any of the following elements;

(i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Names in connection with a *bona fide* offering of goods or services; or

(ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Names, even if you have acquired no trademark or service mark rights; or

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

The Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Names.

Respondent has not submitted any response and has not claimed any rights or legitimate interests with respect to the Domain Names. As per the Complaint, Respondent was not authorized to register the Domain Names.

Respondent did not demonstrate, prior to the notice of the dispute, any use of the Domain Names or a name corresponding to the Domain Names in connection with a *bona fide* offering of goods or services.

On the contrary, as Complainant demonstrated, the Domain Names were used to host the Websites in an attempt to mislead consumers into thinking that the services offered on the Websites originate from Complainant. Such use demonstrates neither a *bona fide* offering of services nor a legitimate interest of Respondent (*Arkema France v. Aaron Blaine*, WIPO Case No. [D2015-0502](#)).

Furthermore, there is no evidence on record giving rise to any rights or legitimate interests in the Domain Names on the part of Respondent within the meaning of paragraphs 4(c)(ii) and 4(c)(iii) of the Policy.

The Panel finds that these circumstances do not confer upon Respondent any rights or legitimate interests in respect of the Domain Names.

Complainant has established Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, “in particular but without limitation” are evidence of the registration and use of the Domain Names in bad faith:

(i) circumstances indicating that Respondent has registered or has acquired the Domain Names primarily for the purpose of selling, renting, or otherwise transferring the Domain Names registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the Domain Names; or

(ii) that Respondent has registered the Domain Names in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or

(iii) that Respondent has registered the Domain Names primarily for the purpose of disrupting the business of a competitor; or

(iv) that by using the Domain Names, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's Websites or location or of a product or service on Respondent's Websites or location.

The Panel concludes that Respondent has registered and used the Domain Names in bad faith.

Because the PHOODLE mark had been widely used by Complainant before the Domain Names registrations, the Panel finds it more likely than not that Respondent had Complainant's mark in mind when registering the Domain Names (*Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whois Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc.*, WIPO Case No. [D2014-1754](#); *Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net*, WIPO Case No. [D2000-0226](#)).

Respondent should have known about Complainant's rights, as such knowledge is readily obtainable through a simple browser search (See *Caesars World, Inc. v. Forum LLC*, WIPO Case No. [D2005-0517](#); *Compart AG v. Compart.com / Vertical Axis Inc.*, WIPO Case No. [D2009-0462](#)).

Furthermore, the content of the Websites gave the impression that it provided exactly the services provided by Complainant, namely Complainant's online word game PHOODLE, prominently displaying Complainant's mark, logo, game, concept, copying functionalities and pop-ups from Complainant's website and app, thereby giving the false impression that the Websites emanate from Complainant. This further supports registration in bad faith reinforcing the likelihood of confusion, as Internet users are likely to consider the Domain Names as in some way endorsed by or connected with Complainant ([WIPO Overview 3.0](#), section 3.1.4).

The above further indicates that Respondent knew of Complainant and chose the Domain Names with knowledge of Complainant and its industry (*Safepay Malta Limited v. ICS Inc.*, WIPO Case No. [D2015-0403](#)).

As regards bad faith use, Complainant demonstrated that the Domain Names were employed to host the Websites that provided services identical to services provided by Complainant, namely Complainant's online word game PHOODLE, prominently displaying Complainant's mark, logo, game, concept, copying functionalities and pop-ups from Complainant's website and app.

The Domain Names operated therefore by intentionally creating a likelihood of confusion with Complainant's mark and business as to the source, sponsorship, affiliation or endorsement of the Websites they resolved to. This can be used in support of a finding of bad faith registration and use ([WIPO Overview 3.0](#), section 3.1.4).

Furthermore, the Panel takes into account that both Domain Names were registered using a privacy service, which can be further evidence of bad faith. Furthermore, the First Domain Name was registered shortly, namely one month, after the launch of Complainant's game PHOODLE online, while the Second Domain Name was registered two months after such launch, and on the same day the Center provided Complainant with the registrant information from the Registrar as regards the First Domain Name, copying Respondent.

The Panel finds that Respondent has registered and used the Domain Names to disrupt Complainant's business.

Under these circumstances and on this record, the Panel finds that Respondent has registered and used the Domain Name in bad faith.

Complainant has established Policy, paragraph 4(a)(iii).

8. 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 Names, <phoodle.app>, and <phood-le.com> be transferred to Complainant.

/Marina Perraki/

Marina Perraki

Sole Panelist

Date: October 18, 2022