

## **ADMINISTRATIVE PANEL DECISION**

**Monsanto Technology LLC v. Domain Sales - (Expired domain caught by auction winner) c/o Dynadot**  
Case No. D2022-4961

### **1. The Parties**

The Complainant is Monsanto Technology LLC, United States of America, represented by BPM Legal, Germany.

The Respondent is Domain Sales - (Expired domain caught by auction winner) c/o Dynadot, United States of America.

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

The disputed domain name <preceon.com> is registered with Dynadot, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 23, 2022. On December 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 24, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 January 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 24, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 26, 2023.

The Center appointed William R. Towns as the sole panelist in this matter on February 1, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and

Declaration of Impartiality and Independence, required by the Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The Complainant is a limited liability company organized and incorporated under the laws of Minnesota, with its principal place of business in St. Louis, Missouri, in the United States ("U.S"). The Complainant was founded in the year 1901, and has become well-known for its agrochemical, agricultural, and other biotechnology based herbicide since the 1970's.

The Complainant is a major producer of genetically engineered crops, including Roundup and other glyphosate-based herbicide. The Complainant is the owner its PRECEON mark, first applied for and registered on October 19, 2021. The PRECEON mark also has been registered by the Complainant in the European Union in February 2022, and as well as registered with its PRECEON mark in several other jurisdictions.

The Respondent registered the disputed domain name <preceon.com> on October 19, 2022. Insofar as the record reflects, it appears that the Respondent registered the disputed domain name after becoming aware of the Complainant's adoption of its PRECEON mark for use in commerce, as well as applying to register its PRECEON mark. The Respondent after registering the disputed domain name <preceon.com> promptly offered to sell the disputed domain name on GoDaddy.com for the considerable asking price of \$ 4,995.00.

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

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

The Complainant states it is a well-known American agrochemical and agricultural biotechnology corporation founded in 1901, and acquired in 2018 by Bayer AG as part of the Complainant's crop science division. The Complainant submits the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant further submits it has registered its PRECEON mark in numerous jurisdictions between October 15, 2021, and December 22, 2021, including trademark registrations in China and in the Russian Federation.

Further, according to the Complainant, it has secured registrations for its PRECEON mark emphasizing that the top level domain name is not an element of distinctiveness when assessing confusing similarity with the Complainant's PRECEON mark. The Complainant observes that the Respondent registered the disputed domain name on October 19, 2021, maintaining that the Respondent lacks rights or legitimate interests in respect of the disputed domain name, and asserting that Complainant has neither licensed nor otherwise been permitted by the Respondent to use the Complainant's PRECEON mark in connection with a *bona fide* offering of goods or services. The Complainant contends that the Respondent has neither used nor made demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services, and is not making a legitimate noncommercial or fair use of the disputed domain name.

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

The Respondent did not reply to the Complainant's contentions.

#### **6. Discussion and Findings**

##### **A. Scope of the Policy**

The Policy is addressed to resolving disputes concerning allegations of abusive domain name registration

and use. *Milwaukee Electric Tool Corporation v. Bay Verte Machinery, Inc. d/b/a The Power Tool Store*, WIPO Case No. [D2002-0774](#). Accordingly, the jurisdiction of this Panel is limited to providing a remedy in cases of “the abusive registration of domain names”, also known as “cybersquatting”. *Weber-Stephen*

*Products Co. v. Armitage Hardware*, WIPO Case No. [D2000-0187](#). See Final Report of the First WIPO Internet Domain Name Process, April 30, 1999, paragraphs 169-177. The term “cybersquatting” is most frequently used to describe the deliberate, bad faith abusive registration of a domain name in violation of rights in trademarks or service marks. *Id.* at paragraph 170. Paragraph 15(a) of the Rules provides that the panel shall decide a complaint on the basis of statements and documents submitted and in accordance with the Policy, the Rules and any other rules or principles of law that the panel deems applicable.

Paragraph 4(a) of the Policy requires that the complainant prove each of the following three elements to obtain a decision that a domain name should be either cancelled or transferred:

- (i) the 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 with respect to the domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

Cancellation or transfer of the domain name is the sole remedy provided to the complainant under the Policy, as set forth in paragraph 4(i).

Paragraph 4(b) of the Policy sets forth four situations under which the registration and use of a domain name is deemed to be in bad faith, but does not limit a finding of bad faith to only these situations.

Paragraph 4(c) of the Policy, in turn, identifies three means through which a respondent may demonstrate rights or legitimate interests in a domain name. Although the complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, prior UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is primarily, if not exclusively, within the knowledge of the respondent. Thus, the view is that the burden of production shifts to the respondent to come forward with evidence of rights or legitimate interests in the domain name, once the complainant has made a *prima facie* showing. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 2.1. See, e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#).

## **B. Identical or Confusingly Similar**

The Panel finds that the disputed domain name <preceon.com> is both confusingly similar and identical to the Complainant’s PRECEON mark, in which the Complainant has established rights through registration and extensive use of the mark. In considering identity and confusing similarity, the first element of the Policy serves essentially as a standing requirement.<sup>1</sup> The threshold inquiry under the first element of the Policy involves a relatively straightforward comparison between the complainant’s trademark and the disputed domain name.

The Complainant’s PRECEON mark is clearly recognizable in the disputed domain name,<sup>2</sup> and does not dispel the confusing similarity of the disputed domain name to the Complainant’s mark. See, e.g. *Instagram, LLC v. Temp name Temp Last Name, Temp Organization*, WIPO Case No. [D2019-0109](#). See also *Instagram, LLC v. A S*, WIPO Case No. [D2020-1327](#). When the relevant trademark is recognizable in the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative,

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<sup>1</sup> See [WIPO Overview 3.0](#), section 1.7.

<sup>2</sup> See [WIPO Overview 3.0](#), section 1.8 and cases cited therein.

meaningless, or otherwise) does not preclude a finding of confusing similarity under paragraph 4(a)(i) of the Policy.<sup>3</sup> Top Level Domains (TLDs) such as <.com>, generally are disregarded when evaluating the identity Policy, irrespective of any ordinary meaning that might be ascribed to the TLD.<sup>4</sup>

Accordingly, the Panel finds the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

### C. Rights or Legitimate Interests

As noted above, once the complainant makes a *prima facie* showing under paragraph 4(a)(ii) of the Policy, paragraph 4(c) shifts the burden of production to the respondent to come forward with evidence of rights or legitimate interests in a domain name. The Panel is persuaded from the record of this case that a *prima facie* showing under paragraph 4(a)(ii) of the Policy has been made. It is undisputed that the Respondent has not been authorized to use the Complainant's PRECEON mark. The Respondent notwithstanding has registered and used the disputed domain name, misappropriating the Complainant's PRECEON mark, and as previously noted, the disputed domain name does not appear to resolve to any active website and has been passively held by the Respondent.

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights or legitimate interests in a domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the 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 has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the 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.

The Respondent has not submitted a formal response to the Complaint, in the absence of which the Panel may accept all reasonable inferences and allegations in the Complaint as true. See *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#). The Panel has carefully reviewed the record in this case, and finds nothing therein that would bring the Respondent's registration and use of the disputed domain name within any of the "safe harbors" of paragraph 4(c) of the Policy.

The Panel concludes from the record that the Respondent was aware of and had the Complainant's PRECEON marks firmly in mind when registering the disputed domain name. The Respondent has brought forward no credible evidence of use or of any demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. See [WIPO Overview 3.0](#), section 2.2 and cases cited therein. Nor has the Respondent asserted any claim to be making a legitimate noncommercial or fair use of the disputed domain name.<sup>5</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> See [WIPO Overview 3.0](#), section 1.11.

<sup>5</sup> A respondent's use of a domain name cannot be considered "fair" if it falsely suggests affiliation with the trademark owner, and UDRP panels generally have found that a domain name appropriating a complainant's trademark plus an additional term can carry a risk of implied affiliation if it effectively suggests sponsorship or endorsement by the trademark owner. See [WIPO Overview 3.0](#), sections 2.5 and 2.5.1. The use of a domain name cannot be "fair" if it suggests a non-existent affiliation with the trademark owner; nor can a use be "fair" if it is pretextual. See *201 Folsom Option JV, L.P. and 201 Folsom Acquisition, L.P. v. John Kirkpatrick*, WIPO Case No. [D2014-1359](#); *Project Management Institute v. CMN.com*, WIPO Case No. [D2013-2035](#).

In view of the foregoing, the Panel concludes that the Respondent has neither used nor demonstrated preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services, and is not making a legitimate noncommercial or fair use of the disputed domain name. Moreover, there is no indication that the Respondent has been commonly known by the disputed domain name at any time within the meaning of paragraph 4(c)(ii) of the Policy.

Accordingly, the Panel finds the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

#### **D. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trademark or service mark) or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the respondent registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances from which such bad faith may be found. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant seeks to profit from and exploit the trademark of another. See *Match.com, LP v. Bill Zag and NWLAWS.ORG*, WIPO Case No. [D2004-0230](#).

For the reasons discussed under this and the preceding heading, the Panel holds that the Respondent's conduct in this case constitutes bad faith registration and use of the disputed domain name within the meaning of paragraph 4(a)(iii) of the Policy. The Panel concludes that the Respondent undoubtedly was aware of the Complainant and had the Complainant's PRECEON mark firmly in mind when registering the disputed domain name. The Respondent has clearly acted in bad faith and with malice, seeking to exploit and profit from the Complainant's trademark rights, in a fraudulent attempt to sell the disputed domain name to unsuspecting victims at an exorbitant price.

## 7. Decision

Accordingly, for the foregoing reasons, and in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name, <preceon.com>, be transferred to the Complainant.

*/William R. Towns/*

**William R. Towns**

Sole Panelist

Date: February 11, 2023