

ADMINISTRATIVE PANEL DECISION

Dell Inc. v. tomiyoshi mizutani

Case No. D2023-0082

1. The Parties

The Complainant is Dell Inc., United States of America (“United States”), represented by Soerensen Garcia Advogados Associados, Brazil.

The Respondent is tomiyoshi mizutani, Japan.

2. The Domain Name and Registrar

The disputed domain name <dellcuritiba.com> is registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on January 6, 2023. On January 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 10, 2023, 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 (Whois Privacy Protection Service by VALUE-DOMAIN) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 10, 2023 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 in English on January 13, 2023.

On January 10, 2023, the Center transmitted an email communication to the Parties in English and Japanese regarding the language of the proceeding. On January 13, 2023, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not explicitly comment on the language of the proceeding.

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 in English and Japanese of the Complaint, and the proceedings commenced on January 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 6, 2023.

On January 26, 2023, the Respondent sent an email to the Center. According to the email, since the registration of the disputed domain name was going to expire in June 2023 and the Respondent would not extend the registration thereof, the Respondent requested to dismiss the Complaint. On January 27 and 28, 2023, the Respondent sent emails to the Center. According to these emails, the Respondent would like to transfer or cancel the disputed domain name and accordingly he would like to make a settlement with the Complainant. And, in these emails, the Respondent expressed his desire to have the settlement form. The Center sent back an email on January 30, 2023, with the settlement form and informed that, in order to reach a settlement, the Respondent should make a contact with the Complainant directly. On February 1, 2023, the Respondent sent an email to the Center in which he attached the settlement form signed by him indicating that the disputed domain name should be transferred from the Respondent's control to the Complainant. On the same day, the Center sent the settlement form signed by the Respondent to the Complainant and indicated that if the Complainant wished to settle the dispute, the Complainant should sign the settlement form and send it back to the Center. The Complainant did not respond to this message. Further communications were received from the Respondent on February 3 and 4, 2023 asking what he should do next.

The Response was filed in English with the Center on February 6, 2023. According to this Response, the Respondent indicated that he "agree[d] with the Complainant and agree[d] to transfer the disputed domain name to the Complainant."

The Center appointed Masato Dogauchi as the sole panelist in this matter on February 20, 2023. 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 American based technology company, founded in 1984, that develops, sells, repairs, and supports computers and related products and services. It is one of the largest computer manufacturers in the world.

The Complainant holds several registrations for the trademark DELL and its variations, in jurisdictions around the world, including the following:

- United States Registration for DELL No. 1616571, registered on October 9, 1990;
- United States Registration for DELL No. 2806770, registered on January 20, 2004;
- Brazilian Registration for DELL No. 815621477, registered on September 29, 1992.

Additionally, the Complainant owns several domain names comprising the DELL mark, including <dell.com>, registered on November 22, 1988.

The disputed domain name was registered on March 3, 2021 and was associated with a website related to computer technical assistance services, reproducing the Complainant's trademark and logo. At that time, the Complainant sent a written cease and desist letter to the owner of the disputed domain name at that time via the WhatsApp contact displayed on the website with the aim of settling the case amicably. Although the Complainant has never received a reply, the website corresponding to this domain name was deactivated and later the registration of the disputed domain name expired on March 3, 2022. The Complainant continued to monitor the disputed domain name and noticed that the disputed domain name was registered again on June 10, 2022, and it resolves to a webpage with pornographic contents.

5. Parties' Contentions

A. Complainant

The Complainant contends that all three cumulative requirements as provided for in paragraph 4(a) of the Policy are satisfied in this case.

B. Respondent

The Respondent signed the settlement form in which the Respondent agreed to transfer the disputed domain name from the Respondent's control to the Complainant. The Respondent also filed a Response in which the Respondent "agree[d] with the Complainant and agree[d] to transfer the disputed domain name to the Complainant."

6. Discussion and Findings

6.1. Preliminary Issue: Language of the Proceeding

In respect of the language to be used in the administrative proceeding, in accordance with the Rules, paragraph 11(a), the language of the administrative proceeding shall be, in principle, the language of the registration agreement. However, the same provision allows the panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

In the present case, the Registrar has confirmed that the language of the Registration Agreement is Japanese in the Registrar's reply to the Center on January 10, 2023.

The Panel determines that the language of this proceeding shall be English rather than Japanese on the following grounds:

- the Complainant requested to that effect;
- the Respondent did not explicitly comment on the language of the proceeding although the Respondent sent emails in Japanese with machine translation into English.
- the disputed domain name is in Latin script and not in Japanese script;
- the Respondent filed the Response in English with the Center; and
- the use of the Japanese language would produce undue burden on the Complainant.

6.2. Consent to Transfer

On February 1, 2023, the Respondent sent an email to the Center in which he attached the settlement form signed by him indicating that the disputed domain name should be transferred from the Respondent's control to the Complainant. On February 6, 2023, the Respondent filed a Response in which the Respondent indicated that he "agree[d] with the Complainant and agree[d] to transfer the disputed domain name to the Complainant." In addition, the Respondent sent several emails expressing his willingness to settle with the Complainant.

Accordingly, the Panel finds that it is not necessary to discuss the merits of this case, and the Panel may order the remedy requested by the Complainant solely on the basis of the Respondent's consent. See, section 4.10 of the [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition](#).

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 names, <dellcuritiba.com>, be transferred to the Complainant.

/Masato Dogauchi/

Masato Dogauchi

Sole Panelist

Date: March 6, 2022