

Decision for dispute CAC-UDRP-104287

Case number CAC-UDRP-104287

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Domain names proxxongmbh.com

Case administrator

Organization Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization Proxxon GmbH

Complainant representative

Organization SCHIEDERMAIR

Respondent

Name Ullan Zabin

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant owns the company name "Proxxon GmbH". Proxxon S.A. owns the following trademarks for PROXXON:

- EUTM registered number 003396256, registered on 11 May 2005, in classes 7, 8 and 9.
- EUTM registered number 011497831, registered on 13 June 2013, in class 10.

The Complainant as a 100% subsidiary and commission agent of Proxxon S.A. is entitled to use the PROXXON trademark.

FACTUAL BACKGROUND

The Complainant is a company registered in Germany and is a subsidiary of Proxxon S.A., Luxembourg. Proxxon S.A. has been producing high quality fine power tools for model makers, precision mechanics, mould makers, tool makers, opticians, goldsmiths, watch-makers, tools for PROXXON MICROMOT system for more than 40 years. The Complainant has since 1977, distributed the PROXXON MICROMOT system tools for Proxxon S.A. both in Germany and internationally.

The Complainant owns the company name "Proxxon GmbH" and, as a subsidiary of Proxxon S.A., has the right to use the

trademark, PROXXON.

The Respondent registered the disputed domain name on 12 October 2021 using a privacy service. The disputed domain name does not resolve to any active content on the Internet.

On 3 December 2021, the MERIT-LINK Group, China, informed the Complainant that they had received an email dated 1 November 2021 from <office@proxxongmbh.com>, purporting to be sent by “Mr. Oskar Möller, Import, Director Manager” and including same address information of the Complainant in its email signature. The email claimed to be interested in price quotes by the MERIT-LINK Group and falsely claimed that the Complainant was interested in setting up a business relationship with the MERIT-LINK Group. On 4 November 2021, and on 10 November 2021, MERIT-LINK Group replied to the email of 1 November 2021 but received no answer.

On 21 December 2021, the Complainant sent a cease-and-desist letter to the Respondent via the email address <office@proxxongmbh.com> but received no reply.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements:

- i. the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- ii. the Respondent has no rights or legitimate interests in the disputed domain name; and
- iii. the disputed domain name has been registered and used in bad faith.

A. IDENTICAL OR CONFUSINGLY SIMILAR

The Complainant asserts that:

- i. the disputed domain name is identical its company name “Proxxon GmbH” and is confusingly similar to the trademark PROXXON in which the Complainant has rights;
- ii. under sections 1 and 5 of the German Trademark Act, as a commercial designation its registered company name, “Proxxon GmbH”, enjoys protection equivalent to the protection of a registered trademark, and gives the Complainant

standing under paragraph 4(a)(i) of the UDRP to bring this Complaint; and

iii. as a 100% subsidiary and commission agent of Proxxon S.A., it has rights in the PROXXON trademark registered in the name of its parent company.

The disputed domain name is comprised of the trademark PROZZON and the term “gmbh”, which is the abbreviation of the German term for “limited liability company”.

The top-level domain, such as “.com”, is a standard registration requirement and can be disregarded when determining confusing similarity.

The disputed domain name <proxxongmbh.com> incorporates the trademark PROZZON. Ignoring the “.com” suffix, the disputed domain name is identical with the Complainant’s registered company name, “Proxxon GmbH”.

The Panel finds that that the disputed domain name is confusingly similar to the trademark PROXXON and is identical to the Complainant’s company name and that the requirements of paragraph 4(a)(i) of the Policy have been met.

B. NO RIGHTS OR LEGITIMATE INTEREST IN THE DISPUTED DOMAIN NAME

The Complainant asserts that the Respondent has no rights or legitimate interests in the disputed domain name. It asserts that the Respondent:

- i. has not used the disputed domain name in connection with a bona fide offering of goods or services, nor made a legitimate non-commercial or fair use;
- ii. is not authorized to use the Complainant’s company name, Proxxon GmbH, or the PROXXON trademark, either as a domain name or in any other way;
- iii. has not been commonly known by the disputed domain name, nor known by a name that corresponds with the disputed domain name and does not have any trademark rights in the term “Proxxon”; and
- iv. on 1 November 2021, sent an email pretending to be from “Mr. Oskar Möller, Import, Director Manager” of the Complainant’s company for phishing purposes and that such use of the disputed domain name as neither a bona fide nor a legitimate non-commercial or fair use.

The Complainant has made out a prima facie case that the Respondent lacks rights or legitimate interest in the disputed domain name. The burden of proof now shifts to the Respondent to show that it has rights or legitimate interests.

The Respondent has not filed a response nor rebutted any of the Complainant’s assertions, nor given any explanation for registering the disputed domain name. The Respondent is not authorized to use the Complainant’s company name or the trademark, PROZZON and there is no evidence that he has rights in the name himself. Sending an unauthorised email purporting to be from the Complainant for what appears to be phishing purposes is not a bona fide or legitimate non-commercial or fair use.

Taking these factors into account, the Panel finds that the Respondent has no rights or legitimate interest in the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been met.

C. REGISTERED AND BEING USED IN BAD FAITH

The Complainant asserts that the disputed domain name was registered and is being used by the Respondent in bad faith.

The trademark registration for PROXXON and the Complainant’s company name, Proxxon GmbH, both predate the registration of the disputed domain name. The Respondent:

- i. has failed to file a Response and has not disputed any of the Complainant’s assertions;
- ii. has used a privacy shield to register the disputed domain name;

- iii. has not demonstrated that he has any rights or legitimate interest in the disputed domain name, and there appears no reason why he would register the disputed domain name, which mirrors the Complainant's corporate name and incorporates the trademark PROXXON, other than to attract internet users for commercial gain by creating a likelihood of confusion with the Complainant's company name and the PROZZON trademark.
- iv. has used the disputed domain name for phishing activities by sending a fraudulent email using the disputed domain name, which purports to be sent the "Import Director Manager" of the Complainant; and
- v. has failed to respond to a cease and desist letter.

These factors indicate the Respondent knew of the Complainant and the PROZZON trademark when he registered the disputed domain name, and has used it in bad faith in connection with an email address for the purposes of creating a likelihood of confusion with the Complainant and the PROZZON mark.

The Panel finds that the disputed domain name was both registered and is being used in bad faith and that the requirements of paragraph 4(a)(iii) of the Policy have been met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

- 1. PROXXONGMBH.COM: Transferred

PANELLISTS

Name	Veronica Bailey
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DATE OF PANEL DECISION 2022-05-01

Publish the Decision
