

Decision for dispute CAC-UDRP-104220

Case number CAC-UDRP-104220

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Domain names polulu.com

Case administrator

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

Complainant

Organization Pololu Corporation

Respondent

Organization Domain Administrator

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

Complainant is the registered owner of US trademark registration No. 5883025 "Pololu" (verbal), registered on October 15, 2019 for services in class 35 with first use in commerce already in 2001.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

1.

It results from the Complainant's undisputed allegations, that Complainant is an electronics manufacturer and online retailer of products ranging from sensors and motion control electronics to motors and wheels to complete robots.

It further results from the Complainant's documented allegations that it has been incorporated in the state of Nevada in May 2002.

Complainant has created the domain name <pololu.com> in November 2000 and continuously used it since 2001 to sell products around the world, directly to customers in the USA and internationally, and through a network of distributors in approximately 50 countries, including Hong Kong, where the Respondent is located.

Complainant is the owner of a registered US trademark for POLOLU (no. 5883025) registered on October 15, 2019 with first use in commerce of 2001.

2.

The Registrar confirmed that the Respondent registered the disputed domain name <polulu.com> on November 18, 2005.

The disputed domain name resolves to a "domain parking" website showing ads targeted at Complainant's customers using keywords such as "Robotics".

Additionally, the disputed domain name is offered for sale on Above.com for an unknown price.

3.

On December 8, 2021 the Complainant sent an e-mail to the Respondent requesting transfer of the disputed domain name to the Complainant. No response of the Respondent has been received by the Complainant.

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

1.

The Panel finds that the disputed domain name <polulu.com> is confusingly similar to the Complainant's trademark.

As a matter of fact, it reflects the Complainant's trademark "Pololu" almost identically, merely substituting the second "o" contained therein by an "u". The Panel considers this misspelling as not being sufficient to render the disputed domain name dissimilar to Complainant's registered trademark, since the domain name contains sufficiently recognizable aspects of the relevant mark.

2.

In the absence of any Response, or any other information from the Respondent indicating the contrary, the Panel further holds that the Complainant successfully presented its prima facie case and that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

First, no evidence or information has been provided that could lead the Panel to conclude that the Respondent is commonly

known by the disputed domain name pursuant to paragraph 4(c)(ii) of the Policy. In addition, the Respondent has no connection or affiliation with the Complainant who has not granted the Respondent any license or consent, express or implied, to use the Complainant's trademark in domain names or in any other manner.

Second, it results from the evidence provided by the Complainant that the disputed domain name is currently connected to a website displaying sponsored links amongst others for websites that are related to Complainant's field of business. Such use can neither be considered a bona fide offering of goods or services nor 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 at issue in the sense of paragraph 4(c)(i) and (iii) of the Policy. In fact, this Panel shares the view of previous panels holding that the use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the Complainant's mark or otherwise mislead Internet users (see section 2.9 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, "WIPO Overview 3.0").

It is acknowledged that once the Panel finds such prima facie case is made, the burden of production shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. Since the Respondent failed to come forward with any allegations or evidence in this regard, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant is therefore deemed to have satisfied paragraph 4(a)(ii) of the Policy.

3.

Finally, the Panel finds that the disputed domain name has been registered and is being used in bad faith.

The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith. One of those circumstances are those specified in paragraph 4(b)(iv), i.e., where the domain name is used to intentionally attempt to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location.

In the Panel's view, the Respondent has intentionally registered the disputed domain name which almost identically contains the Complainant's trademark POLOLU. It is true that said trademark has only been registered in 2019 while the disputed domain name has been registered in 2005.

However, 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 (see WIPO Overview 3.0 at sect. 3.8.2 with further references). Such scenarios include registration of a domain name: (i) shortly before or after announcement of a corporate merger, (ii) further to the respondent's insider knowledge (e.g., a former employee), (iii) further to significant media attention (e.g., in connection with a product launch or prominent event), or (iv) following the complainant's filing of a trademark application.

In the case at hand, the Complainant provided evidence that it used its brand POLOLU since 2001 and incorporated its company containing the element POLOLU in 2002. Consequently, the Complainant had been active under the brand POLOLU several years before the disputed domain name was registered. In addition, the Panel notes the following circumstances surrounding the disputed domain name's registration and use: (i) the Respondent uses a privacy service to hide its identity; (ii) the Respondent did not react on a communication sent by the Complainant to the email address indicated in the WhoIs; (iii) the domain name is offered for sale, and (iv) the Respondent did neither provide any formal response to the Complaint nor the Panel's non standard communication. Therefore no conceivable explanations of its behavior and no legitimate use of the disputed domain name by the Respondent is actually conceivable for the Panel.

Finally, the Complainant also provided evidence that the Respondent is using the disputed domain name to lead to a website featuring PPC-advertisement links including links which refer to the Complainant's field of business. This is indicative of bad faith, even if the webpage is configured automatically by the registrar or any other party. Indeed, particularly with respect to "automatically" generated PPC-links, previous UDRP panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name (nor would such links ipso facto vest the respondent with rights or legitimate interests). Neither the fact that such links are generated by a third party such as a registrar or auction platform (or their affiliate), nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of bad faith (see WIPO Overview 3.0 at sect. 3.5).

In the light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith pursuant to paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. POLULU.COM: Transferred

PANELLISTS

Name	Dr. Tobias Malte Müller
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DATE OF PANEL DECISION **2022-01-27**

Publish the Decision
