



NATIONAL ARBITRATION FORUM

DECISION

Provanta Corporation v. Dotstar, inc c/o James Bond
Claim Number: FA0709001080600

PARTIES

Complainant is **Provanta Corporation** ("Complainant"), represented by **Michael Nikoley**, 2700 Mission College Blvd., Ste. 140-B1, Santa Clara, CA 95054. Respondent is **Dotstar, inc c/o James Bond** ("Respondent"), 126-12 22nd Ave., Fushing, NY 11355, USA.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**provanta.com**>, registered with **Namestream.com, Inc.**

PANEL

The undersigned certifies that he has acted independently and impartially and to the best of his knowledge has no known conflict in serving as Panelist in this proceeding.

James A. Carmody, Esq., as Panelist.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on September 19, 2007; the National Arbitration Forum received a hard copy of the Complaint on September 24, 2007.

On October 2, 2007, Namestream.com, Inc. confirmed by e-mail to the National Arbitration Forum that the <**provanta.com**> domain name is registered with Namestream.com, Inc. and that Respondent is the current registrant of the name. Namestream.com, Inc. has verified that Respondent is bound by the Namestream.com, Inc. registration agreement and has thereby agreed to resolve domain-name disputes brought by third parties in accordance with ICANN's Uniform Domain Name Dispute Resolution Policy (the "Policy").

On October 10, 2007, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of October 30, 2007 by which Respondent could file a response to the Complaint, was transmitted to Respondent via e-mail, post and fax, to all entities and persons listed on Respondent's registration as technical, administrative and billing contacts, and to postmaster@provanta.com by e-mail.

Having received no response from Respondent in compliance with the Policy (see below under Respondent's Contentions), the National Arbitration Forum transmitted to the parties a Notification of Respondent Default.

On November 6, 2007, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed James A. Carmody, Esq., as Panelist.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the National Arbitration Forum has discharged its responsibility under Paragraph 2(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") "to employ reasonably available means calculated to achieve actual notice to Respondent." Therefore, the Panel may issue its decision based on the documents submitted and in accordance with the ICANN Policy, ICANN Rules, the National Arbitration Forum's Supplemental Rules and any rules and principles of law that the Panel deems applicable, without the benefit of any response from Respondent.

RELIEF SOUGHT

Complainant requests that the domain name be transferred from Respondent to Complainant.

PARTIES' CONTENTIONS

A. Complainant makes the following assertions:

1. Respondent's <**provanta.com**> domain name is identical to Complainant's PROVANTA mark.
2. Respondent does not have any rights or legitimate interests in the <**provanta.com**> domain name.
3. Respondent registered and used the <**provanta.com**> domain name in bad faith.

B. Respondent failed to submit a Response in this proceeding which complies with the Policy. Under UDRP Rule 11(a): "Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement"

In this case, Rule 3.11 of the Registrar, Namestream.com, Inc.'s registration agreements states: "You agree to be bound by the ICANN Uniform Dispute Resolution Policy ("UDRP") in all cases to which it applies and as it may be amended in the future."

With respect to UDRP precedent, the panel in *AOL, LLC v. Telesat S.A.*, FA 1040219 (Nat. Arb. Forum Aug. 28, 2007) recently decided not to consider the response because "the Response was received in a foreign language, not in English, which is the language of the Registration Agreement, and consequently, the instant proceedings. As such, as is within the Panel's discretion under these circumstances, the Response was not considered in the rendering of this Decision." Additionally, the panel in *Internet Billing Co. LLC v. Yu*, FA 146944 (Nat. Arb. Forum Apr. 14, 2003) decided not to consider the response

because it was submitted in Korean and the registration agreement was in English, and "[w]ithout a proper, timely Response from Respondent in the language of the agreement the Panel has nothing before it to refute Complainant's allegations."

Accordingly, this case will be treated as if Respondent had filed no Response to the Complaint.

FINDINGS

Complainant, Provanta Corporation, provides debt settlement services to consumers. Complainant holds a trademark registration with the United States Patent and Trademark Office ("USPTO") for the PROVANTA mark (Reg. No. 2,590,773 issued July 2, 2002). Complainant has been using the mark in connection with its debt settlement services, and also holds registrations for the <provantacorp.com> and <provantacorp.biz> domain names.

Respondent registered the <provanta.com> domain name on January 21, 2007. Respondent's <provanta.com> domain name resolves to a website providing links to third-party websites, some of which offer debt settlement services in direct competition with Complainant.

DISCUSSION

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

In view of Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of Complainant's undisputed representations pursuant to paragraphs 5(e), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. *See Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc.*, FA 95095 (Nat. Arb. Forum July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); *see also Talk City, Inc. v. Robertson*, D2000-0009 (WIPO Feb. 29, 2000) ("In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.").

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (2) Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

Identical and/or Confusingly Similar

The Panel finds that Complainant's registration of the PROVANTA mark with the USPTO establishes its rights under Policy ¶ 4(a)(i). *See Innomed Techs., Inc. v. DRP Servs.*, FA 221171 (Nat. Arb. Forum Feb. 18, 2004) ("Registration of the NASAL-AIRE mark with the USPTO establishes Complainant's rights in the mark."); *see also Janus Int'l Holding Co. v. Rademacher*, D2002-0201 (WIPO Mar. 5, 2002) ("Panel decisions have held that registration of a mark is *prima facie* evidence of validity, which creates a rebuttable presumption that the mark is inherently distinctive.").

Respondent's <provanta.com> domain name is identical to Complainant's "PROVANTA" mark, as it incorporates the mark in its entirety and adds only the generic top-level domain ".com." The addition of ".com" is irrelevant when conducting a Policy ¶ 4(a)(i) analysis. Therefore, the Panel finds the disputed domain name identical to Complainant's mark pursuant to Policy ¶ 4(a)(i). *See Nike, Inc. v. Coleman*, D2000-1120 (WIPO Nov. 6, 2000) (finding that the domain name <nike.net> is identical to the complainant's famous NIKE mark); *see also Rollerblade, Inc. v. McCrady*, D2000-0429 (WIPO June 25, 2000) (finding that the top level of the domain name such as ".net" or ".com" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar).

The Panel finds that Complainant satisfied Policy ¶ 4(a)(i).

Rights or Legitimate Interests

Complainant asserts that Respondent lacks rights and legitimate interests in the <provanta.com> domain name. Complainant has the burden of proof for this allegation pursuant to Policy ¶ 4(a)(ii). Once Complainant has made a *prima facie* showing, the burden of proof shifts to Respondent. The Panel finds Complainant has met its burden. *See Do The Hustle, LLC v. Tropic Web*, D2000-0624 (WIPO Aug. 21, 2000) (holding that, where the complainant has asserted that the respondent has no rights or legitimate interests with respect to the domain name, it is incumbent on the respondent to come forward with concrete evidence rebutting this assertion because this information is "uniquely within the knowledge and control of the respondent"); *see also Clerical Med. Inv. Group Ltd. v. Clericalmedical.com*, D2000-1228 (WIPO Nov. 28, 2000) (finding that, under certain circumstances, the mere assertion by the complainant that the respondent has no right or legitimate interest is sufficient to shift the burden of proof to the respondent to demonstrate that such a right or legitimate interest does exist).

Respondent's failure to respond to the Complaint allows the Panel to assume Respondent has no rights or legitimate interests in the <provanta.com> domain name. *See Am. Express Co. v. Fang Suhendro*, FA 129120 (Nat. Arb. Forum Dec. 30, 2002) ("[B]ased on Respondent's failure to respond, it is presumed that Respondent lacks all rights and legitimate interests in the disputed domain name."); *see also Do the Hustle, LLC v. Tropic Web*, D2000-0624 (WIPO Aug. 21, 2000) ("Failure of a respondent to come

forward to [contest complainant's allegations] is tantamount to admitting the truth of complainant's assertions in this regard."). Nonetheless, the Panel will examine the record to determine legitimate rights or interests under Policy ¶ 4(c).

The record contains nothing to suggest Respondent is commonly known by the disputed domain name pursuant to Policy ¶ 4(c)(ii). The WHOIS information identifies Respondent as "Dotstar, inc c/o James Bond" with no reference to the <provanta.com> domain name. Respondent is not licensed or authorized to use the PROVANTA mark. The Panel finds that Respondent has no rights or legitimate interests to the <provanta.com> domain name under Policy ¶ 4(c)(ii). *See Tercent Inc. v. Lee Yi*, FA 139720 (Nat. Arb. Forum Feb. 10, 2003) (stating "nothing in Respondent's WHOIS information implies that Respondent is 'commonly known by' the disputed domain name" as one factor in determining that Policy ¶ 4(c)(ii) does not apply); *see also Ian Schragger Hotels, L.L.C. v. Taylor*, FA 173369 (Nat. Arb. Forum Sept. 25, 2003) (finding that without demonstrable evidence to support the assertion that a respondent is commonly known by a domain name, the assertion must be rejected).

Respondent is using the <provanta.com> domain name to divert Internet users to third-party websites offering similar debt settlement services to that of Complainant's business. The Panel presumes that Respondent is using the domain name for monetary gain, by capitalizing on the good reputation of Complainant's mark. The Panel finds this is not a *bona fide* offering of goods or services under Policy ¶ 4(c)(i) or a legitimate non-commercial or fair use under Policy ¶ 4(c)(iii). *See Or. State Bar v. A Special Day, Inc.*, FA 99657 (Nat. Arb. Forum Dec. 4, 2001) ("Respondent's advertising of legal services and sale of law-related books under Complainant's name is not a *bona fide* offering of goods and services because Respondent is using a mark confusingly similar to the Complainant's to sell competing goods."); *see also Ameritrade Holdings Corp. v. Polanski*, FA 102715 (Nat. Arb. Forum Jan. 11, 2002) (finding that the respondent's use of the disputed domain name to redirect Internet users to a financial services website, which competed with the complainant, was not a *bona fide* offering of goods or services).

The Panel finds that the Policy ¶ 4(a)(ii) has been satisfied.

Registration and Use in Bad Faith

Respondent's <provanta.com> domain name resolves to a website providing links to third party websites, some of which offer debt settlement services in direct competitions with Complainant. The Panel finds that this use by Respondent constitutes an intent to disrupt Complainant's business. Therefore, the Panel concludes that this use of the <provanta.com> domain name constitutes bad faith pursuant to Policy ¶ 4(b)(iv). *See EthnicGrocer.com, Inc. v. Latingrocer.com*, FA 94384 (Nat. Arb. Forum July 7, 2000) (finding bad faith where the respondent's sites pass users through to the respondent's competing business); *see also EBAY, Inc. v. MEODesigns*, D2000-1368 (WIPO Dec. 15, 2000) (finding that the respondent registered and used the domain name

<ebay.com> in bad faith where the respondent has used the domain name to promote competing auction sites.

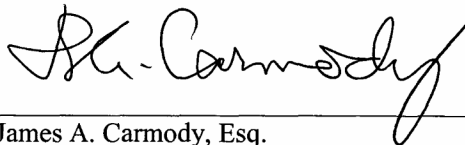
Respondent's use of <**provanta.com**> domain name, which is identical to Complainant's PROVANTA mark, is likely to cause confusion to customers searching for Complainant's goods and services. There may be confusion regarding Complainant's affiliation, endorsement, or sponsorship of the links advertised on Respondent's website. The Panel assumes Respondent is commercially benefiting from this confusion. Based on these findings, the Panel concludes that Respondent's registration and use of the <**provanta.com**> domain name constitutes bad faith under Policy ¶ 4(b)(iv). *See Toronto-Dominion Bank v. Karpachev*, 188 F.Supp.2d 110, 114 (D. Mass. 2002) (finding that, because the respondent's sole purpose in selecting the domain names was to cause confusion with the complainant's website and marks, its use of the names was not in connection with the offering of goods or services or any other fair use); *see also Bank of Am. Corp. v. Out Island Props., Inc.*, FA 154531 (Nat. Arb. Forum June 3, 2003) (stating that "[s]ince the disputed domain names contain entire versions of Complainant's marks and are used for something completely unrelated to their descriptive quality, a consumer searching for Complainant would become confused as to Complainant's affiliation with the resulting search engine website" in holding that the domain names were registered and used in bad faith pursuant to Policy ¶ 4(b)(iv)).

The Panel finds that the Policy ¶ 4(a)(iii) has been satisfied.

DECISION

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be **GRANTED**.

Accordingly, it is Ordered that the <**provanta.com**> domain name be **TRANSFERRED** from Respondent to Complainant.



James A. Carmody, Esq.
Arbitrator

James A. Carmody, Esq., Panelist
Dated: November 20, 2007

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