



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

— A charitable institution limited by guarantee registered in Hong Kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1000289
Complainant:	Prudential Plc
Respondent:	euwioejwq/PrivacyProtect.org

1. The Parties and Contested Domain Name

The Complainant is Prudential Plc, of Laurence Pountney Hill, London EC4R 0HH United Kingdom.

The Respondent is euwioejwq/PrivacyProtect.org, of Domain Admin, P.O. Box 97, Moergestel, Null, 5066 ZH, NL.

The domain name at issue is <asuransi-prudential-indonesia.com>, registered by Respondent with UK2 Group Ltd., of Montagu Pavilion 8-10 Queensway, Gibraltar, Gibraltar 0000, GI.

2. Procedural History

Complainant filed a Complaint on April 29, 2010 with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (ADNDRC) (the “Centre”), concerning domain name <asuransi-prudential-indonesia.com> (the “Disputed Domain Name”) and naming PrivacyProtect.org as Respondent.

On May 5, 2010, the Centre sent an e-mail to UK2 Group Ltd. requesting registrar verification of the Disputed Domain Name. UK2 Group Ltd. e-mailed a response on the same day, stating that “euwioejwq”, not PrivacyProtect.org, is listed as the registrant owner and providing the contact details.

The Centre forwarded this information to Complainant on May 6, 2010, and explained that Complainant needed to either file an amendment to its Complaint or resubmit a revised Complaint naming the correct Respondent. Complainant submitted a revised Complaint, dated May 11, 2010 naming “euwioejwq” as Respondent.

The Centre sent an e-mail to the Respondent on May 13, 2010, stating that a Complaint had been filed against it concerning the Disputed Domain Name.

Respondent did not submit a response to the Complaint.

3. Factual background

For Complainant

Complainant is an international retail financial services company with operations in Asia, the US and the UK.

Complainant's Asian operations include an Indonesian subsidiary, PT Prudential Life Assurance, established in 1995, that specializes in providing life insurance.

According to the Complaint, Section 7 and Annexure 2, the Complainant is the owner of several Community Trademarks and trademarks in Indonesia that incorporate the term "Prudential".

Complainant contends that Respondent was using the Disputed Domain Name for a website that provided information about Complainant's Indonesian subsidiary and life insurance services. According to Complainant, Respondent's website also offered insurance products.

For Respondent

Respondent registered the Disputed Domain Name with UK2 Group Ltd. on February 18, 2010 and is currently the owner.

Complainant became aware of Respondent when it discovered the website www.asuransi-prudential-indonesia.com.

Respondent's website appeared to be an informational site about Complainant's operations in Indonesia. The text was an almost word for word reproduction of the text of the "Introduction" section on the Complainant's official Indonesian site. The Asuransi Prudential Website also published photographs of what appears to be the inside of the Prudential office. One of the photos showed a window with Complainant's logo and name, both being Complainant's registered trademarks in Indonesia.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. **The Disputed Domain Name is identical and/or confusingly similar to the trade or service marks in which Complainant has rights.** The Disputed Domain Name, which incorporates the term "Prudential" in its entirety, is identical or confusingly similar to Complainant's trade or service marks, and the addition of the words "Asuransi" and "Indonesia" is insufficient to distinguish it from the "Prudential" trademarks. "Prudential" is the distinctive and prominent element of the Disputed Domain Name, and the addition of generic terms does not negate the confusing similarity between the Disputed Domain Name and the "Prudential" mark.

- ii. **Respondent has no right or legitimate interest in respect of the Disputed Domain Name.** In the absence of evidence to the contrary from Respondent, the Panel should assume that Respondent does not have any legitimate interest in the Disputed Domain Name, and the use of the Disputed Domain Name is not in connection with any bona fide offering of goods or services, or legitimate non-commercial use. Also, because of Complainant's extensive registered trademark portfolio incorporating the term "Prudential", it is extremely unlikely that any trade mark application for or incorporating "Prudential" filed by any party other than Complainant would progress to registration. The Disputed Domain Name was used to operate the Asuransi Prudential Website, a look-a-like of the Prudential Indonesia Website, established to cause confusion among internet users, and therefore misappropriate the Complainant's goodwill in "Prudential" for unjustified financial gain.
- iii. **The Disputed Domain Name has been registered and is being used by Respondent in Bad Faith.** Respondent's registration and use of the Disputed Domain Name was in bad faith because it was done solely to misappropriate the Complainant's Prudential mark in order to attract, for financial gain, Internet user's to its website by creating a likelihood of confusion with the Complainant's Prudential mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website and the products offered on it. The purpose of Respondent's use of the Disputed Domain Name was to disrupt Complainant's business in Indonesia. Furthermore, the use of a privacy shield to conceal Respondent's identity may indicate that Respondent was using the Disputed Domain Name in bad faith.

B. Respondent

No response was received from the Respondent. Therefore, Respondent is in default.

5. Findings

The ICANN Uniform Domain Name Dispute Resolution Policy (the "Policy") provides, at Paragraph 4(a), that each of these three findings must be made in order for a Complainant to prevail:

- i. Respondent's domain name must be identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent's domain name has been registered and is being used in bad faith.

A) Identical / Confusingly Similar

According to Paragraph 4(a)(i) of the Policy, it must be established that Complainant has rights in the trade or service mark to which the Disputed Domain Name is identical or

confusingly similar. Complainant has established its rights to the “Prudential” mark by evidence of its registered trademark portfolio.

The Panel is of the opinion that the addition of “Assuransi” and “Indonesia” to the term “Prudential” in the Disputed Domain Name does nothing to distinguish it from Complainant’s “Prudential” trade or service marks. The Panel agrees with previous UDRP panels that the incorporation of a well-known trademark in its entirety as a dominant part of a domain name is “confusingly similar to this trademark regardless of whether the additional elements express endorsement, are pejorative or are of a more neutral kind...” (*Oakley, Inc. v. Joel Wong/BlueHost.com- INC*, WIPO Case n° D2010-0100)(See Complaint, Annexure 10).

Furthermore, the words “Asuransi” and “Indonesia” could increase the likelihood that Internet consumers would be misled into thinking that the Disputed Domain Name is affiliated with the Complainant.

In the present case, the average consumers of the goods or services concerned are consumers in the Indonesian market. Complainant’s Indonesian subsidiary calls itself “Prudential Indonesia” on its website, which leads the Panel to fairly assume that PT Prudential Life Assurance is commonly known as “Prudential Indonesia”. Because “Asuransi” means “insurance” in Indonesian, and because Complainant’s operations in Indonesia provide life insurance, the addition of these words to the term “Prudential” make the Disputed Domain Name confusingly similar to Complainant’s trade or service mark for consumers in the Indonesian market.

Furthermore, Respondent’s website features photographs with Complainant’s “Prudential” trade and service mark, and other images from Complainant’s Indonesian website. Respondent’s website also directly references the Complainant’s Indonesian subsidiary, PT Prudential Life Assurance, and gives background information about the company using similar wording to that of Complainant’s subsidiary’s website.

Therefore, the Panel concludes that the Disputed Domain Name is confusingly similar to Complainant’s “Prudential” trade and service marks.

B) Rights and Legitimate Interests

According to the Policy, Paragraph 4(c), “[a]ny of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are 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.”

In order for the Panel to assume that Respondent lacks a legitimate interest in the Disputed Domain Name, due to the absence of evidence to the contrary from the Respondent, Complainant must first present prima facie evidence that Respondent lacks rights or legitimate interests. The Panel agrees with a previous UDRP panel that the burden of proof shifts to Respondent once Complainant has shown prima facie evidence that Respondent lacks rights or legitimate interests (*Cummins Inc. v. DG Lanshan Mechanical Electrical Equipment Co., Ltd.*, ADNDRC Case n° HK-1000286).

Complainant has presented prima facie evidence that Respondent lacks rights or legitimate interests in the Disputed Domain Name. It is not clear from Complainant’s evidence if the Respondent’s use of the Disputed Domain Name was in connection with a bona fide offering of goods or services, or if Respondent’s was making a legitimate non-commercial or fair use of the Disputed Domain Name. However, a fair assumption is that, because of Complainant’s long history in the insurance field and its extensive registered trademark portfolio, Complainant, not Respondent, would have been commonly known by the Disputed Domain Name in Indonesia, satisfying Paragraph 4(c)(ii).

Further proof that Respondent lacks rights or a legitimate interest is the fact that Complainant did not authorize or license Respondent to use the “Prudential” trade or service mark (see *RIO TINTO LONDON LIMITED v. li cheng*, ADNDRC Case n° CN-0900272). Although this is not directly stated in the Complaint, nor is there any direct evidence, it is fair to assume from the very fact that Complainant filed a Complaint that Respondent was not authorized or licensed to use the “Prudential” trade or service mark. Also, the statement that “Respondent registered the Disputed Domain Name to blatantly *misappropriate* the Complainant’s goodwill in the PRUDENTIAL Trade Marks,” suggests that Respondent was not authorized or licensed to use the “Prudential” trade or service mark.

Because Complainant has presented prima facie evidence that Respondent lacks rights or legitimate interests in the Disputed Domain Name, the burden of proof shifts to the Respondent. However, Respondent did not present any evidence demonstrating that it has a legitimate interest in the Disputed Domain Name.

Therefore, the Panel accepts Complainant’s contention that Respondent does not have any legitimate interest in the Disputed Domain Name.

C) Bad Faith

Finally, Paragraph 4(b) of the Policy states, “[f]or the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a

competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

It is not clear from Complainant's evidence whether Respondent was using the Disputed Domain Name for financial gain or for an informational website, or if the purpose of using the Disputed Domain Name was to disrupt Complainant's business in Indonesia.

However, simple searches on Google or Yahoo!, using the keywords “Prudential” and “Indonesia” or “Insurance” and “Prudential”, show that the first results are related to Complainant and its subsidiaries.

Even more compelling is the fact that Respondent's website features photographs with Complainant's “Prudential” trade and service mark, and other images from Complainant's Indonesian website. Respondent's website also directly references the Complainant's Indonesian subsidiary, PT Prudential Life Assurance, and gives background information about the company using similar wording to that of Complainant's subsidiary's website.

Therefore, the Panel finds it highly probable that Respondent was aware of Complainant when it registered the Disputed Domain Name and, absent any evidence to the contrary from the Respondent, finds it difficult not to believe that Respondent registered the Disputed Domain Name in bad faith.

Complainant also relies on *N.V. Nutricia v. svemirNet Emir Mujezinovic*, WIPO Case n° D2009-0876, to put forth the contention that use of a privacy shield to conceal Respondent's identity may indicate that Respondent was using the Disputed Domain Name in bad faith. The respondent in that case used the privacy shield PrivacyProtect.org to hide his identity, and it was found that, absent any submission of the respondent, this conduct may be an indication of the use of the domain name in bad faith. In the present case, Respondent also used the privacy shield PrivacyProtect.org. The Panel finds that Respondent's use of a privacy shield could be evidence of using the Disputed Domain Name in bad faith.

Taking all of the circumstances into account, the Panel concludes that the Respondent had registered and was using the Disputed Domain Name in bad faith.

6. Decision

Based on the foregoing findings, and in accordance with Paragraph 4(a) of the Policy, the Panel holds that the Disputed Domain Name is confusingly similar to Complainant's "Prudential" trade and service marks; that Respondent has no rights or legitimate interests in the Disputed Domain Name; and that the Respondent registered and used the Disputed Domain Name in bad faith.

The Panel orders that the domain name <asuransi-prudential-indonesia.com> be transferred to Complainant.

Nathalie Dreyfus
Panelist

Dated: June 21, 2010