



WIPO Arbitration and Mediation Center

ADMINISTRATIVE PANEL DECISION

Delta Compression S.R.L. v. Targon Ltd.

Case No. D2008-1934

1. The Parties

The Complainant is Delta Compression S.R.L. of Buenos Aires, Argentina, represented by Allende & Brea Law Firm of Buenos Aires, Argentina.

The Respondent is Targon Ltd. of Saint-Petersburg, Russian Federation.

2. The Disputed Domain Name and Registrar

The disputed domain name <aspro.com> is registered with DomReg Ltd. d/b/a LIBRIS.com (the “Registrar”).

3. Procedural History

The Complaint was brought pursuant to the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), which was adopted by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on August 26, 1999, and approved on October 24, 1999, and in accordance with the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”) as approved on October 24, 1999, and the World Intellectual Property Organization (“WIPO”) Supplemental Rules for Uniform Domain Name Dispute Resolution Policy in effect as of December 1, 1999 (the “Supplemental Rules”).

The Complaint, together with Annexes 1-9, was filed, in English, with the WIPO Arbitration and Mediation Center (the “Center”) on December 17, 2008. On December 18, 2008, the Center transmitted by email to the Registrar a request to verify certain information concerning the disputed domain name. On December 24, 2008, the Registrar transmitted by email to the Center its verification response disclosing that the registrant contact information for the disputed domain name differed from the named Respondent specified in the Complaint. Accordingly, the Center sent an email communication to the Complainant on December 31, 2008 providing the correct contact information as disclosed by the Registrar, and inviting the

Complainant to submit an amended Complaint. The Complainant filed an amended Complaint on January 5, 2009. The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Policy, the Rules, and the Supplemental Rules. For simplicity, all references hereinafter to the Complaint will be to the amended version unless specifically indicated otherwise.

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on January 28, 2009. In accordance with the Rules, paragraph 5(a), the due date for Response was February 17, 2009. The Response was filed with the Center on January 23, 2009.

The Center appointed Peter L. Michaelson as the sole panelist in this matter on February 23, 2009. 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.

As to the language of the proceeding, on December 31, 2008, the Center notified the parties that the Complaint had been filed in English, however as confirmed by the Registrar the registration agreement for the disputed domain name was in Russian. Consequently, through the notification, the Center informed the parties that, in the absence of an agreement between the parties and subject to the discretion of this Panel, the language of the proceeding would typically be that of the registration agreement, i.e., Russian. The Complainant was invited to submit: (a) proof of any such agreement as to the language, (b) the Complaint translated into Russian, or (c) a request, including suitable arguments and supporting material, to the Center for English to be the language of the proceeding. In section XIV of the Amended Complaint, the Complainant requested that the language be English and provided supporting argumentation. On February 17, 2009, the Respondent submitted, in addition to its Response in Russian, an English-language translation of the Response itself but not its annexes, the latter remained in Russian. Given that the Respondent, in the absence of any request from the Center or any order from this Panel, has accompanied the Response with an English-language translation, as the Panel see if, there is apparently no undue hardship on the Respondent to conduct this proceeding in English. As such and in accordance with Rule 11, the Panel sets the language of this proceeding to be English.

Further, on February 19, 2009, the Complainant submitted a Supplemental Filing to the Center, specifically a letter through which it asked leave of the Panel, under Rule 12, to file a Reply to the Response as well as to submit new objections, new arguments, statements and evidence. For reasons that will shortly become evident, the Panel denies this request as moot.

This dispute concerns one domain name, specifically <aspro.com>.

4. Factual Background

As indicated in the WhoIs registration record provided in Annex 1 to the Complaint, the disputed domain name <aspro.com> was registered on April 1, 1997 to its original registrant, Feedback Technology Limited DBA Aequitas (“Feedback Technology Limited”) of Saint-Petersburg, Russian Federation. That registrant subsequently sold the name to the Respondent on or about October 29, 2008.

A. The Complainant's ASPRO Marks

The Complainant owns an Argentinean trademark registration and numerous counterpart foreign trademark registrations and pending trademark applications throughout the world for the term ASPRO along with a logo. Currently, these foreign registrations illustratively include various countries in South America, Europe and Asia, the United States of America and, of particular interest here, the Russian Federation. The Complainant's mark was granted in the Russian Federation as Registration 351895 on June 5, 2008 with priority to July 14, 2006.

This mark is registered in international classes 6, 7, 9 and 37 for: "metal containers for compressed gas or liquid air, gas compressors; protective metal containers being parts of gas compressors and fuel pumps for service stations; automated process control system, namely, micro-processor based hardware and software used to monitor the status of industrial machinery, namely turbines, generators and compressors respectively and installation and repair services of said goods".

B. The Complainant

The Complainant is a company duly registered and incorporated under the laws of Argentina. It has been doing business in Argentina since the year 1975 and was initially known as Metalúrgica Aspromonte Hnos.

In 1987, the Complainant manufactured its first natural gas compressor bearing the mark ASPRO. Since that time, the Complainant has been successfully marketing the ASPRO CNG (compressed natural gas) compressor. During 1991, the Complainant exported and distributed that compressor in various countries around the world.

The name ASPRO has its origin in the last name of the original founders (and current managers) of the Complainant: Jose Reinaldo and Vincenzo Aspromonte.

Not only does the Complainant possess a Russian trademark registration for the mark ASPRO, but also, since 2005, the Complainant has been using that mark in commerce around the world including in the Russian Federation. Specifically, the Complainant provided a copy of an International Sale of Goods Agreement (which appears in Annex 8 to the Complaint) dated May 10, 2005 between it and a buyer, Delta AVTO Ltd of Novorossiysk, Russian Federation, evidencing its sale of a natural gas compressor, bearing the mark, to the buyer with that compressor to be shipped from Complainant's location in Buenos Aires to the purchaser's location in the Russian Federation.

On November 11, 2008, the Complainant's counsel in Buenos Aires sent a letter, by courier (UPS), to the registrant, Feedback Technology Limited, which informed that registrant of the Complainant's marks, including that in the Russian Federation, and that the disputed domain name infringed those marks, and demanded transfer of the disputed domain name to the Complainant. Counsel had addressed that letter to the registrant's name and address as had existed at the time in the WhoIs registration record for the name, i.e., the original registrant. A copy of this letter appears in Annex 4 to the Complaint. According to a letter (a copy of which appears in Annex 5 to the Complaint) dated December 4, 2008 from the courier, the courier was unable to locate the intended recipient at the specified address and thus was unable to deliver the letter; the courier's letter stated in pertinent part:

"By the present, we hereby inform that shipment with UPS under tracking number 1Z62165A0441530450 could not be delivered to

consignee FEEDBACK TECHNOLOGY LTD because at the address informed in waybill, no such company was registered. ...”

The Complainant, on January 5, 2009 -the same day it filed its amended Complaint with the Center, sent the same letter as it had sent on November 11, 2008, though now as an email message, but addressed to the Respondent rather than the original registrant. A copy of that email message appears in Annex 7 to the Complaint. The Complainant never received any response to its January 5th message.

C. The Original Registrant and the Respondent

At least as late as December 18, 2008 - the filing date of the original Complaint, the original registrant, Feedback Technology Limited, offered the disputed domain name <aspro.com> for sale through Sedo.com at a minimum price of USD500 - as indicated in Annex 6 to the Complaint by a hard-copy printout of a screenshot from that site of the entry for that name.

The original registrant has apparently never used the name since having registered it in April 1, 1997 and subsequently sold that name to the Respondent on or about October 29, 2008.

The Respondent is currently starting the “Association of Professionals” (which it abbreviates as “AsPro”) and purchased the domain name for use as an address for its upcoming website for that Association.

The Respondent is forming the Association as a vehicle to competitively select “top professionals in different spheres of business and public activity in the Russian Federation” (and its subunits) in order to “create an expert community determined to facilitate and improve the law-making process in the Federation and to make expert judgments on the most important projects carried out both by the state and private sectors of the Russian economy”. (Response, paragraph 1.1, page 4)

In conjunction with its efforts, the Respondent purports to have provided copies (though only in Russian) of: an order it issued on November 1, 2008 which sets forth prospective guidelines for founding of the Association including officers of the organization and financial benchmarks; a business plan for developing the Association; a contract for purchasing equipment and materials for use by the Association; a contract dated October 29, 2008 between the Respondent and a website developer (OfisMail Ltd.) for developing a website for the Association; an insurance certificate dated October 29, 2008 issued by a Russian insurance company “Votum” apparently insuring Respondent’s against infringement of any third-party rights in the name <aspro.com>; a draft charter of the Association; and a contract dated October 2, 2008 for founding the Association. A copy of each of these documents as provided by the Respondent collectively appear in separate annexes to the Response.

D. Judicial Notice taken by the Panel

The Panel takes judicial notice that, as of March 28, 2009 when the Panel itself accessed the website to which the disputed name then resolved, the home page that resulted clearly stated that the domain name was for sale. The seller set a minimum price in excess of USD500. By clicking on the “this domain is for sale” link which was displayed on the home page, the Panel was then directed to a sub-page on the same site which detailed the process for making an offer and the sale process itself. By clicking on the “FAQ” (frequently asked questions) link appearing on the home page, the Panel

was directed to another page on the same site which provided answers to various questions surrounding purchase of the name. Those questions included “I placed my bid in escrow and confirmed it on your site. When will I receive e-mail from escrow or your reaction on my offer? Do you recommend choosing escrow option? Will I receive full and sole control over the domain name in the end of the transaction? How do you pass control over the domain name to me?” The displayed home page and the FAQ sub-page appear to be the same as those shown from the “Sedo.com” site and provided in Annex 6 to the Complaint.

5. Parties’ Contentions

A. Complainant

(i) Identical or Confusingly Similar

The Complainant contends that the disputed domain name is identical to the Complainant’s mark ASPRO.

Specifically, the Complainant states that the name solely consists of its mark ASPRO apart from the addition of the “.com” gTLD (generic top level domain), with the latter being of no significance in assessing identity or confusing similarity between the name and the mark.

Hence, the Complainant believes that it has satisfied the confusing similarity or identity requirement in paragraph 4(a)(i) of the Policy.

(ii) Rights or Legitimate Interests

The Complainant contends, for various reasons, that the Respondent has no rights or legitimate interests in the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy.

First, before receiving any notice of the present dispute, the Respondent was not using the name in connection with a *bona fide* offering of goods or services.

Second, the name was registered by the Respondent with the sole intent to offer it for sale or transfer it to a third party willing to pay in excess of USD500 for it, as evidenced by its being parked at the “Sedo.com” site for sale.

Third, the Respondent is not commonly known by the name nor there is any evidence that Respondent has ever used the mark ASPRO as a trade name, commercial name, registered name or any other similar name to identify itself.

(iii) Registered and Used in Bad Faith

Lastly, the Complainant contends, for various reasons, that the Respondent registered and is now using the disputed domain name in bad faith under paragraph 4(a)(iii) of the Policy.

First, the Complainant alleges that the name was acquired primarily for resale at an amount exceeding its original cost of registration. In that regard, the Respondent is offering the name for sale through Sedo.com for an amount greater than USD500. Further, since the Respondent apparently knew that the Complainant has been selling

its goods in the Russian Federation since 2005 - well before the Respondent obtained the name, then the Respondent obviously acquired the name for its eventual resale either to the Complainant or to a third-party seeking to damage the Complainant's reputation or dilute its mark ASPRO.

Second, the Respondent has not used the name to resolve to an operational website since the name was registered, hence passively holding the name throughout the ensuing time. Moreover, the parking page site to which the name resolves is not indexed by any search engine nor, due to blockage by its owner, present in any Internet Archive. Specifically, a search of the name in the Internet Wayback Machine ("http://www.archive.org/index.php") provides the following result: "Robots.txt Query Exclusion. We're sorry, access to 'http://www.aspro.com' has been blocked by the site owner via robots.txt." (See the screen shot of the results from the Wayback Machine provided in Annex 7 to the Complainant).

Lastly, the Complainant alleges that the conduct of the original registrant in providing incorrect or false contact details to the registrar and which appears in the WhoIs registration record, also reflects bad faith.

B. Respondent

(i) Identical or Confusingly Similar

The Respondent does not contest the Complainant's allegations that the disputed domain name is identical to the Complainant's mark ASPRO.

(ii) Rights or Legitimate Interests

The Respondent takes the position, contrary to the Complainant's contention, that for various reasons, that it possesses rights and legitimate interests in the disputed domain name.

First, the Respondent states that the term "Aspro" consists of two elements: "As" being an abbreviation for the word "Association" and "Pro" being an abbreviation for the word "Professional". Both of these words are generic and thus the likely meaning of the term "Aspro" is a short-hand form of an association for professionals - which is exactly how the Respondent intends to use the name. Further, in the Russian language, the term "AC" has, as a secondary meaning that of a "top professional" or "big master") as evidenced from a definition from provided in a separate annex to the Response from "http://slovari.yandex.ru/dict/bse/article/00004/72000.htm?text=%D0%B0%D1%81".

Second, the Respondent never intended to injure the Complainant's trademark rights in the mark ASPRO by incorporating that mark into a domain name that would be used in conjunction with the goods or services marketed or furnished by the Complainant.

Third, the Respondent, prior to having received notice of the present dispute, has made demonstrable preparations to use the name in connection with a *bona fide* offering of goods or services.

Lastly, a number of third-parties have registered trademark rights in the term "Aspro" which indicates just how weak the Complainant's rights and legitimate interests are in that term when used as the Complainant's mark.

(iii) Registered and Used in Bad Faith

The Respondent also disputes the Complainant's contentions regarding bad faith by asserting that the Respondent did not register or use the disputed domain name in bad faith.

First, the Respondent had no prior knowledge of the Complainant or of any of its products bearing the mark ASPRO when the Respondent acquired the name. In that regard, the Complainant failed to provide any evidence of such knowledge.

Second, as the Respondent acquired the name specifically for use with the association it was then founding, the Respondent did not acquire the name primarily to resell it. Since the time the Respondent acquired the name, it has not approached the Complainant with any offer to sale the name to the latter, nor has the Complainant provided any proof that the Respondent ever did so.

Third, the Respondent cannot speak for and is neither responsible nor liable for any actions taken by the prior registrant regarding the name.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel finds that the disputed domain name is identical to the Complainant's mark ASPRO.

From a simple comparison of the disputed domain name and the mark, no doubt exists that the disputed domain name is, for all practical purposes, identical to the Complainant's mark ASPRO. The only difference between the name is the appending of the gTLD ".com" to the mark, with that difference being irrelevant in assessing confusing similarity or identity under paragraph 4(a) of the Policy and thus generally ignored. See, e.g., *Pernod Ricard v. Tucows.com Co.*, WIPO Case No. D2008-0789 (August 21, 2008).

Therefore, the Panel finds that the disputed domain name <aspro.com> is identical to the Complainant's ASPRO marks so as to cause confusion; hence, the Complainant has satisfied its burden under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Based on the evidence of record here, the Panel finds that no basis exists which, under the circumstances here, would legitimize the Respondent's claim to the disputed domain name under paragraph 4(c) of the Policy.

The Complainant has never authorized the Respondent to utilize its mark ASPRO, nor does the Complainant apparently have any relationship or association whatsoever with the Respondent. As such, any use to which the Respondent were to put any of the Complainant's marks in connection with the identical or similar goods and services to those currently provided by the Complainant, would seem to violate the exclusive trademark rights now residing with the Complainant. See, e.g., *Unique Brands Enterprises, LLC v. Media Insights, Media Insight*, WIPO Case No. D2008-1749 (January 8, 2009); *MySpace, Inc. v. Edwin De Jesus, EDJ Associates Inc.*, WIPO Case No. D2007-1878 (March 12, 2008); *GoDaddy.com, Inc., v. GoDaddysDomain.com*,

Clark Signs, Graham Clark, WIPO Case No. D2007-0303 (May 7, 2007); *Citgo Petroleum Corporation v. Richard Antinore*, WIPO Case No. D2006-1576 (March 14, 2007); *New Destiny Internet Group, LLC and Xplor Media, Inc. v. SouthNetworks*, WIPO Case No. D2005-0884 (October 14, 2005); *Pelmorex Communications Inc. v. weathernetwork*, WIPO Case No. D2004-0898 (December 28, 2004); *Sybase, Inc. v. Analytical Systems*, WIPO Case No. D2004-0360 (June 24, 2004); *Caesars World, Inc. and Park Place Entertainment Corporation v. Japan Nippon*, WIPO Case No. D2003-0615 (September 30, 2003); *Leiner Health Services Corp. v. ESJ Nutritional Products*, NAF Case No. FA 173362 (September 16, 2003); *MPL Communications, Limited et al v. IWebAddress.com*, NAF Case No. FA 97092 (June 4, 2001); *Treeforms, Inc. v. Cayne Industrial Sales, Corp.*, NAF Case No. FA 95856 (December 18, 2000); and *America Online, Inc. v. Xianfeng Fu*, WIPO Case No. D2000-1374 (December 11, 2000). Consequently, the Respondent could not legally acquire any public association between it and any of the Complainant's marks, for any of the goods and services rendered by the Complainant, or, broadly speaking, any good or service likely perceived by its users to be so similar and/or to emanate from or be related, in any fashion, to those then offered by the Complainant.

While the Respondent views that the services it intends to offer under the disputed domain name, i.e., a site dedicated to its Association, are unrelated to the goods with which the Complainant uses its ASPRO marks such that confusion will not arise, the Panel disagrees with that view. The Panel believes that use of the name will not avoid confusion but rather cause it.

Specifically, the Respondent, by its own admission, will assemble, through its Association and hence its website, an expert community selected such that, in part, the community will "make expert judgments on the most important projects carried out both by the state and private sectors of the Russian economy". It is widely known throughout the world that the Russian Federation has immense reserves of crude oil and natural gas and is a significant world supplier of those commodities to various consuming countries, including supplying natural gas to Western Europe through land-based long-distance pipelines. Such pipelines typically include various compressor stations located along its length to maintain sufficient pressure and flow through the pipeline. Further, it is also widely known that considerable efforts are underway, with both domestic and international participants, to implement additional up-stream exploration and extraction capacity and construct new and/or augment existing transport facilities within the Russian Federation to locate new sources of natural gas and crude oil, extract further natural gas and crude oil from additional and existing fields, and ultimately bring those commodities to market. It is beyond question that all such efforts are extremely important to the Russian economy and which, in all likelihood, the Respondent would classify as "important projects". Consequently, it is quite likely that the Respondent will include suitable experts connected with the Russian natural gas industry in its Association. Inasmuch as the Complainant markets, sells and distributes its products to the Russian natural gas industry - as clearly evidenced by the sales and shipping documents provided in Annex 8 to the Complaint, it stands to reason that some of the experts connected with that industry - particularly, though not exclusively, in the engineering, construction and operational realms - may already know or will know of the Complainant's products. As such, the Respondent's use of the disputed domain name in connection with its Association and its proposed website will likely cause confusion with the Complainant's ASPRO marks, not avoid it.

Further, there is absolutely no evidence of record that the Respondent has ever been commonly known by the disputed domain name. Nor is it likely that the Respondent in

this case could ever become so known, in light of the Complainant's trademark rights in Russian Federation. Inasmuch as the name, since its original registration in 1997, has never resolved to an operational website, then any such use which the Respondent at some future date might ultimately make of the name, which includes the Complainant's mark, would likely infringe the trademark rights residing in the Complainant. See, e.g., *MySpace* and *Treeforms, Inc.*, both cited *supra*.

Hence, based on the evidence before the Panel, the Respondent does not fall within paragraph 4(c)(ii) of the Policy.

Moreover, since the Respondent's use of the disputed domain name, which in this Panel's view infringes the Complainant's trademark rights, cannot constitute a *bona fide* offering of services, the Respondent's conduct does not fall within paragraphs 4(c)(i) or 4(c)(iii) of the Policy either. See, e.g., *Unique Brands*, cited *supra*.

Accordingly, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain name within paragraph 4(a)(ii) and 4(c) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that the Respondent's actions, with respect to the disputed domain name, constitute bad faith registration and use.

It is clear to this Panel that if the Respondent were truly intent on using the disputed domain name in conjunction with the Association which it has founded, then it stands to reason that the Respondent would have at least changed the web page, to which the name resolves, to one that indicates that its site is under construction or will soon be forthcoming, or one which indicates upcoming activity of some sort so as to appropriately inform any interested Internet user, who happens to come across the Respondent's website, of the Respondent's planned Association. The Respondent did not.

Instead, the Respondent maintains the existing web page through which the name resolves and particularly one which still shows the name as being offered for sale. Consequently, in the absence of any explanation to the contrary in the record before this Panel, the Panel can justifiably infer that the Respondent's true intent in purchasing the name was simply to re-sell it at a higher price than it paid. In spite of copies of various above-described Russian-language documents which the Respondent provided (in separate annexes to the Response) and which the Respondent claims reflect its true intent, its action in maintaining the "for sale" page persuasively shows otherwise.

Given this, the Panel believes that the Respondent was aware that the disputed domain name had not been used since its original registration in 1997 and the original registrant's intent was simply to passively hold the name for an eventual sale at a suitable level of profit. Obviously, the Respondent has the same intention. Moreover, it appears to this Panel and contrary to the Respondent's statement to the contrary, that more likely than not the Respondent had knowledge of the Complainant and its mark when the Respondent acquired the domain name from its original registrant and thus perceived a suitable opportunity to eventually profit from sale of the name to the Complainant or a third-party potentially having an adverse relationship with the Complainant.

Consequently, the Panel concludes that the Respondent's conduct as in the case file of record with respect to the disputed domain name constitutes bad faith use and registration under paragraph 4(b)(i) and hence also under paragraph 4(a)(iii) of the Policy.

D. Reverse Domain Name Hijacking

The Respondent requested the Panel to find the Complainant engaged in Reverse Domain Name Hijacking. The Respondent bases its claim on the fact that various third parties have registered the mark "ASPRO" in other countries for goods and services different from those for which the Complainant has registered its mark or has applications pending to register that mark.

Since the Complainant prevailed in this proceeding, this request is denied as moot.

7. Decision

The Complainant has provided sufficient proof of its allegations, with respect to the disputed domain name, to establish a case under paragraph 4(a) of the Policy upon which the relief it now seeks can be granted.

Accordingly, under paragraphs 4(i) of the Policy and 15 of the Rules, the Panel grants the relief sought by the Complainant.

The disputed domain name <aspro.com> is to be transferred to the Complainant.

Peter L. Michaelson
Sole Panelist

Dated: March 30, 2009