

## **ADMINISTRATIVE PANEL DECISION**

Pomona Episaveurs v. Ali Mas

Case No. D2022-1653

### **1. The Parties**

The Complainant is Pomona Episaveurs, France, represented by Clairmont Novus Avocats, France.

The Respondent is Ali Mas, United States of America.

### **2. The Domain Name and Registrar**

The disputed domain name <episaveurs-fr.com> is registered with PDR Ltd d/b/a PublicDomainRegistry.com (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 6, 2022. On May 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 9, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 31, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 1, 2022.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on June 13, 2022. 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.

#### **4. Factual Background**

The Complainant is a French company that belongs to the Pomona group, which is a leading provider in the field of food distribution to professionals and restaurants. The Complainant is specialized in food wholesaling in groceries, beverages, hygiene and maintenance for catering professionals.

The Complainant is the owner of the following trademark registrations:

- EPISAVEURS (design trademark), French trademark No. 3909799, filed and registered on March 30, 2012 in classes 3, 16, 21, 29, 30, 31, 32, 33, 35, and 39.

- EPISAVEURS (word trademark), French trademark No. 3075110, filed and registered on January 5, 2001 in classes 3, 21, 29, 30, 31, 32 and 33.

The disputed domain name <episaveurs-fr.com> was registered on April 27, 2022, and it does not resolve to any active website. However, according to the Complaint, it was used to send fraudulent emails.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant alleges that the disputed domain name is confusingly similar to the Complainant's EPISAVEURS trademark because it reproduces identically and entirely the EPISAVEURS trademark, with the addition of a hyphen followed by the letters "fr", which is the country code for France.

The Complainant also alleges that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainant, the Respondent cannot claim to be making any legitimate noncommercial or fair use of the disputed domain name.

In addition, the Respondent has no rights nor legitimate interests arising from a *bona fide* offering of goods and services or from a legitimate noncommercial or fair use of the disputed domain name as it does not redirect the visitor to a real website. Consequently, the disputed domain name has been used for fraudulent and illegitimate purposes by the Respondent.

Lastly, the Complainant alleges that the Respondent has registered and used the disputed domain name in bad faith.

In addition, the Complainant contends that the disputed domain name was registered for the purposes of fraud and demanding payment of a falsified invoice. In this respect, the Complainant puts forward that the Respondent has used the disputed domain name to send emails usurping the identity of an employee of the Complainant, in this case its administrative and financial manager. The Complainant adds that the disputed domain name is used to send fraudulent emails in order to obtain from the Complainant undue payments corresponding to fake invoices.

According to the Complainant, the Respondent attempted to defraud the Complainant by using the email address associated with the disputed domain name to impersonate an employee of the Complainant.

The Complainant request the transfer of the disputed domain name.

##### **B. Respondent**

The Respondent did not reply to the Complainant's contentions.

## 6. Discussion and Findings

Paragraph 4(a) of the Policy states that the domain name holder is to submit to a mandatory administrative proceeding in the event that a third party (complainant) asserts to an ICANN-approved dispute resolution service provider that:

- (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) the domain name holder has no rights or legitimate interests in respect of the domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

Under paragraph 14(b) of the Rules, the Panel shall draw such inferences from the Respondent's default as the Panel considers appropriate. Nevertheless, the Panel may rule in the Complainant's favor only after the Complainant has proven that the above elements are present.

### A. Identical or Confusingly Similar

Under paragraph 4(a)(i) of the Policy, the Complainant is required to establish that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

The Panel finds that the Complainant has provided sufficient evidence to show that it has rights in the EPISAVEURS trademark. A review of the disputed domain name shows that the disputed domain name comprises the Complainant's trademark EPISAVEURS in its entirety, having added just a hyphen and the letters "fr". Therefore, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademark because it is clearly recognizable in the disputed domain name.

Based on this uncontested evidence, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademark, in which the Complainant has rights, and that paragraph 4(a)(i) of the Policy has been satisfied.

### B. Rights or Legitimate Interests

Under the Policy, a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. Once such a *prima facie* case is made, the respondent carries the burden of production of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.1.

Paragraph 4(c) of the Policy lists the ways that a respondent may demonstrate rights or legitimate interests in the domain name:

- (i) before any notice of the dispute, the respondent's 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) the respondent (as an individual, business or other organization) has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent is 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 this case, the Panel finds that the Complainant has made out a *prima facie* case. In particular, the

Respondent has not submitted any arguments or evidence to rebut the Complainant's contention that it has never authorized, licensed or permitted the Respondent to use the EPISAVEURS trademark in any way.

The Respondent is also not using the disputed domain name in connection with any *bona fide* offering of goods or services (see next point in this decision), nor is Respondent making a legitimate noncommercial or fair use of the disputed domain name. Rather, the illegal use of the disputed domain name can never confer rights or legitimate interests upon the Respondent. Section 2.13 of the [WIPO Overview 3.0](#).

Therefore, the Panel concludes that the Respondent does not have rights or a legitimate interests in the disputed domain name within the meaning of the Policy, paragraph 4(a)(ii).

### **C. Registered and Used in Bad Faith**

The Complainant contends that the Respondent registered and is using the disputed domain name in bad faith.

In the present case, the Panel finds that the Respondent was necessarily aware of the Complainant and its trademark at the time of the registration of the disputed domain name, since the very same day of its registration (April 27, 2022), it has been used to create an email address from which the Respondent has sent fraudulent emails to defraud the Complainant.

The Respondent attempted to impersonate an employee of the Complainant, and the Complainant contends that this fraudulent conduct is sufficient to find a bad faith use of the disputed domain name, even though the disputed domain name has never been operated in connection with an active website (see *Bouygues v. Ange Rita Pasquini*, WIPO Case No. [D2021-3994](#) and *Pomona v. WhoisGuard Protected, WhoisGuard, Inc. / Lamar Derick*, WIPO Case No. [D2021-0361](#)).

The Panel is of the view that the use of a domain name for illegitimate activity is considered as manifest evidence of bad faith (see [WIPO Overview 3.0](#), section 3.4; *Colas, Société Anonyme v. Concept Bale*, WIPO Case No. [D2020-2733](#); and *COLAS, Société Anonyme v. Elliott Murray*, WIPO Case No. [D2020-2417](#)).

Considering the above evidence and findings, the Panel therefore finds that the Respondent registered and is using the disputed domain name in bad faith and that paragraph 4(a)(iii) of the Policy has been satisfied.

### **7. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <episaveurs-fr.com> be transferred to the Complainant.

*/Pablo A. Palazzi/*

**Pablo A. Palazzi**

Sole Panelist

Date: June 27, 2022