

## **ADMINISTRATIVE PANEL DECISION**

### Compagnie de Saint-Gobain v. Adam McGuigan Case No. D2022-2179

#### **1. The Parties**

1.1 The Complainant is Compagnie de Saint-Gobain, France, represented by Nameshield, France (the “Complainant”).

1.2 The Respondent is Adam McGuigan<sup>1</sup>, Canada (the “Respondent”).

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

2.1 The disputed domain name <saint--gobains.com> (the “Disputed Domain Name”) is registered with Wild West Domains, LLC (the “Registrar”).

#### **3. Procedural History**

3.1 The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 15, 2022. On June 15, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On June 16, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on June 28, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on June 28, 2022.

3.2 The Center verified that the Complaint together with the amended 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”).

3.3 In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 29, 2022. In accordance with the Rules, paragraph

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<sup>1</sup> At the time of filing the Complaint, the relevant Whois information showed a privacy or proxy service, “Registration Private, Domains By Proxy”; the Complainant filed an amended Complaint mentioning the Registrar confirmed underlying registrant, “Adam McGuigan” as the Respondent. In the present circumstances, the Panel considers the Registrar-confirmed underlying registrant details of the Disputed Domain Name to constitute the concerned Respondent at issue.

5, the due date for Response was July 19, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 26, 2022.

3.4 The Center appointed Ike Ehiribe as the sole panelist in this matter on August 8, 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

4.1 The Complainant Compagnie De Saint-Gobain, is a French company that specialises in the production, processing and distribution of products for the construction and industrial markets. The Complainant is said to have been in existence for 350 years and is now one of the top 100 industrial groups in the world. The Complainant owns several SAINT-GOBAIN trademarks registered worldwide since 1989, such as International trademark number 551682, registered on July 21, 1989, and also many domain names including the SAINT-GOBAIN trademark for instance <saint-gobain.com> registered on December 29, 1995.

4.2 The Respondent Adam McGuigan is allegedly based in Canada and is recorded as having created the Disputed Domain Name on June 2, 2022, and registered same with the Registrar.

4.3 The Disputed Domain Name revolves to a parking page with commercial links and has been used in a phishing scheme.

#### 5. Parties' Contentions

##### A. Complainant

5.1 The Complainant contends that the Disputed Domain Name is confusingly similar to its well-known and distinctive SAINT-GOBAIN trademark. The Complainant in support, submits that the addition of a hyphen and the letter "s" to its trademark is not sufficient to prevent a finding of confusing similarity when conducting a confusing similarity enquiry. In the same vein, the Complainant submits further that this is a clear case of typosquatting and that slight spelling variations does not also prevent a finding of confusing similarity when conducting a confusing similarity test. See in this regard WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition "[WIPO Overview 3.0](#)", section 1.9. Furthermore, it is submitted that the addition of the generic Top-Level domain ("gTLD") ".com" to the Disputed Domain Name does not also prevent the finding of confusing similarity following the [WIPO Overview 3.0](#), 1.11.1. The Complainant finally draws attention to previous UDRP decisions where panels have upheld the Complainant's rights over the SAINT-GOBAIN trademark for instance see *Compagnie de Saint - Gobain v. Contact Privacy Inc. Customer 1249589662/ Latonya Peterson*, WIPO Case No. [D2021-3664](#).

5.2 With respect to rights and legitimate interests in the Disputed Domain Name, the Complainant argues that the Respondent bears the burden of demonstrating to the Panel whether it owns such rights or legitimate interests in the Disputed Domain Name once the Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. Once the Respondent fails to do so, the Complainant is deemed to have satisfied the requirements of paragraph 4(a)(ii) of the Policy. See in support, *Croatia Airlines d.d v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#). Therefore, the Complainant argues that the Respondent is not commonly known by the Disputed Domain Name nor is the Respondent affiliated with or authorised or licensed by the Complainant to make use of the Complainant's trademark to register the Disputed Domain Name. The Complainant further refers to a screenshot of a website that demonstrates that the Disputed Domain Name revolves to a parking page with commercial PPC links and asserts that such conduct is not a *bona fide* offering of goods and services or legitimate noncommercial or fair use under the Policy. The Complainant also refers to the Respondent's phishing attempts with the Disputed Domain Name by passing itself off as one of the Complainant's employees, as conduct which cannot be described as being a *bona fide* offering of goods or services nor noncommercial or fair use pursuant to paragraph 4(c)(i) & (iii) of the Policy. See the

Complainant's reference to the assertion in the [WIPO Overview 3.0](#) to the effect that previous UDRP panels have repeatedly held that the use of a domain name for illegal activity, such as phishing, distribution of malware and other types of fraud can never confer rights or legitimate interests on the registrant of such a domain name.

5.3 On the question of bad faith use and registration, the Complainant's first submission in support of the requirement of bad faith use and registration, alludes to the recent registration of the Disputed Domain Name on June 2, 2022, viewed against the backdrop of the Complainant's extensive use of its well-known trademark, and the Complainant's operations from its long standing website at "saint-gobain.com". It is on the basis of the foregoing factors, that the Complainant then submits that the Respondent obviously knew of the prior rights of the Complainant and extensive use of its SAINT-GOBAIN trademark before registering the Disputed Domain Name. Secondly, the Complainant argues that since the Respondent has actually passed itself off as one of the Complainant's employees it is reasonable to infer that the Respondent registered the Disputed Domain Name with full knowledge of the Complainant's trademark. In this regard, reliance is placed on the previous decision in *Accor v. SANGHO HEO / Contact Privacy Inc.* WIPO Case No. [D2014-1471](#). Thirdly, the Complainant argues that the Respondent's misspelling of the Complainant's trademark of SAINT-GOBAIN was intentionally designed to be confusingly similar is further evidence of bad faith use. Fourthly, the Complainant also submits that since the Disputed Domain Name resolves to a parking page with commercial links, the Respondent has undoubtedly engaged in bad faith registration and use.

## **B. Respondent**

5.4 The Respondent did not reply to the Complainant's contentions, in the circumstances, the Panel shall draw such adverse inferences from the failure of the Respondent to reply as it considers appropriate.

## **6. Discussion and Findings**

6.1 Under paragraph 4(a) of the Policy, to succeed in the administrative proceeding the Complainant must prove that:

- i) the Disputed Domain Name is identical and confusingly similar to the trademark or service mark of the Complainant;
- ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- iii) the Disputed Domain Name has been registered and is being used in bad faith.

6.2 As expressly stated in the Policy the Complainant must establish the existence of each of these three elements in any administrative proceeding.

### **A. Identical or Confusingly Similar**

6.3 This Panel finds that the Complainant is a well-established company which has been in operation for a considerable length of time, for more than 350 years, and has been operating under the SAINT-GOBAIN trademark in the sustainable habitat and construction markets. See a previous UDRP decision in this regard in *Compagnie de Saint-Gobain v. On behalf of saint-gobain-recherche.net owner, Whois Privacy Service/ Grigore PODAC*, WIPO Case No. [D2020-3549](#) recently upholding the well-established international status of the Complainant. Thus, the Panel finds that on a visual examination of the Disputed Domain Name with the Complainant's SAINT-GOBAIN trademark the Disputed Domain Name is undoubtedly confusingly similar to the Complainant's trademark. The Panel accepts that the mere addition of a hyphen, the letter "s" and the gTLD ".com" does absolutely nothing to prevent a confusing similarity finding. In this regard, see in support, the discussion on the test for confusing similarity in sections 1.7 and 1.8 of the [WIPO Overview 3.0](#).

6.4 Therefore, the Panel is satisfied that the Complainant has established that the Disputed Domain Name is confusingly similar to the Complainant's trademark.

## **B. Rights or Legitimate Interests**

6.5 The Panel is also satisfied that the Respondent has failed to establish that it has rights or legitimate interests in the Disputed Domain Name within the ambit of paragraphs 4 (a)(ii) and 4(c) of the Policy. Once the Complainant has made out a *prima facie* case to the effect that the Respondent lacks rights and legitimate interests in the Disputed Domain Name, the Panel in this respect finds it is for the Respondent to furnish the requisite evidence to demonstrate that it has such rights and legitimate interests in the Disputed Domain Name. The Respondent has failed to provide such evidence. See in this regard, the decisions in *Do The Hustle LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#) and *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, *supra*. The Panel finds that the Respondent is not commonly known by the Disputed Domain Name. In addition, there is no evidence to indicate that the Respondent has been permitted, licensed or authorised to use the Complainant's trademark to register a Disputed Domain Name. The Complainant has adduced credible evidence at Annex 6 attached to the Complaint to indicate that the Disputed Domain Name revolves to a parking page that displays commercial links and at Annex 7 to demonstrate that the Disputed Domain Name has been used in a phishing scheme. The Panel finds that such conduct on any view cannot be described as a *bona fide* offering of goods and services nor a legitimate or noncommercial or fair use of the Disputed Domain Name.

6.6 In the circumstances, the Panel is satisfied that the Complainant has established the Respondent's lack of rights and legitimate interests in the Disputed Domain Name as stipulated in paragraph 4(a)(ii) of the Policy.

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

6.7 With reference to the question of bad faith registration and use the Panel has considered a number of undisputed factors which ultimately enables the Panel to conclude that the Respondent registered the Disputed Domain Name in bad faith with the intention to exploit the Complainant's established reputation in the construction industry and goodwill in the SAINT-GOBAIN trademark.

6.8 First of all, the Panel finds that the Respondent could not possibly be unaware of the Complainant's trademark, and reputation in the construction industry when it elected to register the Disputed Domain Name on June 2, 2022. As submitted by the Complainant, the Complainant was already extensively using its trademark worldwide and its long standing operating website at "saint-gobain.com" before the registration of the Disputed Domain Name by the Respondent was effected. Secondly, as the evidence adduced by the Complainant reveals, the Respondent deliberately misspelt the Complainant's trademark and the Respondent has engaged in a phishing scheme whereby it has passed itself off as an employee of the Complainant. As held in *Accor v. SANGHO HEO /Contact Privacy Inc.*, *supra* the unopposed allegation of engaging in phishing schemes combined with the likelihood of confusion is sufficient evidence of bad faith registration and use. Thirdly, further evidence advanced by the Complainant at Annex 6 demonstrates that the Disputed Domain Name resolves to a parking page that displays PPC commercial links; such conduct has normally been held to be evidence of bad faith use by previous UDRP Panels. Fourthly, as indicated in paragraph 5.4 above, the Panel has drawn adverse inferences from the failure of the Respondent to reply to the Complainant's submissions in these proceedings and or previous correspondence from the Complainant.

## **7. Decision**

7.1 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, <saint--gobains.com>, be transferred to the Complainant.

*/Ike Ehiribe/*

**Ike Ehiribe**

Sole Panelist

Date: August 22, 2022