

## **ADMINISTRATIVE PANEL DECISION**

Screening Eagle Technologies AG. v. Fredrik Holmqvist, PeRiQuito holding  
Case No. D2023-5301

### **1. The Parties**

Complainant is Screening Eagle Technologies AG., Switzerland, represented by Hepp Wenger Ryffel AG, Switzerland.

Respondent is Fredrik Holmqvist, PeRiQuito holding, Sweden.

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

The disputed domain name <screeningeagle.org> (the "Domain Name") is registered with Realtime Register B.V. (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 22, 2023. On December 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On December 27, 2023, the Registrar transmitted by email to the Center its verification response confirming that 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 Respondent of the Complaint, and the proceedings commenced on January 3, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 23, 2024. Respondent did not submit a formal response, but sent an email to the Center on January 3, 2024.

The Center appointed Robert A. Badgley as the sole panelist in this matter on January 26, 2024. 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**

Complainant, based in Canton Zurich, Switzerland, holds several trademark registrations for SCREENING EAGLE, including International Reg. No. 1385881 with a February 24, 2017, priority date, and Swiss Reg. No. 705938 with a February 24, 2017, application date. Both trademarks were registered on August 11, 2017. According to Complainant, it uses the SCREENING EAGLE mark for “apparatus for recording, transmission or reproduction of sound and images, sensors and software in the fields of infrastructure and management as well as for the automotive and metal industries.”

Complainant owns the domain name <screeningeagle.com>, which it registered on December 13, 2016. Complainant uses this domain name to host its commercial website.

The Domain Name was registered on March 15, 2023. The Domain Name currently does not resolve to an active website. At one time, however, the Domain Name resolved to a web page with disparaging comments about a delegate of Complainant’s Board of Directors, to wit: “[...] destroyed screening eagle. Fuck you [...] and your fucking ego fuck you and your flicking gang of cock suckers.”

#### **5. Parties’ Contentions**

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

Complainant contends that it has satisfied each of the three elements required under the Policy for a transfer of the Domain Name.

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

Respondent did not reply to Complainant’s contentions. The entirety of Respondent’s submission in this proceeding is captured in his January 3, 2024, email to the Center.

“We dispute the claim for the domain screeningeagle.org. It’s is not illegal to own a domain with similar name and use it to complain (free speech) about a company. Even if the text is crude, it doesn’t matter, free speech is still free speech. [...] We host anything as long as it’s not SPAM related or child porn!”

#### **6. Discussion and Findings**

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is 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) the Domain Name has been registered and is being used in bad faith.

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

The Panel finds that Complainant holds rights in the trademark SCREENING EAGLE through registration and use demonstrated in the record. The Panel finds further that the Domain Name is identical to that mark.

Complainant has established Policy paragraph 4(a)(i).

## B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] 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 [Respondent] (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 [Respondent] 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.

The Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Name. Respondent claims to have a “free speech” right to register and use the Domain Name, but the Panel disagrees in the circumstances of this case.

Section 2.6.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), states:

“To support fair use under UDRP paragraph 4(c)(iii), the respondent’s criticism must be genuine and noncommercial; in a number of UDRP decisions where a respondent argues that a domain name is being used for free speech purposes the panel has found this to be primarily a pretext for cybersquatting, commercial activity, or tarnishing.”

Section 2.6.2 of [WIPO Overview 3.0](#) states in relevant part:

“Panels find that even a general right to legitimate criticism does not necessarily extend to registering or using a domain name identical to a trademark (i.e., <trademark.tld> (including typos)); even where such a domain name is used in relation to genuine noncommercial free speech, panels tend to find that thus creates an impermissible risk of consumer confusion through impersonation. [...]”

Speech can of course take myriad forms, along spectra including clarity versus incomprehensibility, eloquence versus boorishness, plausible versus implausible, etc. The quality of the speech is largely irrelevant in a UDRP case. Under the UDRP, though, one of the factors potentially relevant is whether the domain name was registered with the genuine motive of exercising one’s right to free speech. Here, the record is murky, given Respondent’s failure to explain his motives vis-à-vis the Domain Name in any detail. Rather, we have a mere claim that Respondent has free speech rights.

The Panel accepts that Respondent has free speech rights, but on this record, the Panel is not convinced that Respondent’s free speech rights extend to his registration of a Domain Name identical to Complainant’s registered trademark, which Domain Name resolved (for a time) to a web page more focused on someone affiliated with Complainant’s Board of Directors. Respondent can mount whatever criticism he wishes about that individual, but there is no valid reason to do so via a Domain Name identical to Complainant’s trademark and the consumer confusion engendered by that identity.

In *The First Baptist Church of Glenarden v. Melvin Jones*, WIPO Case No. [D2009-0022](#), the panel rejected the respondent’s “free speech” defense and ordered a transfer of the subject domain name, which domain name had been redirected to another criticism site operated by the respondent. The *First Baptist* panel observed: “This decision [transfer] will not require Respondent to change one word of the content of his principal site (including his statements about Complainant).” Although the domain name in *First Baptist* was redirected to another website controlled by the respondent, and here, by contrast, the Domain Name resolved to a website unique to the Domain Name, the Panel here does not regard this distinction as crucial to the basic point in *First Baptist*, viz., that Respondent is free to say what he wants about Complainant and

its Directors, but does not have the right to “misleadingly divert consumers” by registering a domain name identical to Complainant’s trademark.

Complainant has established Policy paragraph 4(a)(ii).

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

Paragraph 4(b) of the Policy provides that the following circumstances, “in particular but without limitation,” are evidence of the registration and use of the Domain Name in “bad faith”:

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that Respondent has 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 Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent’s website or other online location, by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of Respondent’s website or location or of a product or service on Respondent’s website or location.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith. The Panel incorporates here its discussion above in the “Rights or Legitimate Interests” section. The Panel finds that Respondent obviously had Complainant and its SCREENING EAGLE mark in mind when registering the Domain Name. His purported criticism makes it clear that he is somehow acquainted with Complainant.

In the *First Baptist* case discussed in the previous section (and in the cases cited therein), the panels’ findings of “bad faith” were based on essentially the same rationale as were employed to support their findings that the respondents lacked rights or legitimate interests in respect of the domain names. Relying on those cases, the Panel in the instant case also concludes bad faith registration and use of the Domain Name for the reasons set forth in the previous section.

Considering the circumstances of the case, the current non-use of the Domain Name does not prevent a finding of bad faith.

Complainant has established Policy paragraph 4(a)(iii).

### **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 Domain Name <screeningeagle.org> be transferred to Complainant.

*/Robert A. Badgley/*

**Robert A. Badgley**

Sole Panelist

Date: January 31, 2024