

ADMINISTRATIVE PANEL DECISION

GEA Group Aktiengesellschaft v. Thomas Giglione, Guaranteed Original Case No. D2022-0608

1. The Parties

The Complainant is GEA Group Aktiengesellschaft, Germany, represented by Bardehle Pagenberg Partnerschaft mbB, Germany.

The Respondent is Thomas Giglione, Guaranteed Original, Viet Nam.

2. The Domain Name and Registrar

The disputed domain name <geastartup.com> is registered with FastDomain, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 22, 2022. On February 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 22, 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 Complainant filed an amended Complaint on February 23, 2022.

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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on February 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 16, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 18, 2022.

The Center appointed John Swinson as the sole panelist in this matter on March 25, 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 large international supplier for the food processing industry. The Complainant has a worldwide sales and service network with subsidiaries and contractual partners and distributors in many countries, including in Viet Nam.

The Complainant owns several trademark registrations for GEA, including International trademark registration numbers 674138, 675007, 1001917 and 1341160, the earliest of which is dated January 30, 1997.

The Respondent did not file a Response, so little is known of the Respondent.

The disputed domain name was registered on January 23, 2022.

At one point in time, the disputed domain name was redirected to a website of “Global Educational Academy” of Viet Nam and Canada. That website, located at the domain name <globaleducation-uk.com>, currently displays contact details that include the disputed domain name as part of an email address, namely “[...]@geastartup.com”. This website appears to market English language tests. On some pages of this website, the website displays the Complainant’s GEA logo with the words “Global Education Academy” under the logo.

At the present time, the disputed domain name does not resolve to an active website.

5. Parties’ Contentions

A. Complainant

In summary, the Complainant makes the following submissions:

The designation GEA Group is the company name of the Complainant, *i.e.* its business identifier. The Complainant has been incorporated under this trade name already as early as in 1906.

The disputed domain name is identical or at least clearly confusingly similar to the Complainant’s marks as it fully incorporates the Complainant’s marks and trade name GEA and merely combines it with the element “startup”.

The Respondent has not registered trademarks or trade names corresponding GEA. The Respondent is not making any *bona fide* use or preparations of use of the disputed domain name. The Respondent is not commonly known under the designation “GEA”.

No license or authorization of any other kind has been given by the Complainant to the Respondent to use the designation GEA, the Complainant’s logo or the disputed domain name.

The Respondent was clearly aware of the Complainant and its trademark rights.

The disputed domain name is used for a redirection to a website at the domain name <globaleducation-uk.com>. On that website, the Respondent offers Visa and immigration services, apparently for people in Vietnam/Asia who are interested in immigrating to Canada and other Western countries.

Use of the GEA logo, trademarks and the disputed domain name combining the mark GEA with the term “startup” is evidence of bad faith under paragraphs 4(a)(iii), 4(b) of the UDRP.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(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.

The onus of proving these elements is on the Complainant.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy provides that the Complainant must establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant owns trademark registrations for GEA.

The disputed domain name is confusingly similar to the GEA trademark. The addition of the word "startup" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark under the Policy.

Where the relevant trademark is recognizable within the disputed domain name, the addition of other words or terms does not prevent a finding of confusing similarity under the first element. Section 1.8 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Complainant succeeds on the first element of the Policy in relation to the disputed domain name.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

(i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] 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 [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or

(iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant.

Previous UDRP panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden of production will shift to the respondent to rebut that *prima facie* case.

The Complainant asserts the Respondent has not registered trademarks or trade names corresponding to GEA, that the Respondent is not making any *bona fide* use or preparations of use of the disputed domain name, and that the Respondent is not commonly known under the designation "GEA".

The Complainant also asserts that no license or authorization of any other kind has been given by the Complainant to the Respondent to use the designation GEA, the Complainant's logo or the disputed domain name.

The Complainant notes that the Respondent has used the terms "Global Entrepreneur Accelerator" and "Global Education Academy" but asserts that this does not constitute a *bona fide* use.

The Panel notes that the Respondent is using the Complainant's logo, and there is no logical reason for the Respondent to do so, other than to mislead Internet users.

The disputed domain name is not registered in the name of "Global Entrepreneur Accelerator" or "Global Education Academy".

The Panel considers that, based upon the above, the Complainant has established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the disputed domain name and thereby the burden shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the disputed domain name.

The Respondent has chosen not to file any Response. The Panel finds that the Respondent has failed to produce any evidence to establish its rights or legitimate interests in the disputed domain name.

Based on the evidence before the Panel, none of the circumstances listed in paragraph 4(c) apply in the present circumstances. Accordingly, the Panel finds that the Respondent has no rights or any legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that the Complainant must establish that the Respondent registered and subsequently used the disputed domain name in bad faith.

In the present circumstances, the fact that the disputed domain name includes the Complainant's GEA trademark, and resolved to a website which included the Complainant's logo, leads the Panel to conclude the registration and use of the disputed domain name is in bad faith.

The Respondent's conduct demonstrates the Respondent's knowledge of the Complainant and the Complainant's trademark. The use of the Complainant's GEA logo makes it clear that the Respondent

specifically knew of and targeted the Complainant. See *Fédération Française de Tennis (FFT) v. Daniel Hall, dotCHAT, Inc.*, WIPO Case No. [D2016-1941](#).

The Respondent has not filed a Response and hence has not availed itself of the opportunity to present any case of good faith that it might have. The Panel infers that none exists. *Regal Funds Management Pty Limited v. WhoisGuard Protected, WhoisGuard, Inc. / John Clerk*, WIPO Case No. [D2020-2773](#).

The Panel finds that the Respondent has intentionally attempted to attract for commercial gain Internet users to its website by creating likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the website under paragraph 4(b)(iv) of the Policy. The Respondent's website also could disrupt the business of the Complainant. The fact that the disputed domain name does not currently resolve to an active website does not prevent a finding of bad faith.

The Panel finds that the Respondent has both registered and used the disputed domain name in bad faith.

The Complainant succeeds on the third element of the Policy in relation to the disputed domain name.

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 <geastartup.com> be transferred to the Complainant.

/John Swinson/

John Swinson

Sole Panelist

Date: April 8, 2022