

## **ADMINISTRATIVE PANEL DECISION**

Société Anonyme des Eaux Minérales d'Evian v. Whoissecure, Whoissecure / Goldengate Design; Toni Subaru; Liongate Design, NA; James Rodrigues, Wave Design;

Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) / Temidire Folarin, N/A ; Alicia Pikyavit;

Domain Administrator, See PrivacyGuardian.org / Waves Emirate; Phillip Olumide; Domain Administrator, See PrivacyGuardian.org / Steve Roberts; Sandra Robert; Privacy Service Provided by Withheld for Privacy ehf / Thomas walker; Oroki Yemi

Case No. D2022-0634

### **1. The Parties**

The Complainant is Société Anonyme des Eaux Minérales d'Evian, France, represented by Eversheds Sutherland (France) LLP, France.

The Respondents are

Whoissecure, Whoissecure, United States of America / Goldengate Design, Nigeria; Toni Subaru, United States of America; Liongate Design, NA, United States of America; James Rodrigues, Wave Design, Nigeria;

Domain Admin, Privacy Protect, LLC (PrivacyProtect.org), United States of America / Alicia Pikyavit, United States of America;

Temidire Folarin, N/A, United States of America;

Domain Administrator, See PrivacyGuardian.org, United States of America / Waves Emirate, United States of America;

Phillip Olumide, United States of America;

Domain Administrator, See PrivacyGuardian.org, United States of America / Steve Roberts, United States of America;

Sandra Robert, United States of America;

Privacy Service Provided by Withheld for Privacy ehf, Iceland / Thomas walker, United States of America; Oroki Yemi, Nigeria (hereafter "the Respondents").

### **2. The Domain Names and Registrars**

The disputed domain names <evianbwaterdecal.com>, <eviandecalpromo.com>, <eviandecalwraps.com>, <evianpromo.online>, <eviantwpromo.com>, <evianwaterpromo.com>, <evianwdecal.com> are registered

with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

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

The disputed domain names <eviandecalspromo.com>, <eviantbdecal.com>, <eviantbpromo.com> are registered with OwnRegistrar, Inc. (the “Registrar”).

The disputed domain names <eviandecalwrap.com>, <evianpromotion.com>, <evianspringwater.online>, <eviantablewater.online>, <eviantpromo.com>, <eviantwater.com> are registered with NameSilo, LLC (the “Registrar”).  
(hereafter the “Domain Names”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 23, 2022. On February 23, 2022, the Center transmitted by email to the Registrars a request for registrar verification in connection with the Domain Names. On February 23, 2022, February 24, 2022, and on March 3, 2022, the Registrars transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on March 4, 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 March 9, 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 Respondents of the Complaint, and the proceedings commenced on March 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 11, 2022. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on April 12, 2022.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on April 28, 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, Société Anonyme des Eaux Minérales d’Evian (SAEME), is a company incorporated under French law, and a subsidiary of Danone S.A., a global food and beverage group built on three businesses: essential dairy and plant-based products, waters and specialised nutrition. The Complainant distributes water from the source of Evian. The Evian water history began in 1789, when the Marquis of Lessert discovered the natural spring water source of Evian in the town of Evian-les-Bains, France.

The Complainant product is marketed on all five continents, in more than 140 countries across the world. Over 1.5 billion bottles of Evian water are sold each year. The EVIAN brand thus is extensively used throughout the world, and has acquired considerable renown, consumer recognition and goodwill at an international level.

The Complainant is the owner of trademarks that include the following:

- International trademark EVIAN + logo No. 696812, registered on July 6, 1998, renewed and covering goods and services in classes 3, 5, 14, 16, 18, 24, 25, 28, 32, 33, and 42;
- International trademark EVIAN EAU MINÉRALE NATURELLE + logo No. 755895 registered on March 14, 2001, covering goods in class 32;
- International trademark EVIAN + logo No. 757317 registered on January 29, 2001, covering goods in classes 3, 5, and 32;
- International trademark EVIAN + logo No. 764050 registered on May 18, 2001, covering goods in classes 3, 16, 18, 25, and 32;
- International trademark EVIAN No. 764063 registered on April 18, 2001, covering services in class 38;
- International trademark EVIAN No. 855738 registered on June 6, 2005, covering services in classes 41, 43, and 44;
- International trademark EVIAN + logo No. 860678 registered on June 6, 2005, covering services in classes 41, 43, and 44;
- United States of America trademark EVIAN No. 1155024 registered on May 19, 1981, renewed and covering goods in class 32;
- United States of America trademark EVIAN No. 1778995 registered on June 29, 1993, renewed and covering goods in class 25;
- United States of America trademark EVIAN No. 2822102 registered on March 16, 2004, covering goods in classes 3 and 32;
- European Union trademark EVIAN No. 001422716 registered on September 18, 2006, covering classes 3, 18 and 32;
- European Union trademark EVIAN + logo No. 001390558 registered on June 6, 2022, covering classes 3, 5, and 32.

The Complainant owns several domain names incorporating its EVIAN mark including <evian.fr>, <evian.us>, <evian.it>, <evian.ca>, <evian.com> and <detoxwithevian.co.uk>.

Most of the Domain Names were registered between August 2021, and September 2021, with a small number registered between June 2021, and July 2021, and only one registered in January 2021.

Some of the Domain Names are used or were used to scam Internet users through advertisement of an identical fake Evian water decal campaign. Other Domain Names are inactive.

## **5. Parties' Contentions**

### **A. Complainant**

The Complainant contends that it is a well-known international company purveying mineral water and submits documentary evidence that it is the owner of and has rights in the EVIAN trademarks.

The Complainant contends that all the Domain Names are confusingly similar to the EVIAN trademarks owned by the Complainant, a trademark that has significant recognition.

The terms “promo”, “promotion”, “water”, “springwater”, “tablewater”, “decal(s)”, “wrap(s)” or “clear” appended to the EVIAN trademark in the Domain Names does not diminish confusing similarity.

The Complainant further contends that the Respondents have no rights or legitimate interests in respect of the Domain Names. The Respondents are not affiliated with the Complainant in any way and they have not been authorized to register or use the EVIAN trademark or any domain name incorporating the trademark.

The Complainant further contends that many of the Domain Names are used or were used to scam Internet users through advertisement of an identical fake Evian water campaign that offers users financial compensation against the display of decals (or wraps) on the users’ car (“a small advert for Evian plastered on your car”). The websites reproduces images of Evian water products and promise users to “earn US\$500 weekly”. Users are thereby incentivized to apply by sharing personal information such as their name, address, phone number, email, age and gender, as well as the name of their bank and model of their car, which would clearly not qualify as a *bona fide* offering of goods or services, quite the opposite in fact.

The Complainant further contends that the Domain Names were registered and are being used in bad faith.

Bad faith can be found where the Respondents “knew or should have known” of the registration of the Complainant’s trademarks prior to registering a domain name. The Complainant’s EVIAN trademarks are highly distinctive and well-known globally, as recognized by several UDRP panels.

The Respondents’ choice of the terms “promo” (or “promotion”) “water”, “decal(s)” or “wrap(s)” to add to the EVIAN trademark in the Domain Names blatantly demonstrates the intention of the Respondent to precisely and openly target the Complainant by causing confusion as to the affiliation of the Domain Names with the Complainant’s goods, its business and its trademarks as they strongly suggest an association with the Evian water distributed by the Complainant.

Moreover, it is clear that the Respondents willingly entered a pattern of behavior registering the seventeen (17) Domain Names that reproduce the Complainant’s EVIAN trademark. The Domain Names all reproduce the exact EVIAN trademark of the Complainant in its entirety, and in first position, with the addition of similar terms in the same language, showing similar naming patterns in the Domain Names.

The Respondents are using the Domain Names in bad faith to intentionally mislead Internet users by creating a likelihood of confusion with the Complainant’s trademarks. There is no doubt that the Respondents are fully aware that Internet users would expect to find a website that is affiliated to, or sponsored by the Complainant at a domain name incorporating the exact EVIAN trademark. Therefore, by incorporating the EVIAN trademarks in the Domain Names, the Respondents are deliberately using the Domain Names to mislead Internet users searching for the Complainant, in order to divert web traffic for commercial gain or other illegitimate benefit by taking advantage of the goodwill built up by the Complainant.

Many Domain Names are used or were used to scam Internet users through advertisement of an identical fake Evian water campaign that offers users financial compensation against the display of decals (or wraps) on the users’ car. Such use of the Domain Names is therefore clearly in bad faith as the Respondent, who was well aware of the Complainant’s trademark EVIAN when registering the Domain Names, intends to create a false association with the Complainant with the purpose of taking advantage of the Complainant’s goodwill.

The Complainant request the consolidation of the Domain Names in one case based on the reasons provided in its complaint.

The Complainant request the transfer of the Domain Names.

## **B. Respondent**

The Respondents did not reply to the Complainant’s contentions.

## 6. Discussion and Findings

Paragraph 4(a) of the Policy states that a respondent is required to submit to a mandatory administrative proceeding in the event that the complainant asserts to the applicable provider, in compliance with the Rules, that:

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

(ii) you have no rights or legitimate interests in respect of the domain name; and

(iii) your domain name has been registered and is being used in bad faith.”

### A. Consolidation

The first issue in this case is whether the Complaint can be consolidated against the various named Respondents, as requested by the Complainant.

The Domain Names were registered in the names of different individuals.

Paragraphs 10(e) and 3(c) of the Rules provide:

“10(e) A Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules.”

“3(c) The complaint may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder.”

These provisions empower the Panel to consolidate multiple domain name disputes in a single decision or for a complainant to file a complaint relating to multiple domain names subject to the requirement that the disputed domain names are registered by the same domain-name holder.

The Complainant argues that:

- current and historical content of the corresponding websites and registration data, provides evidence linking all the Domain Names and establishing that they are subject to common control.

- the consolidation would be fair and equitable to all parties considering, in particular, the fact that the Domain Names are or were used for fraudulent purposes.

- procedural efficiency also favors consolidation: all Domain Names reproduce the exact EVIAN trademark of the Complainant, in its entirety and in first position, followed by identical or synonymous terms in the same language, showing similar naming patterns in the Domain Names as shown in the following chart:

#	Domain name	Trademark	Additional terms
1	<eviandecalspromo.com>	EVIAN	decal + promo
2	<eviantbpromo.com>	EVIAN	promo
3	<eviantbdecal.com>	EVIAN	decal
4	<eviandecalpromo.com>	EVIAN	decal+promo
5	<evianwaterpromo.com>	EVIAN	water+promo
6	<evianbwaterdecal.com>	EVIAN	water+decal
7	<evianwdecal.com>	EVIAN	decal
8	<eviandecalwraps.com>	EVIAN	decal+wrap
9	<evianpromo.online>	EVIAN	promo
10	<eviantwpromo.com>	EVIAN	promo

11	<eviandecalwrap.com>	EVIAN	decal+wrap
12	<eviantpromo.com>	EVIAN	promo
13	<eviantwater.com>	EVIAN	water
14	<evianspringwater.online>	EVIAN	spring water
15	<eviantablewater.online>	EVIAN	table water
16	<evianpromotion.com>	EVIAN	promotion
17	<evianclear.com>	EVIAN	clear

- all the Domain Names were registered through the same few registrars over the course of several weeks at a sustained pace, showing recurring registration patterns and elaborate schemes to register almost on a daily basis.

- more than half of the Domain Names point or pointed to the exact same “scam website”, identical word for word, as can be seen from current or historical content and websites alerting Internet users to the scam. This is the case for the following Domain Names, demonstrating that these Domain Names are subject to common control:

Domain number	Domain name
1	<eviandecalpromo.com>
3	<eviantbdecal.com>
4	<eviandecalpromo.com>
7	<evianwdecal.com>
9	<evianpromo.online>
11	<eviandecalwrap.com>
12	<eviantpromo.com>
13	<eviantwater.com>
17	<evianclear.com>

- As regards the remaining Domain Names, the Complainant provides evidence linking them to the Domain Names listed in paragraph 20 above and establishing that all are subject to the same common control based on the evidence as follows:

- Domain Name No. 2 uses the term “tb” in between the EVIAN trademark and the additional term “promo” as is the case in between the EVIAN trademark and the additional term “decal” for Domain Name No. 3 listed in paragraph 20. Additionally, Domain Name No. 2 was registered through the same registrar as Domain Name No. 3. Therefore, Domain Name No. 2 is clearly under the same common control as the same nine Domain Names listed above.

- Domain Names No. 5 and No. 6 were registered by the same registrant as Domain Name No. 4 listed above. Therefore, Domain Names No. 5 and No. 6 are also under the same common control as Domain Names listed above.

- Domain Name No. 8 and No. 10 were registered through the same registrar as Domain Names No. 4, No. 7 and No. 9 listed in paragraph 20 and display the same naming patterns illustrated in paragraph 18. Further Domain Name No. 8 was registered by the same registrant as Domain Names No. 12 and No. 13 listed in paragraph 20. Moreover, Domain Name No. 8 is identical to Domain Name No. 11 listed in paragraph 20 with the exception of the letter “s” at the end of the additional term “wrap”, and Domain Name No. 10 is identical to Domain Name No. 12 listed in paragraph 20 with the exception of the letter “w” before the additional term “promo”. Therefore, Domain Names No. 8 and No. 10 are clearly under the same common control as Domain Names listed above.

- Domain Names No. 14, 15, and 16 were registered through the same registrar as Domain Names No. 11, No. 12 and No. 13 listed in paragraph 20 and display the same naming patterns illustrated in paragraph 18. Additionally, Domain Name No. 14 was registered within 48 hours of Domain Name No. 6. Domain Names

No. 14 and No. 15 were registered by the same registrant and Domain Names No. 15 and No. 16 were registered at the exact same time, at the same second. Most importantly, there is evidence that Domain Names No. 14 and No. 16 were used for the exact same scam as Domain Names listed above. Therefore, the Complainant states that it is clear that Domain Names No. 14, No. 15, and No. 16 are under the same common control as Domain Names listed above.

The Complainant therefore submits that the Domain Names are subject to common control and consolidation of the Domain Names in this Complaint is fair and equitable to all parties.

It is the view of the Panel that the Complainant has demonstrated by a preponderance of the evidence that all the Domain Names are under common management and control of the same entity.

While the Complaint elaborates further, the Panel forms a strong presumption in these circumstances that the Domain Names are all subject to common control on the basis of at least one similarity across the Domain Names – all the Domain Names use a mix of the terms “decal”, “promo”, “water”, “wrap”, “spring water”, “table water”, “promotion” and “clear”. The Panel also understands that all these terms are related to the Complainant’s current promotion related to the use of a decal in its clients’ cars.

Additional evidence is found in the fact that the Domain Names were registered through the same few registrars over the course of several weeks at a sustained pace, showing recurring registration patterns. Finally, the Panel also notes that more than half of the Domain Names point or pointed to the exact same scam website.

This evidence, on its own, strongly points to connections between all of the named Respondents. Other evidence in this case supports the inference that the Respondents are operating for a common purpose. It is apparent that all of the Domain Names carry a similar meaning – evoking the promotion that the Complainant has prepared related to the use of a decal in its clients case. All of the Domain Names wholly incorporate the Complainant’s mark plus a term related to this promotion or terms related to the Complainant’s products.

None of these statements made in the Complaint or its evidence has been challenged by the Respondents.

In these circumstances, the Panel accepts the Complainant’s statements that the Domain Names are subject to common control. The Complainant has provided detailed evidence related to the Domain Names and the connections between them, as outlined above. The Respondents have provided no evidence in response to that put forward by the Complainant.

The Panel also finds that the consolidation of these disputes would be fair and equitable. On the Complainant’s evidence, and as described further below, all of the Domain Names appear to have been registered with a similar purpose in mind. There is a commonality of facts and issues for each Domain Name. As such, it is more procedurally efficient to proceed with a single decision.

The Panel notes that it is not necessary for it to find that the Domain Names are registered nominally to a single entity or person. As noted above, the issue is whether the Respondents can be treated as a single domain name holder, because they are involved in a common enterprise, and whether it is procedurally fair and efficient to do so. The definition of the “Respondent” under paragraph 1 of the Rules does not exclude the “holder” of the domain name registrations from being a common enterprise, being carried out by multiple individuals.

For these reasons, the Panel agrees to the consolidation of the Complaint in relation to each of the Domain Names.

## **B. Identical or Confusingly Similar**

The Complainant has registered rights in its EVIAN trademark, which was registered well in advance of the registration of the Domain Names.

The Panel finds that all of the Domain Names are confusingly similar to the Complainant's trademark. The Complainant's trademark is wholly incorporated in each of the Domain Names.

All of the Domain Names also add descriptive terms which are related to the Complainant's product or its marketing actions, such as including "water", "decal", "clear", "promo", "wrap", "wraps", "promotion", "spring water", and "table water".

As such, their addition to the Domain Names, alongside the Complainant's trademark, may only serve to increase potential confusion.

The Panel accordingly finds that all the Domain Names are confusingly similar to the EVIAN trademark in which the Complainant has rights, and that paragraph 4(a)(i) of the Policy is satisfied.

## **C. Rights or Legitimate Interests**

The Panel concludes that the Respondents have no rights or legitimate interests in the Domain Names. A respondent may have rights or legitimate interests in a disputed domain name if the respondent was commonly known by the domain name, or if the respondent's use, prior to notice of the dispute, was in connection with a *bona fide* offering of goods or services.

In this case, the Respondents are in default and have therefore provided no evidence that they are commonly known by the Domain Names.

According to the Complaint, the Respondents were using some of the Domain Names to impersonate the Complainant online imitating an Evian water campaign that offers users financial compensation against the display of decals on the users' car and to obtain personal and financial information from those Internet users. The Complaint contains screenshots of the content of some of the Domain Names convincingly evidencing that fact. The Respondents have not denied these assertions of the Complainant which would be expected from a *bona fide* service provider, especially in light of the popularity of such scam operations evidenced in the Complaint. Thus there is no evidenced *bona fide* or fair use of the Domain Names.

For those Domain Names which do not resolve to active websites, their absence of use does not, under the circumstances, prevent a finding of a lack of the Respondent's rights or legitimate interests, in light of the Panel's findings under the third element.

Consequently, the Panelist concludes that the Respondents have no rights or legitimate interests in the Domain Names, so that the requirements of paragraph 4(a)(ii) of the Policy are met.

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

The Panel considers that the Domain Names were registered and are being used in bad faith based on the following evidence:

- It is a well-established principle that registration of a domain name that is confusingly similar to a well-known trademark by any entity that does not have a relationship with that trademark or its owner can amount to sufficient evidence of bad faith registration and use (*Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.*, WIPO Case No. [D2000-0163](#)).

- The Panel accepts the Complainant's assertion that EVIAN is a well-known trademark, protected throughout the world (see *Société Anonyme des Eaux Minérales d'Evian (SAEME) v. Vivi Bui and Evian*



*Dayspa*, WIPO Case No. [D2008-1869](#)). Given that the Complainant has been using the EVIAN trademark for several decades, and that the Complainant's website is used by Internet users from all around the world, the Respondents are more likely than not to have been aware of the reputation and business activities of the Complainant.

- The Panel also accepts the Complainant's undisputed submission that bad faith registration and use of the Domain Names is further indicated by the fact that the Respondents are using the Domain Names to imitate a marketing campaign of the Complainant to obtain personal data from Internet users.

- The Respondents have registered 17 domain names containing a combination of different terms related to the Complainant's product in combination with the well-known EVIAN trademark. Some of the websites at the Domain Names contain what appears to be a fake Evian water campaign that offers users financial compensation against the display of decals on the users' car and to obtain personal and financial information from those Internet users. Even if some of the Domain Names are not being currently used, there appears to be no plausible explanation for their registration. The Panel believes those Domain Names are being passively held, and when considered in the totality of the circumstances, finds that those Domain Names are also registered and used in bad faith for the purposes of the Policy.

- The Respondents have used multiple identities and false and incomplete contact information to conceal their activities, and to continue their fraudulent scheme which is strong evidence of bad faith use and registration.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(iii) of the Policy.

## **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 Names <evianbwaterdecal.com>, <evianclear.com>, <eviandecalpromo.com>, <eviandecalspromo.com>, <eviandecalwrap.com>, <eviandecalwraps.com>, <evianpromo.online>, <evianpromotion.com>, <evianspringwater.online>, <eviantablewater.online>, <eviantbdecal.com>, <eviantbpromo.com>, <eviantpromo.com>, <eviantwater.com>, <eviantwpromo.com>, <evianwaterpromo.com>, <evianwdecal.com>, be transferred to the Complainant.

*/Pablo A. Palazzi/*

**Pablo A. Palazzi**

Sole Panelist

Date: May 15, 2022