

ADMINISTRATIVE PANEL DECISION

Greenyard NV v. Franck Gauthier
Case No. D2022-0654

1. The Parties

The Complainant is Greenyard NV, Belgium, represented by Gevers Legal NV, Belgium.

The Respondent is Franck Gauthier, France.

2. The Domain Name and Registrar

The disputed domain name <greenyard-group-sas.com> is registered with Hosting Concepts B.V. d/b/a Registrar.eu (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 24, 2022. On February 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 28, 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 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 8, 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 March 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 30, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 31, 2022.

The Center appointed Manuel Moreno-Torres as the sole panelist in this matter on April 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

The Complainant, a Belgian company established in 1987 and listed on Euronext Brussels, is a global market leader of fresh, frozen and prepared fruit and vegetables and flowers and plants. The Complainant employs over 9,000 people in 25 countries across the world and has built up substantial goodwill and reputation in the sign Greenyard. The Complainant operates its website at “www.greenyard.group”. The Complainant is the owner of a number of trademarks in different jurisdictions, for example, International trademark GREENYARD with registration No. 1172478, registered July 10, 2013, and International trademark GREENYARD with registration No. 1534951, registered March 18, 2020.

The disputed domain name <greenyard-group-sas.com> was registered on December 15, 2021 and is not redirecting to any active website. However, the disputed domain name has been used in connection to send fraudulent purchase orders to the Complainant’s business supplier.

5. Parties’ Contentions

A. Complainant

The Complainant asserts the Top-Level Domain (“TLD”) “.com” is of no significance when assessing the identity or confusing similarity between the disputed domain name and the Complainant’s trademarks. In the Complainant’s opinion the second-level portion of the disputed domain name <greenyard-group-sas.com> is confusingly similar to the GREENYARD trademark because the disputed domain name incorporates the Complainant’s trademark in its entirety. The Complainant highlights that the mere addition of the hyphens and the generic and/or descriptive terms “group” and “sas” to the disputed domain name does not change the overall impression of the designation as being connected to the trademark of the Complainant. While the term “group” is descriptive and the term “sas” (an abbreviation of “Société par actions simplifiée”) is referred to a French type of business entity, none of these terms would prevent a finding of confusing similarity between the disputed domain name and the Complainant’s trademark GREENYARD.

The Complainant alleges that the Respondent has no rights or legitimate interests in the disputed domain name <greenyard-group-sas.com>. First, the Respondent does not own any valid trademark registration for “greenyard” or “greenyard group sas” according to the searches attached to the Complaint. Second, and to the Complainant’s knowledge, the Respondent is not commonly known by the disputed domain name. Third, the Respondent does not have any connection or affiliation with the Complainant whatsoever nor has it received any license or consent, express or implied, to use the Complainant’s GREENYARD trademark in a domain name or in any other manner.

Further, the Complainant refers to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 2.5.1 where UDRP panels have found that domain names identical to a complainant’s trademark carry a high risk of implied affiliation. The additional terms “group” and “sas” do not avoid such risk, insists the Complainant. Such attempt to impersonate the Complainant can be further inferred from the content of the fraudulent emails sent from “[...]@greenyard-group-sas.com” and other related email accounts such as “[...]@greenyard-group.com”. The Complainant points out that the panel in *Greenyard NV v. Withheld for Privacy Purposes, Privacy Service Provided by Withheld for Privacy ehf / Franck Gauthier*, WIPO Case No. [D2021-3469](#) has ordered the transfer of the domain name <greenyard-group.com> to the Complainant. Effectively, says the Complainant, the disputed domain name is being used by the Respondent in connection with a fraudulent phishing scheme and scam, of which one of the Complainant’s suppliers of packaging materials has become the victim by delivering goods without any payment received from the Respondent. The Complainant also notes how the fraudulent emails bear the name and address of one of the Complainant’s affiliated companies, namely, Greenyard Fresh France SAS,

and depict the Complainant's logo in such emails.

With regard to the third element of the Policy, the Complainant asserts that the Respondent has provided false information in connection to his contact details.

Further, having in mind the well-known value of the GREENYARD trademark, the Respondent cannot reasonably claim that it was not aware of the existence of the Complainant, its trademarks and goods when registering the disputed domain name. The addition of the term "group" reinforces the connection with the Complainant's activities and the previous knowledge of the Complainant comes out as well from the use of the disputed domain name for the phishing scheme by impersonating the Complainant.

The Complainant is of the opinion that the registration and use of the disputed domain name falls within the scope of paragraph 4(b)(iv) of the Policy, and that a finding of bad faith derives from the fraudulent phishing scheme.

Finally, the Complainant alleges that the Respondent has engaged in a pattern of conduct within the meaning of paragraph 4(b)(ii) of the Policy. A "pattern of conduct" as required in paragraph 4(b)(ii) of the Policy typically involves multiple domain names directed against multiple complainants, but may also involve multiple domain names directed against a single complainant and here the latter applies. Here, the Respondent has also been the respondent in another UDRP case filed by the Complainant regarding the domain name <greenyard-group.com>. See *Greenyard NV v. Withheld for Privacy Purposes, Privacy Service Provided by Withheld for Privacy ehf / Franck Gauthier, supra*.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel that:

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

There are no exceptional circumstances within paragraph 5(f) of the Rules to prevent the Panel from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a Response. Under paragraph 14(a) of the Rules in the event of such a "default" the Panel is still required "to proceed with a decision on the complaint", whilst under paragraph 14(b) it "shall draw such inferences there from as it considers appropriate". This dispute resolution procedure is accepted by the disputed domain name registrant as a condition of registration.

A. Identical or Confusingly Similar

The Panel finds that the Complainant holds registered trademark rights over GREENAYARD for purposes of standing to file a UDRP case. That said, it is apparent that the disputed domain name reproduces the GREENAYARD trademark in its entirety with the addition of the terms "group" and "sas". The Panel looks at section 1.7 of the [WIPO Overview 3.0](#), where states: "While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly

similar to that mark for purposes of UDRP standing.”

The Panel notes that the additional terms “group” and “sas” do not prevent a finding of confusing similarity under the first element. See section 1.8 of the [WIPO Overview 3.0](#), “Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.”

Rightly observed by the Complainant, TLDs are generally irrelevant to the consideration of identity or confusing similarity between a trademark and a domain name. See section 1.11 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the disputed domain name <greenyard-group-sas.com> is confusingly similar to the Complainant’s GREENYARD trademark, and therefore the first requirement of paragraph 4(a) of the Policy is met.

B. Rights or Legitimate Interests

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. For such, the Complainant provides evidence that the Respondent does not own any valid trademark registration for “greenyard” or “greenyard group sas”, that the Respondent is not commonly known by the disputed domain name, and that he has not received any license or consent, express or implied, to use the Complainant’s GREENYARD trademark in a domain name or in any other manner. The Panel accepts such allegations and the evidence provided.

Further, the Panel considers the Complainant’s allegations with regard to the phishing scheme associated with the disputed domain name. The composition of the disputed domain name, wholly incorporating the Complainant’s trademark with the additional terms “-group” plus “-sas”, cannot constitute fair use in these circumstances as it effectively impersonates the Complainant. See [WIPO Overview 3.0](#), section 2.5.1. Indeed, by impersonating one of the Complainant’s affiliated companies, the Respondent emailed and contacted one of the Complainant’s suppliers using both the email account “[...]@greenyard-group-sas.com” and the GREENYARD logo. Ultimately, the supplier has become the victim by delivering goods without any payment received in turn from the Respondent.

It is well established that a phishing practice is an illegitimate undertaking that can never confer rights or legitimate interests on a respondent. See [WIPO Overview 3.0](#), section 2.13.1.

No rebuttal of such allegations and evidence have entered into the file since the Respondent did not respond to the Complaint even though the Respondent has been duly notified of the proceeding.

Accordingly the Panel finds that the second requirement of the test is met under the Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

In previous headings, the Panel has determined that the Complainant’s GREENYARD trademark has been entirely incorporated within the disputed domain name, and the disputed domain name has been used by the Respondent in an phishing scam by impersonating the Complainant. Under these circumstances, the Panel is of the opinion that the disputed domain name’s composition along with its use leads to the conclusion that the Respondent had the knowledge of the GREENYARD trademark when registering the disputed domain name. Therefore, the disputed domain name was registered in bad faith.

Besides, the evidence put forward to this Panel demonstrates that the Respondent registered the disputed domain name for the purpose of impersonating the Complainant for commercial gain by sending fraudulent emails. Such circumstances match with those depicted in paragraph 4(b)(iv) of the Policy: by using the

domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

The Panel also finds that paragraph 4(b)(ii) of the Policy applies: "you have 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 you have engaged in a pattern of such conduct". The Respondent has engaged in such a pattern because the Respondent has also been the respondent in another UDRP case filed by the Complainant regarding the domain name <greenyard-group.com>. See *Greenyard NV v. Withheld for Privacy Purposes, Privacy Service Provided by Withheld for Privacy ehf / Franck Gauthier, supra*. So this alone is to be deemed sufficient for a finding of bad faith.

The Panel further notes that the Respondent appears to have provided false contact details when registering the disputed domain name, which may be further evidence of bad faith.

Therefore, the Panel finds that the third requirement of the test is met under 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 disputed domain name <greenyard-group-sas.com> be transferred to the Complainant.

/Manuel Moreno-Torres/

Manuel Moreno-Torres

Sole Panelist

Date: April 22, 2022