

## **ADMINISTRATIVE PANEL DECISION**

Agropur Cooperative v. Ken Ema, agropurcooperative.com  
Case No. D2022-0871

### **1. The Parties**

The Complainant is Agropur Cooperative, Canada, represented by Lavery, De Billy, LLP, Canada.

The Respondent is Ken Ema, agropurcooperative.com, Uganda.

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

The disputed domain name <agropurcooperative.com> (hereafter referred to as the “Disputed Domain Name”) is registered with Tucows Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 11, 2022. On March 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On March 14, 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 15, 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 17, 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 18, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 8, 2022.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on April 18, 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, Agropur Cooperative, is a dairy cooperative based in Québec, Canada.

The Complainant is the holder of numerous trademarks consisting of or including the term AGROPUR, including the following:

- AGROPUR, Canadian word mark registered under No. TMA924955 on January 6, 2016 in classes 1, 5, 29, 30 and 32;
- AGROPUR COOPÉRATIVE LAITIÈRE DAIRY COOPERATIVE, Canadian word mark registered under No. TMA1035943 on July 4, 2019 in classes 1, 5, 29, 30, 32, 35, 38, 41, 42, 43 and 44;
- AGROPUR, European Union word mark registered under No. 012669966 on August 1, 2014 in classes 29, 30 and 32.

The Complainant promotes its cooperative and dairy products on its website linked to the domain name <agropur.com>.

The Disputed Domain Name <agropurcooperative.com> was registered on December 13, 2021 and redirects to the Complainant's website.

#### **5. Parties' Contentions**

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

The Complainant considers the Disputed Domain Name to be confusingly similar to trademarks in which it claims to have rights. According to the Complainant, the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Complainant claims that there is no evidence that the Respondent has used the Disputed Domain Name in connection with a *bona fide* offering of goods or services or that it has made serious preparations to do so. Also, according to the Complainant, the Respondent has never been affiliated with or authorized by the Complainant to use the Complainant's trademarks in any capacity. Finally, the Complainant claims that the Disputed Domain Name was registered and used in bad faith. The Complainant claims that the Respondent is using the Disputed Domain Name to create a likelihood of confusion with the Complainant and its marks for phishing purposes.

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

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

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

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

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer the Disputed Domain Name. As the UDRP proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

- (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 Panel will therefore deal with each of these requirements.

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

To prove this element, the Complainant must first establish that there is a trademark or service mark in which it has rights. The Complainant has clearly established that there are trademarks in which it has rights. The Complainant's trademarks correspond to or include the term AGROPUR and have been registered in various countries in connection to the Complainant's dairy products business.

The Disputed Domain Name incorporates the Complainant's AGROPUR word mark in its entirety, simply adding the term "cooperative" which is also included in some marks of the Complainant. 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 (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#))).

Additionally, it is well established that the generic Top-Level Domain ("gTLD"), here ".com", may be disregarded when considering whether the Disputed Domain Name is confusingly similar to a trademark in which the Complainant has rights.

In light of the above, the Panel considers the Disputed Domain Name to be confusingly similar to the Complainant's trademarks.

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

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* showing that the Respondent has no rights or legitimate interests in the Disputed Domain Name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

The Panel notes that the Respondent has not apparently been commonly known by the Disputed Domain Name and that the Respondent does not seem to have acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is "Ken Ema". The Respondent's use and registration of the Disputed Domain Name was not authorized by the Complainant.

Where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (see section 2.5.1 of the [WIPO Overview 3.0](#)). The Disputed Domain Name incorporates the Complainant's AGROPUR trademark in its entirety and simply adds the descriptive term "cooperative", which is also included in some marks of the Complainant. The combination of the two

terms corresponds exactly to the name of the Complainant. Therefore, the Panel finds that the Disputed Domain Name carries a high risk of implied affiliation with the Complainant and cannot constitute fair use.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, including the absence of a response, support a fair use or not (see sections 2.5.2 and 2.5.3 of the [WIPO Overview 3.0](#)).

The Panel finds no signs of a legitimate noncommercial or fair use of the Disputed Domain Name, as it appears to redirect to the Complainant's website. Moreover, the Complainant provides evidence showing it has been contacted by a German company which received an inquiry from an email address linked to the Disputed Domain Name. According to the Panel, this evidence suggests a phishing attempt using the email function of the Disputed Domain Name.

UDRP panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent (see section 2.13.1 of the [WIPO Overview 3.0](#)).

The Respondent had the opportunity to demonstrate its rights or legitimate interests, but did not do so. In the absence of a Response from the Respondent, the *prima facie* case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the Disputed Domain Name. In light of the above, the Complainant succeeds on the second element of the Policy.

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

The Complainant must prove on the balance of probabilities both that the Disputed Domain Name was registered in bad faith and that it is being used in bad faith (see section 4.2 of the [WIPO Overview 3.0](#) and, for example, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) and *Control Techniques Limited v. Lektronix Ltd*, WIPO Case No. [D2006-1052](#)).

Paragraph 4(b) of the Policy provides a non-exclusive list of factors, any one of which may demonstrate bad faith. Among these factors demonstrating bad faith registration and use is the use of a domain name to intentionally attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

In the present case, the Panel finds that it is inconceivable that the Respondent was unaware of the Complainant and its trademark rights when it registered the Disputed Domain Name.

The Complainant provides evidence of various trademarks registered years before the registration of the Disputed Domain Name. The Disputed Domain Name includes the Complainant's distinctive AGROPUR trademark in its entirety combined with the term "cooperative" which is also included in some of the Complainant's trademarks. The combination of both terms also corresponds exactly to the name of the Complainant. Finally, the Disputed Domain Name redirects to the Complainant's official website. As a result, the Panel finds that it is apparent that the Respondent had the Complainant in mind when registering the Disputed Domain Name.

In the Panel's view, the Respondent's awareness of the Complainant's trademark rights at the time of registration suggests bad faith (see *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#), where it was held that the respondent acted in bad faith when registering the disputed domain name, because widespread and long-standing advertising and marketing of goods and services under the

trademarks in question, the inclusion of the entire trademark in the domain name, and the similarity of products implied by addition of a telecommunications services suffix (“voip”) suggested knowledge of the complainant’s rights in the trademarks).

As mentioned above, the Disputed Domain Name redirects to the Complainant’s official website and the evidence provided by the Complainant suggests that the email function of the Disputed Domain Name was used for phishing purposes in at least one instance.

Given that the use of a domain name for *per se* illegitimate activity such as the sale of counterfeit goods or phishing can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith. Similarly, UDRP panels have found that a respondent redirecting a domain name to the complainant’s website can establish bad faith insofar as the respondent retains control over the redirection thus creating a real or implied ongoing threat to the complainant (see section 3.1.4 of the [WIPO Overview 3.0](#)).

In the Panel’s view, the circumstances of the present case indicate that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant’s trademark.

By failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

Therefore, the Panel finds that, it is shown that the Disputed Domain Name was registered and is being used in bad faith. In light of the above, the Complainant also succeeds on the third and last element 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 <agropurcooperative.com> be transferred to the Complainant.

*/Flip Jan Claude Petillion/*

**Flip Jan Claude Petillion**

Sole Panelist

Date: May 2, 2022