

ADMINISTRATIVE PANEL DECISION

LPG Systems SAS v. Igor O Govtven

Case No. D2022-1300

1. The Parties

The Complainant is LPG Systems SAS, France, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Igor O Govtven, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <lpgmassaj.com> (the “Domain Name”) is registered with Beget LLC (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on March 24, 2022. On April 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 13, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on April 29, 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 April 29, 2022.

The Registrar confirmed that the language of the Registration Agreement for the Domain Name is Russian. On April 28, 2022, the Center sent an email communication to the Parties in both English and Russian regarding the language of the proceeding. The Complainant confirmed its request that English be the language of the proceeding on April 29, 2022. The Respondent did not comment on the language of the proceeding.

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 in both English and Russian of the Complaint, and the proceedings commenced on May 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 26, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 27, 2022.

The Center appointed Piotr Nowaczyk as the sole panelist in this matter on June 7, 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 company focused on development of the technology used for therapeutic, rehabilitation, and beauty treatments. In particular, it designs and produces professional machines for use in cellular stimulation and treatment of connective tissue through massages.

The Complainant was founded in 1986 in Valence, France. Currently, it is present in 110 countries. The Complainant has also been present in the Russian Federation through its local distributors since 1999.

The Complainant is the owner of several LPG trademark registrations, including:

- the International Registration LPG No. 636962, registered on June 6, 1995;
- the International Registration LPG No. 1388863, registered on December 4, 2017;
- the European Union Trade Mark LPG No. 016798671, registered on October 4, 2017.

The Complainant's official domain name incorporating its LPG trademark is <lpgsystems.com>.

The Domain Name was registered on September 2, 2021.

On November 23, 2021, November 29, 2021 and December 6, 2021, the Complainant sent to the Respondent cease-and-desist letters. The Respondent has not responded to the Complainant's correspondence.

In accordance with the screenshots attached to the Complaint, at the time of filling the Complaint, the Domain Name resolved to a website through which the Respondent was promoting a body sculpting studio and was offering treatments using machines linked to the Complainant's competitors (the "Website"). As of the date of this Decision, the Domain Name resolves to the same Website.

5. Parties' Contentions

A. Complainant

The Complainant requests that the Domain Name be transferred to the Complainant. According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the Domain Name is confusingly similar to the LPG trademark registrations of the Complainant.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the Domain Name.

Third, the Complainant submits that the Domain Name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy places a burden on the Complainant to prove the presence of three separate elements, which can be summarized as follows:

- (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 the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The requested remedy may only be granted if the above criteria are met.

At the outset, the Panel notes that the applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence". See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

A. Language of the Proceeding

The language of the Registration Agreement for the Domain Name is Russian. Paragraph 11(a) of the Rules provides that "unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding". The Panel may also order that any documents submitted in a language other than that of the proceeding be translated.

As noted by previous UDRP panels, paragraph 11 of the Rules must be applied in accordance with the overriding requirements of paragraphs 10(b) and 10(c) of the Rules that the parties are treated equally, that each party is given a fair opportunity to present its case, and that the proceeding takes place with due expedition (see, e.g., *General Electric Company v. Edison Electric Corp. a/k/a Edison Electric Corp. General Energy, Edison GE, Edison-GE and EEEGE.COM*, WIPO Case No. [D2006-0334](#)).

The Complainant has submitted a request that the language of the proceeding be English.

The Complainant contends, *inter alia*, that it is unable to communicate in Russian. The translation of the Complaint would unfairly disadvantage and burden the Complainant and delay the proceedings and adjudication of this matter.

Furthermore, the Complainant notes that the Domain Name is comprised of Latin characters. According to the Complainant, the term "lpg" – the dominant part of the Domain Name – does not carry any specific meaning in the Russian language.

Finally, the Complainant submits that it has sent a cease-and-desist letter to the Respondent, which remains unanswered. In particular, the Respondent has not requested that communication continue in Russian.

The Panel finds that substantial additional expense and delay would likely be incurred if the Complaint had to be translated into Russian. Moreover, the Panel notes that the Respondent did not comment on the

language of the proceeding, even though the Respondent was notified in English and Russian regarding the language of the proceeding.

Thus, taking these circumstances into account, the Panel finds that it is appropriate to exercise its discretion and allow the proceeding to be conducted in English.

B. Identical or Confusingly Similar

The first element that the Complainant must establish is that the Domain Name is identical or confusingly similar to the Complainant's trademark in which it has rights.

The Complainant holds several valid LPG trademark registrations, which precede the registration of the Domain Name.

The Domain Name incorporates the Complainant's LPG trademark in its entirety. As numerous UDRP panels have held, incorporating a trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to a registered trademark (see *PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS Computer Industry (a/k/a EMS)*, WIPO Case No. [D2003-0696](#)).

The addition of the term "massaj", which likely constitutes a misspelling of the English term "massage", does not prevent confusing similarity between the Domain Name and the Complainant's trademark. UDRP panels have consistently held that 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, [WIPO Overview 3.0](#).

The generic Top-Level Domain ("gTLD") ".com" in the Domain Name is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test. See section 1.11.1, [WIPO Overview 3.0](#).

Given the above, the Panel finds that the Domain Name is confusingly similar to the Complainant's trademark. Thus, the Complainant has proved the requirements under paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the Domain Name.

The respondent may establish a right or legitimate interest in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- (i) that it has used or made 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 prior to the dispute; or
- (ii) that it is commonly known by the domain name, even if it has not acquired any trademark rights; or
- (iii) that it intends to make a legitimate, noncommercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark.

Although given the opportunity, the Respondent has not submitted any evidence indicating that any of the circumstances foreseen in paragraph 4(c) of the Policy are present in this case.

On the contrary, it results from the evidence in the record that the Complainant's LPG trademark registrations predate the Respondent's registration of the Domain Name. There is no evidence in the case file that the Complainant has licensed or otherwise permitted the Respondent to use the LPG trademark or to register the Domain Name incorporating this trademark. There is also no evidence to suggest that the

Respondent has been commonly known by the Domain Name.

Moreover, it results from the evidence in the record that the Respondent does not make use of the Domain Name in connection with a *bona fide* offering of goods or services, as well as it does not make a legitimate, noncommercial or fair use of the Domain Name without intent for commercial gain.

On the contrary, the Respondent uses the Domain Name to attract Internet users to the Website which promotes the body sculpting studio and offers treatments using machines connected to the Complainant's competitors. Such use of the Domain Name does not constitute a *bona fide* offering of goods and services, as well as does not qualify as a legitimate, noncommercial or fair use without intent for commercial gain.

Given the above, the Respondent has failed to invoke any circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in respect of the Domain Name. Thus, there is no evidence in the case file that refutes the Complainant's *prima facie* case. The Panel concludes that the Complainant has also proved the requirement under paragraph 4(a)(ii) of the Policy.

D. Registered and Used in Bad Faith

The third requirement the Complainant must prove is that the Domain Name has been registered and is being used in bad faith.

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. See section 3.1, [WIPO Overview 3.0](#).

Under paragraph 4(b) of the Policy, evidence of bad faith registration and use includes without limitation:

(i) circumstances indicating the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of a trademark or to a competitor of the trademark owner, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name; or

(ii) circumstances indicating that the domain name were registered in order to prevent the owner of a trademark from reflecting the mark in a corresponding domain name, provided it is a pattern of such conduct; or

(iii) circumstances indicating that the domain name was registered primarily for the purpose of disrupting the business of a competitor; or

(iv) circumstances indicating that the domain name has intentionally been used in an attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with a trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on a website or location.

As indicated above, the Complainant's rights in the LPG trademark predate the registration of the Domain Name. This Panel finds that the Respondent was or should have been aware of the Complainant's trademark at the time of registration of the Domain Name. This finding is supported by the content of the Website which displays the Complainant's trademark and promotes treatments similar to those offered by the Complainant.

Moreover, it has been proven to the Panel's satisfaction that the Complainant's LPG trademark is well known and unique to the Complainant. Thus, it is not likely the Respondent could reasonably ignore the reputation of the products and services under this trademark. In sum, the Respondent in all likelihood registered the Domain Name with the expectation of taking advantage of the reputation of the Complainant's LPG trademark.

Furthermore, the Complainant presented evidence that the Domain Name is used in bad faith by the Respondent to attract Internet users to the Website offering products and services linked to the Complainant's competitors. Thus, this Panel finds that the Respondent uses the Domain Name in an attempt to attract, for commercial gain, Internet users to the Website by creating a likelihood of confusion with the LPG trademark as to the source, sponsorship, affiliation, or endorsement of the Website or the activity carried out through this Website by the Respondent.

Finally, the Respondent failed to respond to the cease-and-desist letters sent by the Complainant. This circumstance constitutes further evidence of the Respondent's bad faith.

For the reasons discussed above, the Panel finds that the Complainant has proved the requirements 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 Domain Name <lpgmassaj.com> be transferred to the Complainant.

/Piotr Nowaczyk/

Piotr Nowaczyk

Sole Panelist

Date: June 21, 2022