

ADMINISTRATIVE PANEL DECISION

Agfa-Gevaert N.V. v. Dysolo Moli, GNNS

Case No. D2022-3251

1. The Parties

The Complainant is Agfa-Gevaert N.V., Belgium, represented by Novagraaf Belgium NV/SA, Belgium.

The Respondent is Dysolo Moli, GNNS, Singapore.

2. The Domain Name and Registrar

The disputed domain name <agfadrystar.com> is registered with Web Commerce Communications Limited dba WebNic.cc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 1, 2022. On September 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 2, 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 September 7, 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 September 8, 2022, with the Center.

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 September 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 5, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 7, 2022.

The Center appointed Benjamin Fontaine as the sole panelist in this matter on October 20, 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 states that it is “active in the photographic sector, medical imaging and medical software sector since many years and enjoys a worldwide reputation. It was formerly very well known as a player in the photography sector, namely as a manufacturer of cameras and film”.

As a basis for this Complaint, the Complainant relies on a number of European Union trade mark registrations, including the trade mark no. 003353463 over the word AGFA, registered on January 24, 2005.

The disputed domain name was registered on July 8, 2022 through a privacy shield. The identity of the Respondent, a person domiciled in Singapore, was disclosed by the Registrar in the course of this proceeding.

The disputed domain name is used to host a pornographic site.

5. Parties' Contentions

A. Complainant

The Complainant has provided the following arguments in support of its Complaint:

On the first element of the Policy, it claims that the disputed domain name is confusingly similar to the trade mark AGFA. It states in this respect that “The dominant part of the Domain Name – AGFA – reproduces the Trademark. The domain name agfadrystar.com further comprises the suffixes ‘dry’ and ‘star’ The addition of these suffixes “dry” and “star” does not detract from the overall impression”.

On the second element of the Policy, the Complainant indicates that it has not authorized in any manner the Respondent to register a domain name incorporating its trade mark AGFA. Besides, the Respondent would not appear to be commonly known under the disputed domain name. Finally, the use of the disputed domain name in connection with a pornographic site tarnishes its trade mark.

On the third element of the Policy, the Complainant makes a number of different contentions: first, it claims that its trade mark is “so famous that the Respondent could not ignore the preexistence of the Complainant’s trade mark rights and the Respondent must have been fully aware of it when selecting the domain name”. Second, it states that the Respondent is intentionally attempting to attract Internet users for commercial gain, by creating a likelihood of confusion with its trade mark. Third, the Complainant adds that it “suspects that the Respondent has selected its reputed trade mark AGFA to draw the impression that it is affiliated with the Respondent, or endorsed by it”. Finally, the Complainant highlights that the use of the disputed domain name for an adult sex site does not amount to a *bona fide* offering of goods and services, insofar it relies on the attractiveness of its trade mark.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy requires that the Complainant prove all of the following three elements in order to be successful in these proceedings:

- (i) the disputed domain name is identical or confusingly similar to a trade mark 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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant, under the first requirement of paragraph 4(a) of the Policy, needs to establish that the disputed domain name is identical or confusingly similar to a trade mark or a service mark in which it has rights. As per the Center's practice, this first criteria is perceived primarily as a standing requirement for the Complainant.

The Complainant has shown that it holds rights over the trade mark AGFA.

The disputed domain name includes the Complainant's trade mark AGFA, combined with the terms "dry" and "star". These additions do not prevent the Complainant's trade mark from being immediately recognizable in the disputed domain name. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"): "Where the relevant trade mark 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. The nature of such additional term(s) may however bear on assessment of the second and third elements."

Hence, the first criteria element set out in paragraph 4(a) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a non-exclusive list of circumstances that may indicate the Respondent's rights or legitimate interests in the disputed domain name. These circumstances are:

- i. before any notice 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 individuals, businesses, or other organizations) has been commonly known by the disputed domain name, in spite of not having acquired trade mark 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 trade mark or service mark at issue.

The Respondent, in not responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain name. This entitles the Panel to draw any inferences from such default as it considers appropriate, pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden of proof is still on the Complainant to make at least a *prima facie* case against the Respondent under the second UDRP element.

In that sense, and according to the evidence submitted, the Complainant has made a *prime facie* case against the Respondent that it has not been commonly known by the disputed domain name and is not

affiliated with the Complainant, nor has it been licensed or otherwise permitted to use the Complainant's trade mark AGFA or to register a domain name incorporating the trade mark AGFA.

Besides, the use of the disputed domain name to host a pornographic site does not amount to a *bona fide* offering of goods or services, insofar as the reproduction of the Complainant's trade mark is certainly not justified to develop this activity.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name.

The second criteria element set out in paragraph 4(a) of the Policy is satisfied.

C. Registered and Used in Bad Faith

In order to prevail under the third element of paragraph 4(a)(iii) of the Policy, a complainant must demonstrate that the disputed domain name has been registered and is being used in bad faith.

Paragraph 4(b) of the Policy lists a number of circumstances which, without limitation, are deemed to be evidence of the registration and use of a domain name in bad faith. These are:

- (i) circumstances indicating that [a respondent has] registered or acquired a disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the complainant or to a competitor of the complainant, for valuable consideration in excess of [the respondent's] documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) [the respondent has] registered the disputed domain name in order to prevent the complainant from reflecting the complainant's trade mark or service mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or
- (iii) the respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] site 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 respondent's] site or location or of a product or service on [the respondent's] site.

In this case, the Complainant claims that its trade mark is "so famous" that the Respondent necessarily targeted it when it registered the disputed domain name. However, the Complainant has failed to provide evidence relating to the alleged notoriety of its trade mark, except an extract from the Complainant's site which, allegedly, provides an overview of its worldwide presence.

The Complainant also relies on a favorable precedent in which a prior UDRP panel recognized the reputation of its trade mark AGFA. See *Agfa-Gevaert N.V.V. Domain Administrator, PrivacyGuardian.org / Yang Huai Yi, Chang Sha Bo Huan Wang Luo Ke Ji You Xian Gong Si*, WIPO Case No. [D2019-1495](#). However, in that previous proceeding the panel outlined expressly that the Complainant had failed to provide evidence of the alleged reputation of its trade mark. However, that panel had taken the initiative to perform its own research.

The Panel also notes that the Complainant has failed to address the meaning and impact of the words "dry" and "star", which are also part of the disputed domain name. It simply mentions that the word "agfa" is the "dominant element".

In spite of these limitations, this Panel is prepared to uphold that the disputed domain name was registered, and is being used, in bad faith. The Respondent did not provide any response and the Panel will uphold the claims of the Complainant, which appear credible on the balance of probabilities. Also, the Panel can rely on

the investigation conducted by the learned panelist in the above-mentioned case. The Panel has also made some very limited factual research on the possible meaning of the expression “dry star” in the pornographic industry, as well as the photographic and imaging industry.

Against this background, the Panel finds that:

- The Complainant’s trade mark enjoys some reputation, or at least was a very reputed brand years ago, at a time when films and film cameras were prominent consumer products. Likely, such reputation extended to Singapore, where the Respondent is located and Complainant contends to have a commercial presence;
- Respondent has configured the disputed domain name by associating the trade mark AGFA of the Complainant as the first element, to the expression “drystar”, which is comprised of two recognizable dictionary terms thus further emphasizing the initial term “agfa”, which appears to have no ordinary meaning other than in connection to the Complainant. Moreover, the Panel found that the Complainant offers a radiological printer product under the name “drystar”, which further suggests the Respondent was aware of the Complainant and its trade mark;
- Respondent has concealed his/her identity with a privacy shield, and has provided incomplete or incorrect contact details;
- Respondent is using the disputed domain name in connection with a pornographic site, where information is displayed in Chinese characters, with no reference to “agfa dry star” or any combination of such elements.

Based on these elements, the Panel is satisfied that the Respondent configured the disputed domain name in order to create confusion and attract Internet users to its pornographic site. This is bad faith registration and use as per paragraph 4(b)(iv) of the Policy.

Accordingly, the third criteria element set out in paragraph 4(a) of the Policy is also satisfied and the Complaint succeeds.

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 <agfadrystar.com> be transferred to the Complainant.

/Benjamin Fontaine/

Benjamin Fontaine

Sole Panelist

Date: November 1, 2022