

## **ADMINISTRATIVE PANEL DECISION**

Altarea v. olivier Petreschi, altarea-gestionprivee  
Case No. D2022-3429

### **1. The Parties**

The Complainant is Altarea, France, represented by Nameshield, France.

The Respondent is olivier Petreschi, altarea-gestionprivee, France.

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

The disputed domain name <altarea-gestionprivee.com> (the “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 September 15, 2022. On September 15, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On the same date, 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 September 21, 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 22, 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 September 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 19, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 26, 2022.

The Center appointed Vincent Denoyelle as the sole panelist in this matter on November 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 following facts are based on the submissions in the Complaint and the Annexes to the Complaint.

The Complainant is a real estate group of companies headquartered in France.

The Complainant is the owner of several trade marks for ALTAREA including the following:

- European Union Trade Mark No. 001148246, ALTAREA, registered on November 8, 2000 and;
- International Registration No. 907441, ALTAREA, registered on July 12, 2006.

The Complainant is also the owner of the domain name <altarea.com> since 1999.

The Domain Name was registered on August 23, 2022 and does not resolve to any website.

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

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

The Complainant contends that the Domain Name is confusingly similar to the ALTAREA trade mark in which the Complainant has rights as the Domain Name incorporates the entire ALTAREA trade mark with the addition of the terms "gestion" and "privee" and that such addition to the Domain Name does not prevent the likelihood of confusion between the Domain Name and the Complainant's trade mark.

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the Domain Name. The Complainant contends that the fact that the Respondent is identified in the Whois database as "altarea-gestionprivee" is merely an attempt by the Respondent to mislead Internet users. The Complainant states that it does not know the Respondent and that the Respondent is not affiliated with the Complainant or authorized by the Complainant in any way to use the Complainant's trade mark. The Complainant also states that it does not carry out any activity for, or has any business with the Respondent. Finally, the Complainant points out that the Domain Name resolves to an inactive website and that the Respondent did not make any use of the Domain Name since its registration, and there is no indication that the Respondent has made any plan to use the Domain Name.

The Complainant contends that the Respondent has registered the Domain Name in bad faith, with the intention to target the Complainant and its ALTAREA trade mark. The Complainant submits that it has acquired over the years a strong reputation and goodwill in its ALTAREA trade mark. The Complainant also considers that the Respondent is using the Domain Name in bad faith. The Complainant submits that given the reputation of its ALTAREA trade mark, no actual or contemplated use of the Domain Name could reasonably be considered as being in good faith. The Complainant also points to the fact that the Domain Name has been set up to allow the sending of emails.

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

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

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

In order to prevail the Complainant must substantiate that the three elements of paragraph 4(a) of the Policy have been met, namely:

- (i) the 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 Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

In the case of default by a party, as is the case here, paragraph 14(b) of the Rules makes it clear that if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

In the absence of a Response from the Respondent whereby the Respondent did not object to any of the contentions from the Complainant, the Panel will have to base its decision on the basis of the Complaint and supporting Annexes.

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

In light of the evidence provided by the Complainant, the Panel is satisfied that the Complainant has substantiated that it holds valid trade mark rights in ALTAREA which is reproduced in the Domain Name.

The second point that has to be considered is whether the Domain Name is identical or confusingly similar to the trade mark ALTAREA in which the Complainant has rights.

At the second level, the Domain Name incorporates the Complainant's ALTAREA trade mark with the addition of an hyphen "-" and the term "gestionprivee". The Panel finds that this addition does not prevent a finding of confusing similarity between the Complainant's trade mark and the Domain Name. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Then there is the addition of the generic Top-Level Domain ("gTLD") ".com". As is generally accepted, the addition of a gTLD, such as ".com", is merely a technical registration requirement and as such is typically disregarded under the first element confusing similarity test.

Thus, the Panel finds that the Domain Name is confusingly similar to a trade mark in which the Complainant has rights.

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

Paragraph 4(c) of the Policy sets out relevant circumstances that could demonstrate that a respondent has rights or legitimate interests in a domain name.

Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate [the respondent's] rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to [the respondent] of the dispute, [the respondent's] use of, or demonstrable 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; or
- (ii) [the respondent] (as an individual, business, or other organization) ha[s] been commonly known by the domain name, even if [the respondent] ha[s] acquired no trade mark or service mark rights; or
- (iii) [the respondent] is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

Numerous previous panels have found under the UDRP that once the Complainant makes a *prima facie* showing that the Respondent does not have rights or legitimate interests in the disputed domain name, the burden of production shifts to the Respondent to rebut the showing by providing evidence of its rights or interests in the disputed domain name.

Having reviewed the Complainant's assertions and evidence, the Panel is satisfied that the Complainant has made a *prima facie* showing that the Respondent lacks rights or legitimate interests in the Domain Name.

The Complainant has stated that it does not know the Respondent and that it has not licensed or otherwise authorized the Respondent to make any use of its trade mark ALTAREA.

Given the goodwill of the Complainant's trade mark ALTAREA (especially in the country of residence of the Respondent) and its strong association with the Complainant, it is highly unlikely that the Respondent could substantiate any actual or contemplated *bona fide* or legitimate use of the Domain Name.

Furthermore, the nature of the Domain Name, comprising the Complainant's trade mark in its entirety in combination with the term "gestionprivee" (meaning "private management" in French, an activity relevant to the Complainant's business), carries a risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#). The Panel further notes that the registrant organization identified in the registration details of the Domain name is "altarea-gestionprivee", however, there is no evidence before the Panel that the Respondent is actually commonly known by the Domain name or "altarea". Rather, it is more likely that such details were specifically chosen to falsely suggest an affiliation with the Complainant.

Thus, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

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

Paragraph 4(b) of the Policy sets out a number of relevant non-exhaustive circumstances, which can be deemed to constitute evidence of registration and use of a domain name in bad faith, namely:

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

Given the circumstances described in the Complaint and the documentary evidence provided by the Complainant, the Panel finds that the Domain Name was registered in bad faith.

The Domain Name reproduces the exact ALTAREA trade mark of the Complainant and this cannot be a coincidence given the overall circumstances of the present case including (i) the goodwill of the Complainant's ALTAREA trade mark and the fact that it is a made up term strongly associated with the

Complainant, (ii) the fact that the Respondent appears to be based in France where the Complainant is headquartered, (iii) the fact that the Domain Name was registered relatively recently and many years after the registration of the trade mark ALTAREA and (iv) the targeted choice of terms appended to the ALTAREA trade mark in the Domain Name.

Thus, the Panel finds that the Domain Name was registered in bad faith.

As for use of the Domain Name in bad faith, given the circumstances described in the Complaint and the evidence provided by the Complainant, the Panel considers that the Domain Name is used in bad faith.

The Domain Name appears to be passively held. Passive use itself does not prevent a finding of the Respondent's bad faith given the overall circumstances here, specifically the goodwill of the Complainant's ALTAREA trade mark, especially in the country where the Respondent appears to be based, the implausibility of any good faith use to which the Domain Name may be put, and the Respondent's default.

In addition, the DNS setup of the Domain Name (with active MX records), along with the composition of the Domain Name, lead the Panel to consider that the Domain Name could be used to deceive Internet users. In these circumstances, the Domain Name constitutes a potential threat hanging over the head of the Complainant.

The fact that the Respondent chose not to object to the Complainant's assertions can only reinforce the Panel's view that the Domain Name is used in bad faith.

Thus, the Panel finds that the Domain Name has been registered and is also being used in bad faith.

## **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, <altarea-gestionprivee.com>, be transferred to the Complainant.

*/Vincent Denoyelle/*

**Vincent Denoyelle**

Sole Panelist

Date: November 21, 2022