

ADMINISTRATIVE PANEL DECISION

ArtMeta AG v. Romain Donnot, N'Break
Case No. DIO2022-0018

1. The Parties

The Complainant is ArtMeta AG, Switzerland, represented by Lenz & Staehelin, Switzerland.

The Respondent is Romain Donnot, N'Break, France, represented by Cabinet d'Avocat LBV, France.

2. The Domain Name and Registrar

The disputed domain name <artmeta.io> is registered with Key-Systems GmbH (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 21, 2022. On April 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 22, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the .IO Domain Name Dispute Resolution Policy (the "Policy"), the Rules for .IO Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for .IO 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 April 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 17, 2022. The Response was filed with the Center on May 17, 2022. On May 18, 2022, the Complainant submitted a Supplemental Filing to the Center.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on May 23, 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 present administrative proceeding arises from a business dispute between the Complainant and the Respondent.

The Complainant is a Swiss joint-stock company which has the stated aim of developing and creating a metaverse consisting of a 3D world, in which artists and galleries of the traditional art market are offered new possibilities in the digital space, especially concerning Non-Fungible-Tokens (“NFTs”). The Complainant’s Managing Director (“Delegierter des Verwaltungsrates”) is Roger Haas.

The Complainant is the owner of Swiss Registered Trademark No. 778543 for the word mark ARTMETA, filed on November 18, 2021 and registered on March 23, 2022 for various goods and services in Classes 9, 28, 35, 36, 37, 38, 39, 41, 42, 43, and 45.

The Respondents are N’Break, a French simplified stock company and its sole owner and employee, Romain Donnot. Unless the context otherwise requires, both N’Break and M. Donnot are together designated as “the Respondent” in this Decision.

From about November 2021 onwards, the Parties collaborated on the creation of a metaverse entitled the “ArtMeta” project. The precise nature and timeline of their relationship is unclear to the Panel, other than that it was based upon a verbal agreement which is now characterized differently by each of them. The Complainant describes the relationship as an agency arrangement (but also refers to there having been an employment relationship in an email to the Respondent dated February 12, 2022). From the Complainant’s perspective, the nature of such arrangement was that N’Break was appointed to develop the metaverse and M. Donnot was to work as the Complainant’s technical manager. The Complainant produces three invoices dated between December 2021 and January 2022 issued by N’Break to the Complainant for work done in respect of the project entitled “Promotional graphics and services for ArtMeta”, “Technical and Development Manager for ArtMeta”, and “Technical and Development Manager for ArtMeta project” respectively (Panel’s machine translation from French).

The Respondent appears to suggest that the relationship was something more than an agency arrangement, possibly a partnership or joint venture, but does not specify exactly what this was. The Respondent specifically focuses on the fact that it is the copyright owner for the metaverse. Crucially, it is clear that the Respondent sees itself as part of the “Founding Team” for the project along with two other people, one of whom is Roger Haas. For example, the Respondent produces a “Light Paper” document, which appears to have been intended for a fundraising exercise for the “ArtMeta” project, in which such “Founding Team” is specifically named, and in which the Respondent, M. Donnot, is listed as “Partner, CTO, Head of Platform Development @ArtMeta.io”. The provenance and authorship of this document, and whether or not it was endorsed by both of the Parties, is unclear. It is not dated, though the media reference contained within it means that it must post-date October 22, 2021. The paper itself indicates an “Activity Schedule” of completed and future activities, including funding rounds and grant funding for the project. While it is not known whether the timeline is accurate, the list of completed activities seem to involve both the Complainant and the Respondent. For example, August 2019 is noted as the founding of the Complainant and a private equity round, while November 2021 to December 2021 covers the set-up of the development team.

The disputed domain name was transferred to the Respondent from its previous owner on or before November 13, 2021 and bears a creation date of November 2, 2021. The associated website appears to be the “metaverse” developed by the Respondent. Prior to the transfer, Mr. Haas negotiated the purchase price of the disputed domain name with its previous owner. The agreed price appears to have been paid in Tethered USD via a digital wallet in the account name “ArtMeta”. The funds were received by the seller on December 17, 2021. Mr. Haas asked the seller to work with M. Donnot on the transfer of the disputed domain name. The essence of the present dispute is that M. Donnot placed the disputed domain name into the organization name of N’Break with himself as the registrant contact and has refused to transfer it to the Complainant after the Parties’ relationship broke down.

In January 2022, disagreements arose between the Parties. From February 2022, there have been various abortive attempts between the Parties to reach a settlement involving the termination of their relationship on an agreed basis. As far as the Panel can determine, at stake is the transfer of the disputed domain name, compensation for the Respondent's work done in developing the metaverse and for the assignment of any related copyright vesting in the Respondent.

5. Parties' Contentions

Due to the volume and complexity of the Parties' submissions, it has been necessary to summarize their contentions and, to a certain extent, to simplify these. The fact that any particular contention may not be expressed in detail in the summary which follows does not mean that it has not been considered. The Panel has reviewed all of the Parties' submissions and documentary evidence before reaching its Decision.

A. Complainant

In summary, the Complainant contends as follows:

The disputed domain name is identical to the Complainant's trademark, the Respondent has no rights or legitimate interests in the disputed domain name, and has registered and/or used the disputed domain name in bad faith.

The Respondent provided services to the Complainant under a verbal agency contract and served as the "ArtMeta" project technical manager from November 2021. The Respondent received compensation for its said services. The Complainant acquired and paid for the disputed domain name. The Respondent was left with the task of completing the transfer and registration of the disputed domain name into the name of the Complainant. The Respondent registered the disputed domain name in its own name and the Complainant only became aware of this when the relationship broke down. This was contrary to the Parties' contractual relationship. The Respondent never had rights or legitimate interests in the disputed domain name.

The Respondent is blocking the Complainant's business with the sole purpose of obtaining money from the Complainant on dubious grounds and has exploited the fact that the disputed domain name has been registered in its name to build up pressure on the Complainant in the context of the settlement negotiations. The Respondent has implied that the disputed domain name belongs to the Respondent and has stated that the Complainant should submit a purchase offer for its transfer. The Respondent is using the disputed domain name as leverage to obtain an increased, illegitimate payment.

The Parties have attempted to reach a settlement by way of various negotiations without success.

Past cases under the Policy cover the scenario where a contractor withholds a domain name that it was only allowed to manage on behalf of the complainant and tries to profit therefrom.

B. Respondent

In summary, the Respondent contends as follows:

The Complaint should be denied.

The Complainant's trademark is descriptive of its services and may not qualify as a valid trademark.

The Respondent is in dispute with the Complainant regarding the Parties' relationship. At the beginning of the "ArtMeta" project, the Parties were supposed to work together. The Respondent was not asked by the Complainant to register the disputed domain name in the Complainant's name. The Complainant agreed to let the Respondent register the disputed domain name. There is no evidence of the Complainant's alleged

request regarding the registrant name of the disputed domain name. As the Complainant bears the burden of proof, the Complainant's assertions regarding such request must be rejected.

The Respondent is the legitimate copyright owner of all content displayed at the website associated with the disputed domain name, including creating the metaverse code and visuals which are still under construction. The Complainant's payment of EUR 24,350 covers the work done but this does not amount to a copyright assignment. The Respondent is exercising a legitimate interest in maintaining control over its copyright works in the artistic metaverse and registered the disputed domain name under its name as it created the copyright works on the associated website. The Complainant merely financed the project.

It is untrue that M. Donnot was only the Complainant's technical manager. The disputed domain name was registered by N'Break, one of two companies in charge of registering the disputed domain name for the Complainant. The Respondent had no intention to obtain money from the Complainant to which it is not entitled. On the contrary, it intended to work with the Complainant. After M. Donnot recovered from ill-health, he learned of the Complainant's intention to eject the Respondent from the "ArtMeta" project. Knowing of M. Donnot's weakness, the Complainant sent a draft settlement agreement containing a copyright assignment provision. This was sent in bad faith. The Respondent was legitimate in its refusal of the offer and in negotiating a transfer of the disputed domain name for value. The offer and counter offers on this subject form part of normal negotiations, which do not prove any bad faith on the Respondent's part. The Respondent was surprised to see the Complainant seize Swiss jurisdiction to attempt to obtain a transfer of the disputed domain name pointing to a website containing the Respondent's copyrighted works. The Complainant is using its best efforts to put pressure on the Respondent to expel it from the project and benefit from its work.

C. Complainant's supplemental filing

In its supplemental filing, the Complainant contends as follows:

The Respondent refers in the Response to Swiss court action but there are no current proceedings between the Parties in any jurisdiction. The Respondent has produced a draft brief of such an action but this is only a draft which has not been submitted to a court at this time. The Complainant will not initiate any court proceedings while the present administrative proceeding is pending. Said draft brief had been shared on a "without prejudice" basis and should not have been referred to in the present proceeding.

Legal proceedings that were initiated by the Complainant in Switzerland were filed in March 2022, but were withdrawn the same month on the basis of a proposed settlement agreement between the Parties. No judgment was rendered on substantive issues.

6. Discussion and Findings

In terms of paragraph 4(a) of the Policy, for the Complaint to succeed, the Complainant must prove each of the following:

- (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 has been registered or is being used in bad faith.

A. Preliminary Matter: Complainant's Supplemental Filing and Court Proceedings

Paragraph 12 of the Rules provides that it is for the panel to request, in its sole discretion, any further statements or documents from the parties it may deem necessary to decide the case. Unsolicited

supplemental filings may nevertheless be considered, according to the Panel's discretion (see *Pure Proactive Health, Inc. d/b/a Betr Health v. Kevin Appelbaum*, WIPO Case No. [DIO2020-0005](#)).

In the present case, the Complainant has submitted a brief supplemental filing to address the Respondent's reference to court proceedings in Switzerland. The Panel is content to admit the Complainant's supplemental filing on the basis that the Complainant could not reasonably have anticipated the nature of the Response on this topic when it filed the Complaint.

Turning to the nature of the supplemental filing, paragraph 18 of the Rules provides:

“Effect of Court Proceedings

(a) In the event of any legal proceedings initiated prior to or during an administrative proceeding in respect of a domain-name dispute that is the subject of the complaint, the Panel shall have the discretion to decide whether to suspend or terminate the administrative proceeding, or to proceed to a decision.

(b) In the event that a Party initiates any legal proceedings during the Pendency of an administrative proceeding in respect of a domain-name dispute that is the subject of the complaint, it shall promptly notify the Panel and the WIPO Center. See Paragraph 8 above.”

The following statement is noted in the “Other Legal Proceedings” section of the Response: “The Swiss jurisdictions were seized. The Zug court and the Zug Court of Appeal rejected the Complainant's case. The third legal action is currently pending.” By contrast, the Complainant assures the Panel that no proceedings between the Parties are presently pending. Although the Respondent states that the Complainant has seized Swiss jurisdiction on three occasions, it does not provide details beyond including what appears to be a court writ in its Annex 5. The Complainant states that this document is merely a draft and has not been used to institute proceedings. The Panel accepts the Complainant's statement. The document has three notable features of being a draft, namely, it has a placeholder for the date, it does not appear to have been signed, and it contains no official markings from the court to which it is addressed.

While the draft writ has not been proceeded with, it appears that there has been previous litigation between the Parties, possibly relating to the disputed domain name, albeit that this is no longer pending. The Complainant notes that certain proceedings between the Parties were both instituted and terminated in March 2022 and that the termination was due to a proposed settlement. No further details of these proceedings have been supplied by either of the Parties. The Panel would have preferred to have understood their nature more fully and to have had more detail as to how and in what circumstances they were terminated, particularly as the Parties appear to be at odds as to whether final decisions were rendered, whether they were terminated for settlement or whether the Complainant's case was “rejected”.

Nevertheless, there does not appear to be any court action currently pending between the Parties, and as the Parties have not elaborated further regarding the previous proceedings, the Panel does not see any reason why it would be inappropriate to proceed to a decision in the present administrative proceeding.

B. Merits

The present case essentially describes a business dispute which happens to have a domain name as its object. It is not a typical cybersquatting case. Nevertheless, the Complainant cites two previous cases under the UDRP, which has substantive similarities to the Policy, in support of its submission that the present case is suitable for a determination under the Policy.

In *Votorantim Participações S.A., Fibría Celulose S.A. v. Aracruz Celulose S.A., Franz Delboni, Netstructure Soluções Ltda.*, WIPO Case No. [D2012-1545](#), the domain name concerned had been handed over to the respondent as part of the management of some 400 domain names in terms of an express domain name management service agreement. The case followed several administrative proceedings filed by other parties against the same respondent in similar circumstances. The decision in one of the previous cases

noted that the respondent's service agreement made provision for the fact that it was merely a management agreement, conferring no intellectual property rights upon the respondent, such that the respondent had no legal rights over the domain names concerned. The respondent in the case did not engage with the administrative proceeding.

In *Nürmont GmbH v. PCC Heilbronn GbR Eberhard Düttra*, WIPO Case No. [D2001-0954](#), the respondent was the Internet service provider and web host of the complainant. The respondent was instructed to develop a website for the complainant, for which the domain name concerned was required, but the respondent registered said domain name in its own name, after which the complainant began to use the domain name for said website. The respondent did not engage with the administrative proceeding and the panel noted that it had reached its decision without the benefit of the respondent's comments, and in doing so had assumed that the complainant's contentions were true.

It may immediately be noted from the synopses of the two cases cited by the Complainant that in neither of these was the nature of the business relationship between the parties, nor any other contentions within the complaints concerned, challenged by the respective respondents. Both of the contractual relationships described were characterized by the respective complainant as the normal agency relationship between a company and its domain name manager. In the present case, by contrast, the Respondent has replied in some detail to the Complainant's contentions along the lines that its relationship to the Complainant is something more than a mere domain name manager, such that it was permitted to register the disputed domain name in its own name when it was transferred from the party which sold it to the Complainant. The Respondent puts forward the "Light Paper", in which the Respondent's M. Donnot is described as a "Partner" and part of the "Founding Team" of the "ArtMeta" project, and submits that the Complainant was the financier of the project "like a movie producer", while the Respondent "created the metaverse". This suggests a more complex relationship than that described in the two previous cases cited by the Complainant.

It appears to the Panel that the Respondent is characterizing the relationship between the Parties as something akin to a partnership or joint venture in which each of the Parties was making a substantial contribution to the "ArtMeta" project. While the Complainant contends for an agent/client relationship, and also an employment relationship, it accepts that the basis for the Parties' dealings was verbally agreed, and was not reduced to writing at any point. Despite attempts to negotiate, the Parties have failed to agree on an *ex post facto* settlement agreement which might have clarified their relationship. The documentary evidence, such as it is, is not conclusive. The invoices prepared by the Respondent could be suggestive of an agency agreement but, equally, it is not unusual in partnerships or joint ventures for ancillary services to be supplied by one or other of the partners to the partnership or joint venture vehicle in furtherance of its objects. Equally, the "Light Paper", while of unknown date and provenance, suggests that the Respondent might have been something more to the "ArtMeta" project than a web developer or employee.

The Panel has reached the conclusion that it is not in a position to determine the nature of the Parties' business relationship and whether or not such arrangement did or did not entitle the Respondent to place the disputed domain name into its own name upon transfer from the selling party. As was noted in an early case under the related UDRP, *The Thread.com, LLC v. Jeffrey S. Poploff*, WIPO Case No. [D2000-1470](#), panels under the Policy are not a general domain name court, and the Policy is not designed to adjudicate all disputes of any kind that relate in any way to domain names. Rather, the Policy is narrowly crafted to apply to a particular type of abusive registration.

Given that the business relationship between the Parties was agreed verbally, the present dispute is better suited to resolution in the courts, where the Parties would have the benefit of oral testimony and cross-examination, as well as discovery procedures and *interim* remedies. Accordingly, while the Panel finds that the case is unsuitable for determination under the Policy, the present Decision should not be taken as a specific endorsement of the case adopted by either of the Parties in their respective pleadings, and it is not addressed to any particular forum that may ultimately be seized of the matter.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Andrew D. S. Lothian/

Andrew D. S. Lothian

Sole Panelist

Date: June 6, 2022