

## **ADMINISTRATIVE PANEL DECISION**

Agropur Cooperative v. Bryan Olson  
Case No. DME2022-0027

### **1. The Parties**

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

The Respondent is Bryan Olson, Canada.

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

The disputed domain name <agropur.me> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 22, 2022. On December 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 23, 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 December 27, 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 December 28, 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 January 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 1, 2023.

The Center appointed Leon Trakman as the sole panelist in this matter on February 9, 2023. 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 North American dairy cooperative founded in 1938, with its headquarters in Quebec, Canada. Commonly known as “Agropur”, it supplies products in the industrial, retail, and food product services. It also owns consumer brand names under which it produces and supplies products.

The Complainant provides a list of its registered trademarks predominantly in Canada, but also in the United States of America (“United States”), and in countries elsewhere such as in South America and Europe. Specific to this case, the Complainant is the owner of one Canadian trademark registration for AGROPUR (TMA924955, registered on January 6, 2016) and three Canadian trademark registrations incorporating the words AGROPUR COOPERATIVE (TMA1056014, registered on September 24, 2019; TMA1035883, registered on July 4, 2019; and TMA1035943, registered on July 4, 2019). The list provided by the Complainant includes a number of further trademarks that incorporate the mark AGROPUR.

The disputed domain name was registered on June 25, 2022, it redirects to the Complainant’s official website. According to the evidence submitted with the Complaint, the disputed domain name was used to send fraudulent emails purporting to have been sent on behalf of the Complainant.

#### **5. Parties’ Contentions**

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

The Complainant contends the following:

- A. the disputed domain name is identical or confusingly similar to its trademark, paragraph 4(a)(i); Rules, paragraphs 3(b)(viii), (b)(ix)(1);
- B. the Respondent has no rights or legitimate interests in the disputed domain name, paragraph 4(a)(ii); Rules, Paragraph 3(b)(ix)(2); and
- C. the Respondent has registered and is using the disputed domain name in bad faith, paragraphs 4(a)(iii), 4(b); Rules, paragraph 3(b)(ix)(3).

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

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

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

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

The element to decide is whether the disputed domain name is identical or confusingly similar to the Complainant’s trademark. The disputed domain name includes the Complainant’s trademark, AGROPUR, in full. In that respect, the disputed name is identical to the Complainant’s mark. The country-code Top-Level Domain (“ccTLD”) suffix “.me” is a standard registration requirement and as such is disregarded under the confusing similarity test. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.11.1. The primary element in the Second-Level of the disputed domain name is identical to the Complainant’s mark and the use of the term “me” does not detract from that similarity.

Accordingly, the Panel holds that the disputed domain name is identical to the Complainant’s trademark, the Complainant has satisfied requirements of the Policy, paragraph 4(a)(i).

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

The second element, to determine whether the Respondent has any rights or legitimate interests in the disputed domain name, whether (as an individual, business, or other organization). Included in that determination is whether the Respondent is, has been, or is commonly known by the disputed domain name. That does not entail requiring that the Respondent has acquired a trademark or service mark in that name.

The burden of proof is on the Complainant to make out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. On doing so the Respondent can adduce evidence of having rights or legitimate interests in the disputed domain name. However, in this case, the Respondent has not provided any such evidence. Hence, the Panel will determine whether the Complainant has made out a *prima facie* case.

On the evidence provided by the Complainant, the Respondent has neither rights nor legitimate interests in the disputed domain name. The Respondent is not commonly known by the disputed domain name, as an individual, business, or in any other capacity. Nor is the Respondent affiliated or otherwise authorized by the Complainant to use the disputed domain name. The Complainant is not associated with the Respondent in any other capacity, whether as an agent with an express, implied, or ostensible right to use the disputed domain name. Nor has the Complainant ratified the Respondent's use of that name. The Respondent is also not authorized to use the name by a third party who has authorization from the Complainant to appoint a third party to so act.

Furthermore, noting the use of the disputed domain name in connection with what appears to be a fraudulent email scheme, and the composition of the disputed domain name, the disputed domain name carries a high risk of the Respondent being assumed to have an implied affiliation with the Complainant. See [WIPO Overview 3.0](#), section 2.5.1.

Accordingly, the Complainant has satisfied the *prima facie* burden of proof that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has not adduced any evidence to the contrary that he has such rights or legitimate interests, leaving the Complainant's case unrebutted.

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

Bad faith registration and use arising when the Respondent has registered and is using the disputed domain name in bad faith pursuant to paragraph 4(a)(iii) of the Policy. The test for establishing bad faith is that the Respondent is using the disputed domain name with the intention, *inter alia*, to induce the belief that he has the right to that use when he has no such right in fact or to take unfair advantage of the similarity with the Complainant's mark. Bad faith use usually arises when the disputed domain name is not being used in connection with a legitimate noncommercial or fair use.

Establishing bad faith use does not require that the Respondent intends to harm the Complainant or the Complainant's business. The test is that the Respondent's use of the disputed domain name could reasonably have that effect of misleading Internet users.

A preliminary inquiry is whether the Respondent, in registering and using the disputed domain name, is reasonably aware of the Complainant's trademark and business operations. In the current case, the Complainant's business is widely known across Canada, and the Respondent is located in Canada. Noting the composition of the disputed domain name, and the facts and circumstances of this case, the Panel finds that the Respondent was aware of the Complainant's mark, and targeted the Complainant.

It is reasonable to determine that the Respondent was in bad faith in registering and then using the disputed domain name. Evidence of that bad faith is significant. It includes the Respondent providing two email addresses to Internet users that are easily perceived as being connected to the Complainant (one of them making use of the disputed domain name), and redirecting the disputed domain name automatically to the Complainant's official website. This action creates the reasonable impression in the minds of Internet users that the Respondent

is the Complainant or is affiliated with the Complainant. The Panel notes that “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 [WIPO Overview 3.0](#), section 3.1.4.

The Respondent in the instant case has gone further in misleading and deceiving Internet users, by sending them fraudulent inquiries, and more seriously, by issuing invoices purportedly in the name of the Complainant. These actions constitute strong evidence that the Respondent used, and is using, the personal names, emails addresses, positions and even signatures of Complainant’s officers to mislead and deceive Internet users. The likely purpose of such action is to secure commercial gain at the expense of Internet users. It is also likely to cause harm to the reputation and business of the Complainant.

Paragraph 4(b)(iv) of the Policy stipulate that, “by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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”.

In this case, the Respondent’s bad faith conduct extends beyond an attempt to create confusion with the Complainant’s trademark. By issuing false invoices in the name of the Complainant and by forging the signatures of the Complainant’s corporate officers, the Respondent is likely engaging in fraud. This action constitutes significant further evidence of bad faith under the Policy.

The Panel determines that the Respondent registered and is using the disputed domain name in bad faith, and that the Complainant has satisfied 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 disputed domain name, <agropur.me>, be transferred to the Complainant.

*/Leon Trakman/*

**Leon Trakman**

Sole Panelist

Date: February 21, 2023