

## **ADMINISTRATIVE PANEL DECISION**

Mr. Dirk Dammers v. Artem Kravchenko

Case No. D2023-0642

### **1. The Parties**

The Complainant is Mr. Dirk Dammers, Germany, represented by BPM Legal, Germany.

The Respondent is Artem Kravchenko, Russian Federation.

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

The disputed domain name <elesgo.org> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 11, 2023. On February 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 14, 2023, 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 (John Doe, REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 17, 2023, 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 February 20, 2023.

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 February 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 15, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 16, 2023.

The Center appointed Steven A. Maier as the sole panelist in this matter on March 21, 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 supplier of surfacing materials for furniture, floor coverings and other applications under the name and trademark ELES GO.

The Complainant is the owner of International trademark registration number 659078 for a figurative mark ELES GO, registered on August 30, 1995 in International Classes 17, 19 and 27. The registration designates territories including the Russian Federation.

The disputed domain name was registered on April 17, 2012.

The Complainant provides evidence that the disputed domain name has resolved to a Russian language website which features the Complainant's ELES GO trademark and a range of the Complainant's flooring products. The website states (in translation) "THE SHOP IS CLOSED. All items are sold out! Our organization is no longer active". The website includes the further statement: "Look for our products in the glossy laminate center at toptorg.org."

#### 5. Parties' Contentions

##### A. Complainant

The Complainant states that it historically licensed a German company to use its ELES GO trademark. It states that that licensee operated a branch office in St Petersburg, Russian Federation until 2006 and that the Respondent was an employee of that licensee. The Complainant submits that the licensee was not entitled to sub-license the use of the trademark to any party and that the Complainant has never licensed or permitted the Respondent to use it.

The Complainant submits that the disputed domain name is identical to its trademark ELES GO.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that it has no relationship with the Respondent and has never authorized him to use its ELES GO trademark, that the Respondent has not commonly been known by the disputed domain name and that the Respondent is making neither *bona fide* commercial use nor legitimate noncommercial or fair use of the disputed domain name.

The Complainant refers to the Respondent's website referred to above and also to the website at "www.toptop.org" to which visitors to the first website are redirected. The Complainant provides evidence of the second (Russian language) website and submits neither of the two websites can amount to a *bona fide* third-party use of its trademark under the criteria set out in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). In respect of the second website, the Complainant submits that the Respondent displays the Complainant's ELES GO trademark, that it offers goods that emanate from the Complainant's direct competitors and that it fails accurately to disclose its relationship with the Complainant, including no relevant disclaimer and stating untruthfully that it is an official representative of the Complainant's products.

The Complainant submits that the disputed domain name was registered and has been used in bad faith. The Complainant contends that the Respondent obviously had the Complainant's trademark in mind when he registered the disputed domain name since he has purported to sell the Complainant's products. The Complainant submits that the Respondent has, however, used the disputed domain name to direct traffic to his second website at "www.toptop.org" where he offers goods from a variety of manufacturers including the Complainant's competitors. The Complainant contends that the Respondent is therefore using the disputed domain name to divert internet traffic to its website by misleading consumers as to a legitimate connection between the disputed domain name and the Respondent's website (paragraph 4(b)(iv) of the Policy).

## B. Respondent

The Respondent did not reply to the Complainant's contentions. However, the Complainant exhibits email correspondence between itself and the Respondent dating from August 2022 and provides a translation of the Respondent's position as follows:

"According to the Russian laws, I do not need a right holder's permission to work... Civil Code Article 1487. Exhaustion of the exclusive right to a trademark. It shall not be an infringement of the exclusive right to a trademark to use that trademark by others in respect of goods that have been introduced into civil circulation in the territory of Russia directly by the right holder or with his consent."

The Respondent adds:

"There is a flow of people looking for glossy laminate through it. And we sell gloss from different manufacturers."

## 6. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (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 and is being used in bad faith.

### A. Identical or Confusingly Similar

The disputed domain name is identical to the Complainant's trademark ELESGO, ignoring the generic Top-Level Domain ("gTLD") ".org" which may typically be disregarded for the purposes of comparison. The Panel therefore finds that the disputed domain name is identical to a trademark in which the Complainant has rights.

### B. Rights or Legitimate Interests

The Respondent claims, in effect, that he is making *bona fide* commercial use of the disputed domain name by using it to sell the Complainant's products which have already been introduced into the Russian Federation and in which the Complainant's trademark rights have been exhausted under Russian law.

Apart from the fact that the Respondent has admitted to using the disputed domain name to sell products from other manufacturers as well as those of the Complainant, proceedings under the UDRP fall to be determined under the terms of the Policy and not necessarily under the trademark laws of any national jurisdiction. The potential legality of the Respondent's conduct under those national laws is not material to the Panel's finding under the Policy as such legality would not automatically translate into rights or legitimate interests in a domain name under the Policy.

The Panel finds in this regard, on the evidence available, that the Complainant has never licensed or authorized the Respondent to register the disputed domain name or otherwise to use its ELESGO trademark (which the Respondent does not in any event dispute).

The Panel also finds the disputed domain name to be inherently deceptive. The Complainant's trademark is fanciful in nature and the disputed domain name adopts the whole of that trademark without adornment other than the gTLD "org". The Panel finds in the circumstances that Internet users will inevitably be misled into

believing that the disputed domain name is owned, operated or authorized by, or otherwise commercially affiliated with, the Complainant.

In certain limited circumstances, a reseller of trademarked goods or services may legitimately incorporate that trademark into a domain name used for the resale of the goods or services in question (see, e.g., section 2.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). However, those circumstances do not include those where the domain name is inherently deceptive or those where the domain name is used to sell goods or services other than those offered by the trademark owner. The circumstances also require that the respondent’s website should accurately disclose its relationship (or lack thereof) with the complainant: that is not the case in this instance and, moreover, the Complainant provides evidence that the Respondent falsely claims to be an official representative of the Complainant’s products.

The Panel finds in the circumstances that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

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

Similar considerations arise in connection with bad faith as discussed in relation to rights or legitimate interests above. The Panel finds the Complainant’s trademark to be fanciful and the disputed domain name to be inherently deceptive, as inevitably implying an affiliation with the Complainant. It is clear on the evidence that the Respondent registered the disputed domain name with the intention of referring to the Complainant’s ELESKO trademark, but did so without the Complainant’s authority or, based on the available record, any other rights or legitimate interests in respect of the disputed domain name. Furthermore, the Respondent has used the disputed domain name for the purpose of a website which redirects Internet users to another website which sells goods from manufacturers other than, and including competitors of, the Complainant.

The Panel therefore finds that, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s trademarks as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its website (paragraph 4(b)(iv) of the Policy).

The Panel finds in the circumstances that the disputed domain name has been registered and is 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 disputed domain name <elesgo.org>, be transferred to the Complainant.

*/Steven A. Maier/*

**Steven A. Maier**

Sole Panelist

Date: April 3, 2023