

## **ADMINISTRATIVE PANEL DECISION**

Peter Millar LLC v. Michael Nava, Domain Nerdz LLC  
Case No. D2023-4766

### **1. The Parties**

The Complainant is Peter Millar LLC, United States of America (“United States”), represented by Corsearch, Inc., United States.

The Respondent is Michael Nava, Domain Nerdz LLC, United States.

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

The disputed domain name <gfore.xyz> is registered with Sav.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 15, 2023. On November 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 16, 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 (Privacy Protection,) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 20, 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 November 25, 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 December 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 24, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 26, 2023.

The Center appointed William F. Hamilton as the sole panelist in this matter on January 15, 2024. 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 owns the trademarks G FORE and G/FORE (collectively the “Marks”). The Complainant offers for sale a distinctive line of golf clothing, apparel, and equipment in the United States and internationally. The Complainant’s products can be purchased online at its websites at “www.gfore.com” and “www.gfore.co.uk” and in retail shops in more than 35 countries.

The Complainant owns numerous registrations for the Marks. In the United States, the Complainant owns the following registrations:

- United States Patent and Trademark Office Registration No. 4035425 for G FORE, dated October 4, 2011;
- United States Patent and Trademark Office Registration No. 4117878, for G/FORE, dated March 27, 2012.

The Complainant promotes its branded products on Facebook®, Instagram®, Twitter® (now “X”), and YouTube®.

The disputed domain name was registered on November 18, 2022, and redirects to a parking page at Dan.com where the disputed domain name is stated as not being “properly configured” but permits for notification through email when the disputed domain name “becomes available for sale again”.

#### **5. Parties’ Contentions**

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

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name. Notably, the Complainant contends that the disputed domain name is confusingly similar to the Marks because the disputed domain name is composed by either eliminating the space in the Complainant’s trademark G FORE or eliminating the slash in the Complainant’s trademark G/FORE. The Complainant asserts that the Complainant never authorized the Respondent to use the Marks or to register the disputed domain name, that the Respondent is not commonly known by the disputed domain name, and never engaged in any *bona fide* commercial activity or legitimate noncommercial or fair use in connection with the disputed domain name. The Complainant asserts that the Respondent knew of the Marks and has used the disputed domain name in bad faith to attract unsuspecting Internet users to its website presumably for commercial benefit or to sell the disputed domain name considering that Dan.com is an aftermarket trading platform to sell and buy domain names.

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

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

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

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel 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 was registered and is being used in bad faith.

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

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in the Marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. The Panel finds the Marks are recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. The Top-Level Domain of the disputed domain name, in the case ".xyz", is viewed as a standard registration requirement and is disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.

The Panel finds the first element of the Policy has been established.

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

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise. Moreover, the nearly identical disputed domain name is not active and redirects to a third party page stating, essentially, that the disputed domain name may be for sale. Such use cannot confer rights or legitimate interest upon the Respondent. [WIPO Overview 3.0](#), section 2.5.3.

The Panel finds the second element of the Policy has been established.

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

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding.

Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3.

Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's Marks and the composition of the disputed domain name and finds that in the circumstances of this case, the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy. The Panel notes that the Respondent has registered a domain name that is nearly identical to the Complainant's well-known Marks. Accordingly, Internet users may likely believe that the disputed domain name will resolve to a website that is sponsored or affiliated with the Complainant. Moreover, the disputed domain name does not resolve to a website offering any products and services but instead redirects to Dan.com stating that the disputed domain name is not configured. Furthermore, the website at Dan.com permits users to subscribe for an update when the disputed domain name is offered for sale again, implying the for-sale nature of the disputed domain name. Thus, on the evidence presented, the Panel finds that the disputed domain name was registered and used in bad faith to confuse Internet users for commercial gain or to re-sell the disputed domain name to the Complainant or another unwitting third party.

The Panel finds that the Complainant has established the third element 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 <gfore.xyz> be transferred to the Complainant.

*/William F. Hamilton/*

**William F. Hamilton**

Sole Panelist

Date: January 19, 2024