

## **ADMINISTRATIVE PANEL DECISION**

Gate Gourmet Switzerland GmbH v. Colby Sawyer

Case No. D2024-1495

### **1. The Parties**

The Complainant is Gate Gourmet Switzerland GmbH, Switzerland, represented by TIMES Attorneys, Switzerland.

The Respondent is Colby Sawyer, United States of America.

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

The disputed domain name <gategr0up.com> (the “Domain Name”) is registered with Wild West Domains, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 9, 2024, identifying two disputed domain names, one being the Domain Name. On April 9, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 10, 2024, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The other disputed domain name was registered with another registrar. The Center sent an email communication to the Complainant on April 16, 2024, informing the Complainant that the two disputed domain names were registered with different registrars and that the underlying registrants had different names. The Center invited the Complainant either to file separate complaints for the disputed domain names or, alternatively, to demonstrate that the underlying registrants are in fact the same entity and/or that both the disputed domain names are under common control. The Complainant filed an Amended Complaint on April 19, 2024, in respect of the Domain Name providing the registrant and contact information disclosed by the Registrar.

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 April 29, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 19, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 25, 2024.

The Center appointed Tony Willoughby as the sole panelist in this matter on May 30, 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, based in Switzerland, is a member of a group of companies engaged in the provision of airline catering on a large international scale. It trades under the “gategroup” name and operates its principal website via its <gategroup.com> domain name. It is the registered proprietor of several trade mark registrations covering “gategroup”. For present purposes it is only necessary to mention one of those registrations, namely:

European Union Trade Mark Registration No. 017873516 GATEGROUP (word) registered on October 31, 2018, for a variety of goods and services in classes 9, 21, 35, 39, 42 and 43.

The Domain Name was registered on February 12, 2024, but is not connected to an active website. It has however been used for emails in attempts to persuade clients of the Complainant to pay money owing to the Complainant into a bank account set up by the Respondent.

The Complainant has produced in evidence emails passing between a customer of the Complainant and the Respondent, the latter using the Domain Name in impersonation of the Complainant.

On February 12, 2024, the Respondent, by way of an email address using the Domain Name, sent an email headed “Important Change Advice Letter for Customer Payments” to a customer of the Complainant requesting the customer to change its records to ensure that all future payments are directed to what purports to be the Complainant’s subsidiary bank account. The details of that subsidiary bank account accompany that email on what is a forged document purporting to come from a Vice President of Citibank. The email exchanges, all using email addresses using the Domain Name, continued through to March 8, 2024.

On March 26, 2024, the Complainant sent a cease and desist letter to the Registrar and the Whols-displayed registrant of the Domain Name (Domains by Proxy LLC) drawing their attention to the Complainant’s trade mark rights and to the fact that the Complainant was aware of the fraudulent use to which the Domain Name had been put. The letter sought inter alia deregistration of the Domain Name.

The Complainant not having received a substantive response, the Complainant’s representatives sent a follow-up email on April 17, 2024, addressed this time to the Respondent, the identity of the Respondent having been disclosed by the Registrar in response to the Registrar Verification Request. No reply was received.

## 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 Domain Name.

Notably, the Complainant contends that the Domain Name could only have been registered for one purpose, 'phishing', as is evident from the emails referred to in section 4 above. The Complainant points to the near identity of the Domain Name, differing from the Complainant's GATEGROUP trade mark solely by the substitution of the "O" by a "0" (zero). The Complainant contends that registration and use of the Domain Name for 'phishing' cannot give rise to legitimate interests in respect of the Domain Name and cannot constitute anything other than registration and use of the Domain Name in bad faith within the meaning of paragraph 4(b) of the Policy.

### B. Respondent

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

## 6. Discussion and Findings

### A. General

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the Domain Name, the Complainant must prove each of the following, namely that:

- (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.

### B. 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 trade mark and the 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 respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

Subject to the substitution of a zero ("0") for the "o" (in "gategroup") the entirety of the Complainant's trade mark is reproduced within the Domain Name. Accordingly, the Domain Name is substantially identical and certainly confusingly similar to the Complainant's trade mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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

## **B. Rights or Legitimate Interests and C. Registered and Used in Bad Faith**

In this case it is convenient that the second and third elements of the Policy be dealt with together. As indicated in section 4 above the factual background is such that, as contended by the Complainant, the Respondent's objective from the outset was to register a deceptively similar domain name (substituting a zero for the letter "o" in the Complainant's name) with the fraudulent intent of using it for email addresses barely distinguishable from email addresses used by the Complainant's staff and thereby seeking to divert money intended for the Complainant into a bank account of the Respondent.

Fraudulent activity of this kind can never confer rights or legitimate interests on a respondent ([WIPO Overview 3.0](#), section 2.13.1) and on the same basis registration and use of a domain name for such a purpose clearly constitutes bad faith registration and use of the Domain Name under the Policy ([WIPO Overview 3.0](#), section 3.4).

The Panel finds that both the second and third elements have been established.

## **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 <gategr0up.com> be transferred to the Complainant.

*/Tony Willoughby/*

**Tony Willoughby**

Sole Panelist

Date: June 12, 2024