

## **ADMINISTRATIVE PANEL DECISION**

**A. AUGIS, ARTHUS BERTRAND v. Mira Holdings**  
Case No. D2024-3871

### **1. The Parties**

The Complainants are A. AUGIS and ARTHUS BERTRAND, France, represented by Cabinet Herrburger, France.

The Respondent is Mira Holdings, United States of America (“United States”), represented by John Berryhill, Ph.d., Esq., United States.

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

The disputed domain name <augis.com> (the “Disputed Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 23, 2024. On September 23, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On September 23, 2024, 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 (Domains by Proxy, Bodis LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 24, 2024, 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 September 25, 2024.

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 September 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 20, 2024. The Response was filed with the Center on October 20, 2024.

On October 24, 2024, the Center received a supplement filing from the Complainant (the Complainant's First Supplemental Filing"). On the same date the Center received a supplement filing from the Respondent (the Respondent's Supplemental Filing"). On October 25, 2024, the Center received a further supplement filing from the Complainant (the "Complainant's Second Supplemental Filing").

The Center appointed Nick J. Gardner as the sole panelist in this matter on October 24, 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 Complainants appear to be French legal entities. The Complaint indicates that the First Complainant is a subsidiary of the second Complainant and proceeds on the basis that they are a single entity. The Respondent has proceeded on the same basis. The Panel will simply refer to the Complainants collectively as "Complainant" hereafter.

The Complainant's business is the manufacture and sale of certain forms of jewelry, in particular commemorative medals. The Complainant owns French trademark No. 1540792 for the word AUGIS registered on January 5, 1990, in respect of precious metals in various forms. It also owns European Union Trade Mark No. 012395885 for the word AUGIS registered on May 15, 2014, in respect of (amongst other goods) common metals in various forms, and jewelry. These trademarks are referred to as the "AUGIS trademark" in this Decision. The Complainant's principle website uses the domain name <augis.fr>. The content of the website is entirely in French.

The Disputed Domain Name was originally registered on September 4, 1998. Its ownership history is discussed below. The evidence filed by the Complainant shows that as of August 2, 2024, it resolved to a page with "click through" links to third party sites offering similar products to those offered by the Complainant (but see further the discussion below). At the time of this Decision, the Disputed Domain Name resolves to a webpage indicating it may be for sale, but without any links to third party sites.

#### **5. Parties' Contentions**

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

The Complainant says the Disputed Domain Name is identical to the AUGIS trademark.

The Complainant says that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Respondent is not using the Disputed Domain Name in connection with a bona fide offering of goods or services. The Respondent has not been commonly known by the Disputed Domain Name.

The Complainant says that the Disputed Domain Name was registered and is being used in bad faith. The Respondent knew or should have known about the Complainant's earlier rights in the AUGIS trademark. The Disputed Domain Name resolves to a webpage which contains links to third party sites offering products which compete with those of the Complainant, some of which are counterfeits of the Complainant's own products.

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

The Response first of all draws attention to the fact that the Disputed Domain Name was originally registered in 1998 by the Complainant who held it until 2013, when its registration lapsed.

The Response then indicates that on October 18, 2024, the Respondent filed suit against the Complainant in the United States Court for the District of Arizona. A copy of the relevant complaint has been placed in

evidence. A docket number was not available at the time the Response was filed, but the Respondent indicated this would be notified when available. The Panel will refer to this action as the “Arizona Proceeding” and its complaint as the “Arizona Complaint”.

The Arizona Complaint commences as follows:

“1. This is a civil action for Declaratory Judgment under the Lanham Act, 15 U.S.C. §§ 1114(a) and 1125(a); and reverse domain name hijacking in violation of the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1114(2)(D)(v) (the ‘ACPA’).

2. This Court has personal jurisdiction over Defendants as they have consented to jurisdiction by this court in selecting ‘Registrar’ as ‘Mutual Jurisdiction’ for resolution of this matter, in a Complaint filed with the World Intellectual Property Organization (WIPO) in accordance with Paragraph 3(b)(xii) of the Uniform Domain Dispute Resolution Policy (UDRP) of the International Committee of Assigned Names and Numbers (ICANN)”.

The Arizona Complaint then goes on to set out the detail of the Complainant’s causes of action. It is not necessary to repeat that detail here. The Arizona Complaint concludes by seeking the following relief:

“WHEREFORE, Plaintiff Mira Holdings, Inc., prays for judgment against Defendants as follows:

- A. For a declaration by the Court, that Defendants have no trademark rights in the domain name that are subject to protection in the United States;
- B. For a declaration by the Court, pursuant to 15 U.S.C. § 1114(2)(D)(iv)(v), Plaintiff is entitled to registration, ownership and use of the domain name Augis.com;
- C. For a declaration by the Court, pursuant to 28 U.S.C. § 2201, Plaintiff’s registration of the Domain Name is lawful and does not infringe on any trade or service mark right the Defendants may claim in the United States;
- D. For a declaration by the Court that Defendants have attempted unlawfully to interfere with Plaintiff’s rights and expectations under its domain name registration.
- E. Damages according to proof at trial;
- G. Cost and expenses, including costs under 15 U.S.C. § 1114(2)(D)(iv)-(v) and reasonable attorneys fees; and
- H. For such other and further relief as this Court deems just and proper”.

The Response invites the Panel to terminate the present proceeding given the Arizona Proceeding pursuant to Rule 18(a) of the Rules. It notes this is a matter for the discretion of the Panel but sets out in considerable detail why it says the Panel should exercise its discretion to terminate. The Panel does not consider it necessary to set out all the detail of the Respondent’s arguments in this regard.

The Response also addresses the substance of the Complaint. The Respondent concedes the Disputed Domain Name is identical to the AUGIS trademark, though notes that the Complainant’s business appears entirely restricted to France, and there is no evidence to show the Complainant is well known in France or anywhere else.

The Response points out that the Complainant was the owner of several United States trademark applications and/or registrations which it has abandoned. In particular, a registration for the logo LES A D’AUGIS (with the single letter “A” being displayed in stylised form) as shown in United States registration No. 1,235,161 was registered by the Complainant in 1983, but was not renewed and expired in 1989.

The Response goes on to say the Respondent has a legitimate interest in acquiring the Disputed Domain Name for resale given that the term “augis” is a name (most commonly a surname but in some cases a first name, apparently of Lithuanian origin). The Respondent’s evidence in this regard is discussed below. It points out the Complainant’s own use of the term derives from the fact it was the name of the Complainant’s founder.

The Respondent draws attention to a previous case where it was the respondent and where the panel found in its favour - *Mangels Industrial S.A. v. Mira Holdings, Inc.*, WIPO Case No. [D2024-2275](#), and where the panel stated as follows:

“The Complainant’s trademark MANGELS, while somewhat distinctive, is not unique to the Complainant, and that name is in legitimate use by other parties both in the course of trade – though this would not necessarily assist the Respondent if it were targeting any of those brand owners – and as a personal surname. The Complainant’s trademark registrations are of limited geographical scope and the Complainant provides no evidence of the reputation and public profile of that trademark, nor any grounds on which to conclude that the Respondent was, or ought to have been, aware of its trademark when it registered the disputed domain name”.

The Respondent says its registration of the Disputed Domain Name is also consistent with other surname-domain names which the Respondent has registered for the same reason, including <cavanagh.com>, <obermaier.com>, <buccelli.com>, and <harck.com>, among others. The Respondent says that trade in non-exclusive and non-distinctive personal names and surnames has long been recognized as a legitimate activity under the Policy as noted in *Boutique Tristan & Iseut Inc. v. B & B*, WIPO Case No. [D2007-1816](#) where the panel stated: “Here, the Domain Name [<tristan.com>] is a male first name; not a very common name, but nonetheless a male first name. It is perhaps best known for the name of one of the participants in the medieval romantic story of Tristan and Iseult/Isolde, from which the Complainant’s corporate name is derived. Tristan is not a name, which is so well-known as a trade mark of the Complainant, that the Complainant is the obvious entity to spring to one’s mind when the name is mentioned. It might be, if one were employed by the Complainant or a purchaser of the Complainant’s products or a resident of an area where the Complainant has an outlet. However, as the Complainant has observed, the Respondent is the creature of two men, Bryan and Bruce Graves, residents in a rural community in Delaware and the trade mark is a trade mark used by the Complainant for ladies’ fashion goods and services”.

The Respondent says that the fact that the Complainant was a prior registrant of the Disputed Domain Name does not mean that the Respondent’s subsequent registration was in bad faith. The opposite is true. As the Panel noted in *Corbis Corporation v. Zest*, NAF Claim No. FA0107000098441: “A domain registrant who knows a domain name has been abandoned should be more confident, not less so, that there is no competing trademark claim relating to the domain name. There is an element of ‘finders keepers, Losers weepers’ in this decision. We believe that is as it should be. In sum, where a party registers a lapsed domain name, and it is not attempting to use the name to compete with the mark holder or disrupt its business, we believe that ordinarily the trademark holder should be denied relief, whether the mark is a common law or registered mark, whether the mark is ‘strong’ or ‘weak.’”

The Respondent says that the Complainant’s original registration of the Disputed Domain Name expired on September 3, 2013. It then entered a multi-stage process during which the domain is deactivated and only the registrant may renew it, or initiate the redemption process past the post-expiration renewal deadline. No action was taken and ultimately it was auctioned on July 7, 2014, which was when the Respondent acquired it. The Respondent says that it had no knowledge of the Complainant when it acquired the Disputed Domain Name or at any time until it received the present Complaint.

The Respondent says that the webpage which the Complainant says the Disputed Domain Name resolved to was a dynamic parking page where the links in question are geographically dependent and it had no knowledge of what links were being displayed to visitors in France. This page was only recently used as a result of some reorganization as to how the Respondent dealt with its domain name portfolio. The Respondent queries whether the Complainant properly understands how parking pages work or how Google search results will vary geographically.

The Respondent cites *Admiral Insurance Services Limited v. Mr. Adam Dicker*, WIPO Case No. [D2005-0241](#) where the panel said: “It is unnecessary to decide whether any intentional display by the Respondent of insurance advertisements on his website after becoming aware of the Complainant’s mark could render illegitimate that which was previously legitimate because the Panel accepts that the terms under which Google makes its AdSense advertisements available do not permit the Respondent to control them and that the Respondent cannot be aware of their content as displayed in any particular country.”

The Respondent says that, having learned of the Complainant's objection via the Complaint, the Respondent has disabled parking for the Disputed Domain Name and refers to *Mariah Media Inc. v. First Place Internet Inc.*, WIPO Case No. [D2006-1275](#), where the panel said "The automated advertising feed arrangements are such that it cannot be assumed that the Respondent requested such links or was even aware of them before receiving notice of this dispute. In the face of the Respondent's denials and the automated nature of the advertising links, the Panel considers these particular links insufficient to prove the Respondent's intent to mislead Internet users by means of the Domain Name itself".

## **6. The Supplemental Filings**

### **The Complainant's First Supplemental Filing**

This filing is in a number of respects repeats matters already set out in the Complaint. The Panel does not intend to set these out again. The Complainant requests that the Panel make a decision. It says the Arizona Proceeding relates to United States trademark issues whilst the Complaint is based on the Complainant's French and European trademarks. It says the Respondent is trying to evade a decision which will in all likelihood be in the Complainant's favour.

The Complainant says that "augis" has no meaning of its own, and the Respondent's argument that it is a family name is "particularly artificial". It also says that the Respondent's argument that it is also a Lithuanian first name "cannot be serious".

The Complainant says its trademarks were in force when the Respondent acquired the Disputed Domain Name and it either knew of these trademarks or willfully turned a blind eye to them. It says that a person who acquires a domain name that has lapsed is under a duty to investigate the previous use made of the domain name and whether the previous registrant has any applicable rights – it refers to *Haringey London Borough Council v. Host Master, 1337 Services LLC*, WIPO Case No. [D2023-1321](#) in this regard – see discussion below.

The Complainant produces a screenshot from <archive.org> showing how it used the Disputed Domain Name in 2013 in relation to a website selling its products. That website is in French.

The Complainant says that the Respondent should have conducted due diligence when it acquired the Disputed Domain Name, and goes into some detail as to what it says should have been done. It says that had it done so it would have learnt of the Complainant and its trademarks. It concludes this argument with the following sentence "In the end while the Panel was of the view that Mira Holdings may have acted in good faith in acquiring the domain name <augis.com>, it nevertheless made use of it in a commercial manner that infringed the Complainant's rights". The Panel will refer to this sentence as the "Alleged Admission" (see below).

### **The Respondent's Supplemental Filing**

The Respondent lodged this filing on a provisional basis, asking that it be considered only if the Complainant's First Supplemental Filing was admitted.

The Respondent says that the Complainant has submitted to the jurisdiction of the Arizona court as a consequence of its use of the UDRP. It goes into some detail as to the background to the relevant provisions in the UDRP. The Panel does not consider it necessary to repeat that material here.

The Respondent says that it does not dispute the Complainant has trademarks in France and may be very well-known there. It says that it "has no reason to question that the Complainant appears to make fine keepsake jewelry which is no doubt treasured and admired in France".

The Respondent notes that the Complainant argues that the Respondent had a duty to investigate prior registration of the Disputed Domain Name. The Respondent disagrees but says that had it done so, it would have learned that the prior registrant of the apparently-abandoned Disputed Domain Name had also

abandoned its United States trademark registrations and applications. It says the notion that the Respondent “turned a blind eye” to French trademark registrations is absurd. It points out there are over a hundred trademark registration systems in the world. While many have only recently become electronically accessible, the idea that the Respondent should have learned French in order to navigate whatever may have been available in 2014 at <Inpi.fr>, in order to register what is clearly a surname consistent with other names in Respondent’s portfolio is “asking a bit much”.

The Respondent draws attention to the Alleged Admission and says that although the grammar is unclear it amounts to an admission that bad faith registration is not established, and hence the Complaint must fail.

### **The Complainant’s Second Supplemental Filing**

This filing firstly continues to debate the scope of the Arizona Proceeding. The Panel does not find it necessary to set out the detail of what it says. It then goes on to dispute that the Alleged Admission is an admission of any kind and says that the statement is “unambiguous”.

## **7. Discussion and Findings**

### **Procedural Issues - admissibility of supplemental filings**

No provision concerning supplemental filings is made in the Rules or Supplemental Rules, except at the request of the panel according to paragraph 12 of the Rules, which states the panel, in its sole discretion, may request any further statements or documents from the parties it may deem necessary to decide the case.

According to paragraph 10 of the Rules, the panel has the authority to determine the admissibility, relevance, materiality, and weight of the evidence, and also to conduct the proceedings with due expedition, ensuring that the Parties are treated with equality and that each Party is given a fair opportunity to present its case.

As stated in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.6, unsolicited supplemental filings are generally discouraged – unless specifically requested by the panel – and the party submitting an unsolicited supplemental filing should clearly show its relevance to the case and why it was unable to provide the information contained therein in its complaint or response.

Accordingly, UDRP panels generally accept supplemental filings only when they provide material new evidence or a fair opportunity to respond to arguments that could not reasonably have been anticipated. See, for example, *Welcomemat Services, Inc. v. Michael Plummer Jr., MLP Enterprises Inc.*, WIPO Case No. [D2017-0481](#).

In the particular and unusual circumstances of the present case the Panel will however admit all of the supplemental filings identified above. It does so because various matters have emerged as the case has progressed – notably the fact that the Respondent has commenced the Arizona Proceeding, and the revelation by the Respondent that the Complainant had previously owned the Disputed Domain Name and allowed it to lapse - a fact that (surprisingly) is not mentioned in the Complaint. The Panel finds all of the supplement filings helpful in understanding the overall factual situation and the position of each party in relation to these issues.

### **Preliminary Issue – suspension or termination of the present proceeding.**

The Respondent has commenced the Arizona Proceeding. The Panel does not find it either necessary or helpful to seek to rule on the debate between the parties as to the precise scope of the Arizona Proceeding. If necessary, that will be for the Arizona court in due course. What is however clear, and actually not disputed, is that the fact of the Arizona Proceeding engages paragraph 18 of the Rules which provides as set out below.

“18. 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 Provider. See Paragraph 8 above”.

[WIPO Overview 3.0](#), section 4.14.2 provides as follows in relation to this issue:

“Panels generally issue a UDRP decision on the merits even in an overlapping court-UDRP proceeding scenario where, notwithstanding the fact that a UDRP decision would not be binding on the court, the relative expediency of the UDRP versus courts is seen as a benefit to the parties. Panel reluctance to terminate a UDRP case on this basis often also takes account of, and respects, the potential for a court action to address causes of action separate from that being addressed in the UDRP proceeding”.

In considering how to proceed, the Panel has considered whether the Respondent is correct to say that the Complainant has consented to the jurisdiction of the Arizona court. The relevant consent to jurisdiction as set out in the Complaint is as follows: “In accordance with paragraph 3(b)(xii) of the Rules , the Complainant will submit with respect to any challenges that may be made by the Respondent to a decision by the Administrative Panel to transfer or cancel the domain name(s) that is/are the subject of this complaint, to the jurisdiction of the courts at the location of the principal office of the concerned registrar”. It seems to the Panel that the consent in question is only applicable if and when the Panel has made a decision to cancel or transfer the Disputed Domain Name, which of course has not occurred. The Respondent in fact acknowledges this possibility but says the Arizona court will apply a wider test. In any event the Panel considers this is a matter for the Arizona court. The Arizona Proceeding is clearly a “ [...] legal proceeding[] initiated [...] during an administrative proceeding in respect of a domain-name dispute that is the subject of the complaint” and hence the Panel accepts the Respondent is correct to say that paragraph 18 of the Rules applies and the Panel has a discretion to suspend or terminate the present case.

The Panel declines to suspend or terminate the present case. It does so primarily because it considers its decision on the merits (below) may render the Arizona Proceeding otiose, and thereby assist the parties in saving costs and providing finality within a rapid timescale.

### **Substantive Issues**

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

- (i) the Disputed Domain Name is identical with 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 Panel finds that the Complainant has rights in the AUGIS trademark. The Disputed Domain Name is identical to this trademark, as the Respondent correctly concedes.

Accordingly, the first condition of paragraph 4(a) of the Policy has been fulfilled.

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

In view of the Panel’s finding in relation to bad faith (below) the Panel does not need to address this issue.

### C. Registered and Used in Bad Faith

The Respondent acquired the Disputed Domain Name by way of an auction process which followed the previous registrant of the Disputed Domain Name allowing its registration to lapse. The previous registrant of the Disputed Domain Name was in fact the Complainant. The Disputed Domain Name had between 1998 and 2013 been owned by the Complainant, and had lapsed on September 3, 2013. Extraordinarily this fact is nowhere mentioned in the Complaint. It was introduced by the Respondent in the Response. Even more extraordinarily the Complainant's First Supplemental Filing clearly accepts that what the Respondent has said is factually correct but does not seek to explain to the Panel how or why the Disputed Domain Name registration was allowed to lapse. There are two likely possibilities: one is that due to some form of administrative error the lapse was inadvertent and unintentional; the other is that a conscious decision was made to allow the Disputed Domain Name to lapse. If the first was the case the Panel would have expected the Complainant to say so, and provide as much detail as possible as to what happened. Its failure to do so suggests to the Panel that the second alternative may be the case. Of course the relevant events occurred over ten years ago and conceivably the relevant facts may be lost in time and the Complainant now simply does not know what happened. However, if that was the situation, the Panel would have expected the Complainant to explain this was the case, and describe what efforts it had made to establish the relevant facts. It also seems odd to the Panel that if the lapse was inadvertent the Complainant did not take any action to seek to recover the Disputed Domain Name either in the ten months between it lapsing and it coming up for sale by auction, or for some ten years thereafter. The Panel notes that the Complaint records that the Disputed Domain Name was originally registered in 1998, over 25 years ago, but says very little about its historical use, limiting to provide a screen capture of the use of the Disputed Domain Name in 2013, seemingly advertising the Complainant's products. The Panel finds it difficult to believe that the Complainant's advisers would not have investigated this issue in the course of preparing the Complaint and, had they done so, would have quickly learned that the Complainant had been the original registrant. The present action has apparently been triggered by the Disputed Domain Name recently being set to resolve to a parking page which, in France at least, generated click through links to competing and/or counterfeit products. The failure to describe the history is however perplexing, and the Panel suspects deliberate. It is also relevant to note that the Complainant allowed its United States trademarks to expire in 1989.

Taking all of this together, the Panel considers it reasonable to infer that it is more likely than not that the Complainant deliberately allowed the Disputed Domain Name to lapse in 2013, and chose not to inform the Panel of this history.

The Respondent says that it had no knowledge of the Complainant or its business when it acquired the Disputed Domain Name. If that is the case (and see further below on this issue), and the Disputed Domain Name could credibly have been acquired by the Respondent for its value independent of any connection with the Complainant, then it cannot, in the view of the Panel, have been registered in bad faith. It is quite clear to the Panel that the Disputed Domain Name has a potential value independent of any connection with the Complainant. The word "augis" is both a first name and a surname. The Respondent's evidence shows that there are some 600 individuals on LinkedIn with "Augis" as either a surname or a first name. As a surname, the genealogy website "ancestry.com" appears to contain over 5,900 records relating to the name "Augis". The Respondent provides specific examples of individuals with the name "Augis" and in particular identifies various domain names which include the term "augis", and which mainly relate to people with the name "Augis", as follows:

<augis.org> - Home of the Association of Upper Gastro-Intestinal Surgery of Great Britain and Ireland;  
<augis.com.br> - Home of Augis Group, an international hospitality firm;  
<karineaugis.com> - Home of French fashion designer Karine Augis;  
<antoineaugis.com> - Home of French videographer Antoine Augis;  
<augis-online.de> - Home of a German vending machine firm, Augis Schulversorgung UG;  
<augisshieldsafetyway.com> - Home of Augis Shield, an Australian safety products manufacturer;  
<augisart.com> - Home of Chicago Tattoo Artist;  
<micheleaugis.com> - Home of Michele Augis Creative Services;  
<fredaugis.com> - Home of visual artist Fred Augis;  
<augisglobal.com> - Home of staffing firm Augis Global;  
<erikaugis.com> - Home of music instructor Erik Augis;



<nicolasaugis.com> - Home of software designer Nicolas Augis; and,  
<augislab.com> - Home of Augis Laboratory Solutions LLC.

The Respondent observes, correctly in the Panel's view, that the range and variety of persons or companies with "Augis" as a name or who are using "augis" in their domain names constitutes a market of potential customers who might quite legitimately wish to acquire the Disputed Domain Name. In reaching this conclusion the Panel notes the Complainant disparages the Respondent's evidence. It says the argument that the Disputed Domain Name "corresponds to a family name rather than a trademark seems particularly artificial". The Panel disagrees and fails to understand how the Complainant reached that view given the Respondent's evidence. The Complainant also says that the claim that "Augis" is a first name of Lithuanian origin "cannot be serious" despite the Respondent quite clearly showing that "www.babynames.com" identifies "Augis" as a first name of Lithuanian origin and that LinkedIn lists multiple examples of people having the first name "Augis", and Wikipedia lists "Augis Kepežinskas" who is a Lithuanian set and costume designer. Again the Panel does not understand how the Complainant reached its view given this evidence. Any one of the people with a first name or last name "Augis" would in the Panel's opinion clearly be entitled to acquire the Disputed Domain Name for their own usage should they so wish and as such represent a potential market for the Respondent. Disparaging the Respondent's clear evidence as "artificial" or not "serious" is not a substitute for producing proper alternative evidence in rebuttal.

The question that then arises is whether the Respondent's claim to have no knowledge of the Complainant is to be believed. Leaving aside for one moment the Complainant's status as the previous registrant of the Disputed Domain Name, there are in the Panel's view no other credible reasons for thinking the Respondent should have had any knowledge of the Complainant. There is no evidence before the Panel of the Complainant having any business anywhere but France. Its website is entirely in French. There is no evidence of it being famous or having any reputation anywhere. In short there is nothing to suggest that an organisation in the United States should have any knowledge of the Complainant or its business. There is no obligation on a domain name registrant to search trademark registries around the world to see if someone somewhere has a registration for the term in question – especially when a cursory Internet search would show the term in question was a five letter word corresponding to a name in use by multiple persons.

Does the fact that the Respondent acquired the Disputed Domain Name at auction, and by definition, knew it was a lapsed domain name with a previous registrant alter this analysis? The Complainant cites *Haringey London Borough Council v. Host Master, 1337 Services LLC*, WIPO Case No. [D2023-1321](#) and sets out the following quotation as being from that decision.

"A domain holder [...] has a duty to investigate whether the prior owner of a lapsed domain name has any rights in the domain name in question [...] An Internet archive search would have shown Complainant's prior use of the Disputed Domain Name and also of the continuity of those services under the current version of the Mark."

The quotation in question is both inaccurate and incomplete. The actual quotation is as follows:

"A domainer, especially one who has repeatedly abused the domain name system, has a duty to investigate whether the prior owner of a lapsed domain name has rights in the domain name of interest [...] An Internet archive search would have shown Complainant's prior use of the Disputed Domain Name and also of the continuity of those services under the current version of the Mark."

In the present case the Respondent is a domainer but there is no evidence it has "repeatedly abused the domain name system". Further in the above cited case, the domain name at issue had no conceivable meaning other than in relation to the complainant, the complainant was continuing to provide the services previously provided under the domain name at issue under another similar domain name, and no response had been filed challenging any of the points the complainant had made. The Panel is doubtful that in the present case the facts are such that the Respondent was under a positive duty to extensively investigate the previous use of the Disputed Domain Name or was in some way fixed with constructive knowledge of what that use was. Ultimately however the point does not, in the opinion of the Panel, matter in the circumstances of this case. Even if the Respondent should have investigated previous use, or is fixed with constructive knowledge of that use, what did that use comprise? The filed evidence establishes that the Complainant had

abandoned its United States trademarks some years earlier and had taken no steps to recover the Disputed Domain Name in the period of some ten months between it lapsing and it coming up for sale at auction. There is also no evidence to suggest the Complainant had any business activity in the United States or indeed anywhere outside France. For reasons discussed above it seems more likely than not to the Panel that the Complainant had in fact deliberately allowed the Disputed Domain Name to lapse. In short there is nothing on the record which would indicate to the Respondent that the Complainant had overarching rights which prevented the Respondent purchasing a domain name which corresponded to a name used by a non-trivial quantity of people.

The Panel attaches no weight to the Alleged Admission. The Panel disagrees with the Complainant that it is “unambiguous” – the Panel has read it many times and still does not understand what it means - but it seems that this is likely a translation or language issue, so the Panel ignores the point.

The Panel agrees with the Respondent that the Complainant does not appear to have fully appreciated how parking pages or Google search results work and in particular how the links or results in question are likely to be geographically-dependent. The Complainant presents the links to websites offering counterfeit products as being a conscious decision by the Respondent when it is clear that it was likely a French specific result which the Respondent had no knowledge of, and when it did learn of the position it disabled the parking page in question.

Accordingly, the Panel concludes there is no credible evidence to establish that the Disputed Domain Name was registered and is being used in bad faith, and the Complainant has failed to establish that the third condition of paragraph 4(a) of the Policy has been fulfilled.

#### **D. Reverse Domain Name Hijacking**

Several circumstances of this case have led the Panel to consider whether the filing of the Complaint constitutes “using the Policy in bad faith to attempt to deprive a registered domain name holder of a domain name” – see the Rules, paragraph 1, definition of Reverse Domain Name Hijacking (“RDNH”). Paragraph 15(e) of the Rules provides that if after considering the submissions the panel finds that the complaint was brought in bad faith, for example in an attempt at RDNH, or was brought primarily to harass the domain name holder, the panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding. The Rules, paragraph 15(e), call for this analysis even when the respondent has not expressly requested a finding of abuse – see *Timbermate Products Pty Ltd v. Domains by Proxy, LLC / Barry Gork*, WIPO Case No. [D2013-1603](#). Curiously in the present case the Respondent has not in terms asked for such a determination but has done so in the Arizona Proceeding which is a further reason why the Panel considers it should address the issue.

As set out in the [WIPO Overview 3.0](#) section 4.16, reasons articulated by panels for finding RDNH include: (i) facts which demonstrate that the complainant knew it could not succeed as to any of the required three elements – such as the complainant’s lack of relevant trademark rights, clear knowledge of respondent rights or legitimate interests, or clear knowledge of a lack of respondent bad faith (such as registration of the disputed domain name well before the complainant acquired trademark rights), (ii) facts which demonstrate that the complainant clearly ought to have known it could not succeed under any fair interpretation of facts reasonably available prior to the filing of the complaint, including relevant facts on the website at the disputed domain name or readily available public sources such as the Whois database, (iii) unreasonably ignoring established Policy precedent notably as captured in this WIPO Overview – except in limited circumstances which prima facie justify advancing an alternative legal argument, (iv) the provision of false evidence, or otherwise attempting to mislead the panel, (v) the provision of intentionally incomplete material evidence – often clarified by the respondent, (vi) the complainant’s failure to disclose that a case is a UDRP refiling, (vii) filing the complaint after an unsuccessful attempt to acquire the disputed domain name from the respondent without a plausible legal basis, (viii) basing a complaint on only the barest of allegations without any supporting evidence”.

In the present case the Panel considers that it has been presented by the Complainant with materially incomplete evidence. That seems indisputable – the Complaint does not mention the Complainant was the previous registrant of the Disputed Domain Name. It seems to the Panel more likely than not that this

omission was a deliberate decision, but even if not, the Complainant could in its First Supplemental Filing explain what had happened and why it had not previously been mentioned. It did not do so.

The Panel is also concerned by the selective and inaccurate purported quotation from *Haringey London Borough Council v. Host Master, 1337 Services LLC*, WIPO Case No. [D2023-1321](#). Specifically, the omission from the quotation of the words “[...] especially one who has repeatedly abused the domain name system [...]” seems to the Panel to omit an important part of the panel’s reasoning in that case and which was in fact not present in the current case. The Panel considers it more likely than not that the omission was deliberate.

In all the circumstances the Panel concludes that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.

## 8. Decision

For the foregoing reasons, the Complaint is denied. Moreover, the Panel finds that the Complaint has been brought in bad faith and constitutes an attempt at Reverse Domain Name Hijacking.

*/Nick J. Gardner/*

**Nick J. Gardner**

Sole Panelist

Date: November 7, 2024