

## **ADMINISTRATIVE PANEL DECISION**

Axel Sylvian van den Braken v. Domain Administrator, afterTHOUGHT, Inc  
Case No. D2025-4698

### **1. The Parties**

The Complainant is Axel Sylvian van den Braken, Netherlands, self-represented.

The Respondent is Domain Administrator, afterTHOUGHT, Inc, 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 <gains.com> is registered with Dynadot Inc (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 13, 2025. On November 13, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 14, 2025, 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 (Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 20, 2025, 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 the same date.

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 November 21, 2025. In accordance with the Rules, paragraph 5, the due date for Response was December 11, 2025.

The Respondent requested an additional four days to file a Response, which was granted and the new due date for Response was December 15, 2025. The Response was filed with the Center on December 15, 2025.

The Center appointed Ganna Prokhorova, Douglas M. Isenberg and Karen Bernstein as panelists in this matter on January 8, 2026. The Panel finds that it was properly constituted. Each member of 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 private person based in the Netherlands (Kingdom of the) who claims to have used the name GAINS as a brand in the fitness and personal development sector since 2017. The Complainant claims to have built a social media presence around the term “Gains”, asserting an Instagram following of over 2 million and a Facebook page with over 320,000 followers.

In 2025, the Complainant filed a United States trademark application No. 99407913 for the mark GAINS in Classes 5 and 35, and two Benelux trademark applications for GAINS, Nos. 1531366 and 1532054. As of the date of this Decision these applications remain non-registered, namely the United States application, filed in September 2025, is pending, and the Benelux filings have been preliminarily refused.

In support of unregistered trademark rights, the Complainant provided evidence of social media use and limited commercial activity, including screenshots of a website displaying GAINS branded supplement products (noted as “sold out”) and a “pre-order” page for a GAINS journal, as well as two invoices from 2017 and 2025 which the Complainant claims show sales relating to a GAINS product.

The disputed domain name was registered on May 31, 1997. The case record further demonstrates that the disputed domain name was previously offered for sale. As of the date of this Decision, the disputed domain name resolves to a commercial gambling and casino website.

The Respondent is a United States company owned by Mr. Ammar Kubba, who is a professional domain name investor. The Respondent acquired the disputed domain name on May 14, 2021, as part of its domain investment portfolio, reportedly for a substantial sum in the six figure range (USD 149,500). Since mid-2025, the Respondent has licensed the disputed domain name to a third-party startup (GamerGains Labs, Inc.) for use in connection with a “play-to-earn” cryptocurrency gaming platform branded as “Gains”. The disputed domain name currently resolves to the website of this gaming platform. The Respondent also owns other domain names <mygains.com>, <gains.net>, <gains.ai>.

Prior to filing this UDRP Complaint, the Complainant attempted to acquire the disputed domain name from the Respondent. In July 2023, the Complainant contacted the Respondent expressing a strong interest in the disputed domain name for a planned fitness related venture, but acknowledged he did not have the capital to purchase the disputed domain name outright. No agreement was reached. It was only after the Respondent’s licensee launched its “Gains” crypto gaming platform, and after the Complainant filed his own trademark applications in late 2025, that the Complainant initiated this UDRP proceeding.

#### **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:

- (1) The Complainant asserts common law rights in the GAINS mark based on continuous commercial use since 2017, substantial social media presence, commerce activities including supplement shipments and PayPal transactions, and trademark applications in the United States Patent and Trademark Office (“USPTO”) and Benelux. The disputed domain name is identical to the Complainant’s trademark, since it incorporates the GAINS mark in its entirety, and the addition of the “.com” extension does not prevent confusion.
- (2) The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not commonly known by the name “gains” and has never been authorized, licensed, or permitted by the Complainant to use the GAINS mark. The Respondent is a professional domain investor holding numerous domains for resale, including multiple GAINS formative names. The disputed domain name was never used for any bona fide offering of goods or services and was listed for sale. The Respondent held the disputed domain name passively for years, displaying only placeholder pages or sales redirects, which panels consistently deem evidence of lack of legitimate interest. The Complainant’s GAINS brand is associated with fitness, discipline, and personal growth, and has acquired secondary meaning through widespread recognition. The Respondent’s subsequent use of the identical disputed domain name for a gambling and crypto-casino platform operated by a third party creates severe tarnishment, misleads consumers, and damages the Complainant’s reputation.
- (3) The disputed domain name was registered and is being used in bad faith. The Respondent is a professional domain investor that held the disputed domain name passively and listed it for sale. The Respondent later enabled its use for a gambling and crypto-casino platform, intentionally attracting users by creating confusion with the Complainant’s established mark for commercial gain, which constitutes bad faith. The Respondent or a party acting with its knowledge also filed a USPTO application for GAINS in July 2025, demonstrating actual knowledge of the Complainant’s prior rights. Combined with the Respondent’s pattern of registering GAINS related domains and speculative holding, these circumstances strongly support a finding of bad faith registration and use under the Policy.

## **B. Respondent**

The Respondent contends that the Complainant has not satisfied all three of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that:

- (1) The Complainant has not established trademark rights in the term “GAINS”. The Complainant relies primarily on recently filed trademark applications, including a United States trademark application filed shortly before the present proceeding, as well as Benelux applications that are pending and have been provisionally refused. Pending or refused applications do not confer trademark rights under the Policy. The Complainant has not clearly identified the goods or services for which it claims trademark rights in GAINS, nor has it demonstrated substantial commercial use of the mark. The Complainant’s evidence of use consists mainly of social media accounts and statistics, which do not demonstrate the sale or offering of GAINS branded goods or services. The Complainant has failed to show continuous commercial activity associated with the GAINS mark. The Complainant’s alleged sales evidence does not establish the sale of GAINS-branded products. The Complainant has not demonstrated the existence of enforceable trademark rights in GAINS, either at present or at the time the disputed domain name was acquired by the Respondent.
- (2) The Respondent has rights or legitimate interests in respect of the disputed domain name. The disputed domain name consists of a common dictionary word, which is inherently capable of legitimate use. The Respondent acquired the disputed domain name as part of its activities as a professional domain investor, without targeting the Complainant or any alleged mark. Prior to notice of the dispute, the Respondent licensed the disputed domain name to a third party operating a “play-to-earn” cryptocurrency gaming platform, which the Respondent contends constitutes a bona fide use of the domain name. The

Respondent further notes that the licensee owns trademark rights in GAMERGAINS and has made demonstrable preparations to use the disputed domain name in connection with its business. Given the dictionary nature of the term and the documented commercial licensing and use, the Respondent's conduct constitutes a legitimate interest, and the Complainant's assertions to the contrary are unsupported.

(3) The disputed domain name was neither registered nor used in bad faith. The Respondent acquired the disputed domain name in 2021 for its value as a dictionary term, independently of any alleged rights of the Complainant. At the time of acquisition, the Respondent had no knowledge of the Complainant, nor could the Complainant reasonably have been targeted, given the lack of demonstrated trademark rights or commercial activity. The Respondent's subsequent licensing of the disputed domain name occurred prior to notice of the dispute and reflects legitimate commercial exploitation of a descriptive term. The Complainant's outreach in July 2023 acknowledged no existing trademark rights and presented only an aspirational business plan. These facts negate any claim of opportunistic cybersquatting or bad faith under the Policy. The Respondent further argues that the Complainant's trademark filings and alleged commercial activity occurred after the Respondent's acquisition and licensing of the disputed domain name.

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer the disputed domain name. In UDRP cases, the standard of proof is the balance of probabilities.

To succeed in a UDRP complaint, the Complainant has to demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied, namely:

- (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.

The Panel has reviewed the entire case file and the evidence provided. The Panel is also guided, where pertinent, by the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), which reflects consensus positions of UDRP panels on many common issues. The Panel will make reference to these consensus views in the analysis below as applicable.

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

As discussed in sections 1.1.3 and 1.1.4 of the [WIPO Overview 3.0](#), while the Policy makes no specific reference to the date on which the holder of the trademark or service mark acquired its rights, such rights must be in existence at the time the complaint is filed. A pending trademark application would not by itself establish trademark rights within the meaning of UDRP, paragraph 4(a)(i).

Here, the Complainant has filed trademark applications for GAINS, and the applications have not yet proceeded to registration. Therefore, the existence of these trademark applications do not by itself establish that the Complainant has trademark rights and standing to file a Complaint under the Policy.

The Complainant also submits that it has common law trademark rights based on its business activities carried out under the brand GAINS.

In the absence of a registered mark, the Complainant must prove that GAINS has become a distinctive identifier associated with the Complainant's goods or services, i.e., that he has unregistered (common law) trademark rights in the name.

UDRP panels have consistently held that to substantiate unregistered trademark rights, a complainant's evidence should demonstrate that the name has acquired secondary meaning as a mark identifying the complainant as the source of products or services. Relevant factors include the duration and nature of the complainant's use of the name, the degree of public recognition, the amount of sales and advertising under the name, and any other evidence showing that the public associates the name with the complainant's business. [WIPO Overview 3.0](#), section 1.3.

Moreover, if the term in question is an ordinary or descriptive word (as "gains" is), the threshold of proof is higher, and the complainant must provide compelling evidence that the descriptive term has become uniquely connected with the complainant's offerings.

After careful review of the record, the Panel finds that the Complainant has not met this burden. While the Complainant claims to have used GAINS as a brand since 2017, the supporting evidence is scant and unpersuasive. The Complainant's primary evidence of use consists of his social media following and a few screenshots of recent product-related pages:

- The Complainant asserts that his Instagram account (under the handle related to "gains") has approximately 2.1 million followers and that his Facebook page has around 321,000 followers. These figures suggest the Complainant may have built a notable online audience. However, a large social media following, by itself, does not automatically equate to trademark rights. The Complaint provides no concrete evidence of sales, advertising expenditure, or industry/media recognition linking GAINS to identifiable goods or services over time; social-media metrics are not tied to substantiated marketplace activity. The Complainant did not demonstrate how the term "gains" is used on these platforms in a manner analogous to a brand or source identifier for goods or services. There is no evidence that the Complainant's social media presence was promoting or selling a specific "gains" product or service over the years. It appears the content was more akin to general motivational or fitness-related posts rather than a commercial offering under the GAINS mark.
- The Complainant provided two invoices/receipts (one from 2017 and one from 2025) in an effort to show commercial transactions under the name GAINS. Neither document, however, convincingly establishes that the Complainant sold GAINS-branded products to customers. The 2017 invoice references a purchase of a "smoothie ebook" from a third party entity (styled "Your Healthy World"), which does not clearly tie to any GAINS-branded product or to the Complainant's own business. The 2025 invoice appears to be a receipt from a print on demand service for a single jar of protein powder. The invoice actually lists the Complainant himself as the billing party, suggesting that the Complainant may have ordered a custom labeled product (likely the same GAINS protein container depicted in the Complaint's annexes) rather than selling it to a member of the public. In other words, this is evidence of the Complainant purchasing a prototype or sample product, not evidence of a customer purchase or revenue generating sale under the GAINS mark.
- The Complainant's recent website evidence similarly fails to show established trade in GAINS branded goods. The Complaint included a screenshot of a webpage under the domain name <gains.cx> (and a linked site <gains.plus>) showing two tubs of whey protein powder with a GAINS label, both marked as "sold out". Rather than demonstrating ongoing sales, this suggests that no inventory was actually available. Indeed, the Respondent points out (and the Complainant does not refute) that the Complainant had no functional e-commerce site at the time, since the domain name <gains.cx> merely forwarded to a page where a GAINS branded journal could be pre-ordered in late 2025 for future delivery. The Complainant did not furnish any evidence of actual orders or customers for this journal or any other product under the GAINS name.

Crucially, the Complainant's own communications undermine his claim of long standing GAINS business activities. In an email the Complainant sent to the Respondent in July 2023 (well before this dispute), the Complainant described GAINS as an aspirational project, stating that he had been "dreaming of building" a company around the name and concept, citing inspirations like a successful fitness apparel brand, and he candidly acknowledged that he lacked the funds to acquire the disputed domain name at that time. The Complainant effectively presented GAINS as a future venture he was passionate about starting, rather than an already thriving enterprise. Nowhere in that correspondence (or elsewhere in the record) did the Complainant demonstrate that by 2023 he was actually offering goods or services commercially under the GAINS name. This timeline strongly suggests that whatever "goodwill" or recognition the Complainant claims to have built in the GAINS mark may have arisen primarily from his personal or online presence, not from a bona fide business distinguishing itself in the marketplace as "GAINS".

The Panel also notes that "gains" is a common English word, often used in colloquial fitness jargon (e.g. "making gains" in the gym) and in other generic contexts (meaning profits or increases). Such a term is inherently not distinctive. The Complainant has provided no evidence that consumers or the public uniquely associate "gains" with the Complainant's fitness or self-improvement services, as opposed to its ordinary meaning or other third-party uses. In fact, the record shows that multiple parties have used or filed trademarks incorporating "gains". This further underscores that GAINS on its own has not acquired a singular secondary meaning referring to the Complainant.

Accordingly, the Complainant has failed to support a claim of common law trademark rights with evidence of acquired distinctiveness. See *Zelig AI, LLC v. dong xuyan*, National Arbitration Forum Claim FA2410002120196.

In summary, the Panel finds that the Complainant has not proven that he possesses trademark rights, registered or unregistered, in the term GAINS. The evidence falls short of establishing that GAINS is a distinctive identifier of the Complainant's goods or services. Absent such rights, the Complainant does not meet the threshold requirement of UDRP paragraph 4(a)(i).

Because the Complainant has failed to satisfy the first element of the Policy, the Panel need not examine the second and third elements (rights or legitimate interests, and bad faith). The Complaint cannot succeed without clearing the first hurdle. See also *Roadcam, Inc. v. Jon Smejkal*, WIPO Case No. [D2014-1980](#).

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

In view of the Panel's determination above under Paragraph 4(a)(i) of the Policy, it is unnecessary for the Panel to address the issue of the Respondent's rights or legitimate interests with respect to the disputed domain names under Paragraph 4(a)(ii) of the Policy.

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

In view of the Panel's determination above under Paragraph 4(a)(i) of the Policy, it is unnecessary for the Panel to address issues of bad faith registration and use of the disputed domain names under Paragraph 4(a)(iii) of the Policy.

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

Under Paragraph 1 of the Rules, "Reverse Domain Name Hijacking" (RDNH) is defined as "using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name". Paragraph 15(e) of the Rules provides that if "the Panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking 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".

Where a Complainant proceeds despite the fact that it knew or should have known that it did not have a colorable claim under the Policy, a finding of RDNH may be appropriate. [WIPO Overview 3.0](#), section 4.16.

The Complainant submitted no evidence of the acquired distinctiveness required to support a claim of common law trademark rights. See *Zelig AI, LLC v. dong xuyan*, National Arbitration Forum Claim FA2410002120196. Instead, the Complainant relied primarily on recently filed trademark applications and provided only minimal evidence in support of its alleged common law rights. It is well established under the Policy that pending trademark applications do not confer rights. Moreover, the Complainant failed to submit credible evidence of sales, advertising, or public recognition sufficient to demonstrate acquired distinctiveness, despite asserting the existence of goodwill spanning eight years.

The Panel also notes that the Complainant's own correspondence from July 2023 described its business plans as aspirational and acknowledged a lack of capital to acquire the disputed domain name. These statements directly contradict the Complainant's assertions of longstanding trademark rights.

In light of the Respondent's continuous ownership of the disputed domain name long before the Complainant acquired or claimed any trademark rights, the Complaint lacked any realistic prospect of success. The Panel further observes that the Complainant had previously approached the Respondent in an attempt to purchase the disputed domain name. After failing to acquire it through negotiation, the Complainant initiated this proceeding, effectively seeking to obtain the disputed domain name without payment.

Accordingly, the Panel concludes that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding. The Panel therefore finds that the Complaint amounts to Reverse Domain Name Hijacking within the meaning of paragraph 15(e) of the Rules.

## 7. Decision

For the foregoing reasons, the Complaint is denied.

*/Ganna Prokhorova/*

**Ganna Prokhorova**

Presiding Panelist

*/Douglas M. Isenberg/*

**Douglas M. Isenberg**

Panelist

*/Karen Bernstein/*

**Karen Bernstein**

Panelist

Date: January 20, 2026