

ADMINISTRATIVE PANEL DECISION

UP v. Dwight Schrute
Case No. D2022-0912

1. The Parties

The Complainant is UP, France, represented by Casalonga Avocats, France.

The Respondent is Dwight Schrute, France¹.

2. The Domain Name and Registrar

The disputed domain name <groupechequedejeuner.email> is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 15, 2022. On March 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 17, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on March 23, 2022 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 March 23, 2022.

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 March 30, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 19, 2022. The Respondent did not submit any response.

¹ The Complaint was originally filed against “Redacted for privacy”. The identity of the Respondent was subsequently disclosed by the Registrar in response to the Center’s request for registrar verification in connection with the disputed domain name. The amended Complaint lists the person disclosed by the Registrar as the sole Respondent.

Accordingly, the Center notified the Respondent's default on May 3, 2022.

The Center appointed Louis-Bernard Buchman as the sole panelist in this matter on May 9, 2022. 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, a company founded in France in 1964, designs products and services (such as vouchers, cards, mobile applications) which facilitate the daily life of 21.3 million people in 28 countries around the world. The Complainant is the third largest group worldwide in the service voucher market, supporting its clients, communities and retailers with dedicated solutions (e.g. employee benefits, public and social programs, incentive, loyalty and rewards programs, business expenses management). Its best-known service, created in 1972, is the "Chèque Déjeuner" meal voucher offer for employees, which is co-financed by the employer and the employee,

The Complainant owns several trademarks containing the three terms GROUPE CHEQUE DEJEUNER, including international trademark No. 1040134 registered on May 19, 2010 and European Union trademark No. 007594567 registered on May 31, 2010 (hereinafter together referred to as "the Mark").

The Complainant has also registered many domain names, *inter alia* <groupechequedejeuner.com> (on July 22, 1997) and <groupechequedejeuner.fr> (on May 24, 2004).

The disputed domain name <groupechequedejeuner.email> was created on December 29, 2021.

The Complainant has submitted evidence that the disputed domain name resolved to a pay-per-click parking page in French and that it has been used to activate MX-servers. At the time of this Decision, the disputed domain name still resolves to this parking page.

5. Parties' Contentions

A. Complainant

(i) The Complainant submits that the disputed domain name reproduces the Mark, in which the Complainant has rights, and is identical to the Mark insofar as the disputed domain name contains the three elements "groupe", "cheque" and "dejeuner" in their entirety.

(ii) The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Furthermore, the Complainant contends that the Respondent used the Complainant's address when registering the disputed domain name.

(iii) The Complainant submits that the Respondent has registered the disputed domain name in bad faith.

(iv) The Complainant submits that the Respondent is using the disputed domain name in bad faith.

(v) The Complainant requests that the disputed domain name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural Aspects - Failure to respond

As aforementioned, no Response was received from the Respondent.

Under the Rules, paragraphs 5(f) and 14(a), the effect of a default by the Respondent is that, in the absence of exceptional circumstances, the Panel shall proceed to a decision on the basis of the Complaint.

Under paragraph 4(a) of the Policy, it is the Complainant's burden to establish that all three of the required criteria for a transfer of the disputed domain name have been met, even in the event of a default.

Under paragraph 14(b) of the Rules, the Panel is empowered to draw such inferences from the Respondent's default as it considers appropriate under the circumstances.

In this case, the Panel finds that as a result of the default, the Respondent has failed to rebut any of the reasonable factual assertions that are made and supported by evidence submitted by the Complainant. In particular, by defaulting and failing to respond, the Respondent has failed to offer the Panel any of the types of evidence set forth in paragraph 4(c) of the Policy or otherwise, from which the Panel might conclude that the Respondent has any rights or legitimate interests in the disputed domain name, such as making legitimate noncommercial or fair use of the disputed domain name.

Moreover, as discussed below, the Respondent has failed to provide any exculpatory information or reasoning that might have led the Panel to question the Complainant's arguments that the Respondent has acted in bad faith.

6.2. Substantive Requirements of paragraph 4(a) of the Policy

A. Identical or Confusingly Similar

In comparing the Mark with the disputed domain name <groupechequedejeuner.email>, it is evident that the latter consists of the Mark, followed by the generic Top-Level Domain ("gTLD") ".email".

It is also well established that a gTLD does not generally affect the assessment of a domain name for the purpose of determining identity or confusingly similarity.

The Panel finds that the disputed domain name <groupechequedejeuner.email> is identical to the Mark, which is incorporated in its entirety.

Thus, the Complainant has satisfied the requirement of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Although a complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, UDRP panels have recognized that with regard to paragraph 4(a)(ii) of the Policy, this could result in the often impossible task of proving a negative proposition, requiring information that is primarily, if not exclusively, within the knowledge of a respondent.

Thus, the consensus view of UDRP panels is that paragraph 4(c) of the Policy shifts the burden of production of evidence to the respondent to come forward with evidence of rights or legitimate interests in a domain name, once the complainant has made a *prima facie* showing, as the Panel believes the Complainant has made in this case. See *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#).

As previously noted, the Respondent offered no reason for selecting the disputed domain name. There is no evidence that the Respondent is known by the disputed domain name. The way the Respondent has used the disputed domain name is not *bona fide* (see *Ok! Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)). The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. The disputed domain name redirects the public to a parking page displaying pay-per-click links, showing a clear intent to obtain an unfair commercial gain, with a view to misleadingly diverting consumers or to tarnish the Mark.

No information is provided on what rights or legitimate interests the Respondent may have in the disputed domain name.

Further, UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation, which cannot constitute fair use. See section 2.5.1 of the of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)")

In the circumstances, the Panel concludes that the Complainant has established the requirement of paragraph 4(a)(ii) of the Policy with respect to the disputed domain name.

C. Registered and Used in Bad Faith

As noted above, the Respondent has failed to provide any exculpatory information or persuasive reasoning that might have led the Panel to question the Complainant's arguments that the Respondent acted in bad faith by creating confusion to the detriment of the Complainant by registering the disputed domain name confusingly similar to the Mark, which can be considered as "cybersquatting".

It is established in prior UDRP decisions that where the respondent knew or should have known of a trademark prior to registering the disputed domain name, such conduct may be, in certain circumstances, sufficient evidence of bad faith registration and use. See *Weetabix Limited v. Mr. J. Clarke*, WIPO Case No. [D2001-0775](#).

In this case, given that the disputed domain name resolves to a pay-per-click parking page, the Panel finds that it is impossible to believe that the Respondent chose to register the disputed domain name randomly with no knowledge of the Mark. See *Barney's Inc. v. BNY Bulletin Board*, WIPO Case No. [D2000-0059](#); *Kate Spade, LLC v. Darmstadter Designs*, WIPO Case No. [D2001-1384](#), citing *Cellular One Group v. Paul Brien*, WIPO Case No. [D2000-0028](#); and *SembCorp Industries Limited v. Hu Huan Xin*, WIPO Case No. [D2001-1092](#).

Considering the Respondent's use of the disputed domain name, the use of the Complainant's address for the registration of the disputed domain name, and the activation of MX servers enabling the Respondent to send phishing emails, the Panel concludes that the Respondent knew of the Mark when the Respondent registered the disputed domain name, and that such registration was made in bad faith.

The Panel finds that the Respondent has attempted to attract Internet users for commercial gain by creating a likelihood of confusion with the Mark as to the source, sponsorship, affiliation, or endorsement of the competitor's website, and that such use is constitutive of bad faith.

Prior UDRP panels have also held that bad faith use of a domain name by a respondent may also result from the fact its good faith use is in no way plausible, considering the specificity of the activity (see *Audi AG v. Hans Wolf*, WIPO Case No. [D2001-0148](#)). The Panel finds it is indeed not possible to imagine any plausible future active use of the disputed domain name that would not be illegitimate, considering the specificity of the Complainant's activity and the Complainant's prior ownership of the disputed domain name.

Moreover, in this case, the Respondent took active steps to hide his identity. Although using a proxy service to hide the identity of the registrant is not *per se* conclusive of bad faith registration and use (see *Trinity Mirror Plc and MGN Ltd. v. Piranha Holdings*, WIPO Case No. [D2008-0004](#)), the Panel notes that the fact

that the Respondent used a proxy service to hide his identity and contact details prevented the Complainant from contacting him. Prior UDRP panels have held that deliberate concealment of identity and contact information may in certain circumstances be indicative of registration in bad faith (see *TTT Moneycorp Limited v. Diverse Communications*, WIPO Case No. [D2001-0725](#), and *Schering Corporation v. Name Redacted*, WIPO Case No. [D2012-0729](#)). See section 3.2.1 of the [WIPO Overview 3.0](#).

Finally, prior UDRP panels have held that in certain circumstances, registrants of domain names have an affirmative duty to abstain from registering and using a domain name which is either identical or confusingly similar to a prior trademark held by others and that contravening that duty may constitute bad faith. See Policy, paragraph 2(b); *Nike, Inc. v. B. B. de Boer*, WIPO Case No. [D2000-1397](#); *Nuplex Industries Limited v. Nuplex*, WIPO Case No. [D2007-0078](#); *Mobile Communication Service Inc. v. WebReg, RN*, WIPO Case No. [D2005-1304](#); *BOUYGUES v. Chengzhang, Lu Ciagao*, WIPO Case No. [D2007-1325](#); *Media General Communications, Inc. v. Rarenames, WebReg*, WIPO Case No. [D2006-0964](#); and *mVisible Technologies, Inc. v. Navigation Catalyst Systems, Inc.*, WIPO Case No. [D2007-1141](#).

As indicated above, the nature of the disputed domain name, being identical to the Mark, further supports a finding of bad faith in the present circumstances. See [WIPO Overview 3.0](#), section 3.2.1.

The Panel concludes in the light of all these circumstances that the Respondent's registration and use of the disputed domain name constitute bad faith, and that the requirement of paragraph 4(a)(iii) of the Policy is also satisfied in this case.

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 <groupechequedejeuner.email> be transferred to the Complainant.

/Louis-Bernard Buchman/

Louis-Bernard Buchman

Sole Panelist

Date: May 12, 2022