

ADMINISTRATIVE PANEL DECISION

Arvella Investments v. DIDIER TERRIEN, ARVELLA
Case No. D2022-3592

1. The Parties

The Complainant is Arvella Investments, France, represented by Gide Loyrette Nouel, France.

The Respondent is DIDIER TERRIEN, ARVELLA, France.

2. The Domain Name and Registrar

The Disputed Domain Name <arvellainvestments.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 28, 2022. On September 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On September 28, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 29, 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 a Complaint on October 3, 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 October 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 31, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 31, 2022.

The Center appointed Christiane Féral-Schuhl as the sole panelist in this matter on November 7, 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 is a French company created in 2017 with offices in Paris and London and specialized in investment's management.

The Complainant is the owner of several trademarks (the "ARVELLA Trademarks"):

- the French wordmark ARVELLA No. 4628995, registered on March 2, 2020, for services in class 36;
- the international wordmark ARVELLA No. 1526818, registered on March 10, 2020, for services in class 36.

The Complainant is also the owner of a domain name incorporating the ARVELLA Trademarks: <arvella.com>.

The Disputed Domain Name was registered by the Respondent on June 7, 2022, and reverts to an inactive website. The Disputed Domain Name was also configured to MX servers to generate email addresses as part of a phishing scam.

5. Parties' Contentions

A. Complainant

First, the Complainant states that the Disputed Domain Name is identical or confusingly similar to its ARVELLA Trademarks. The Complainant states that the Disputed Domain Name wholly reproduces its ARVELLA Trademarks followed by the descriptive word "investments". The Complainant highlights the fact that the word "arvella" does not have any specific meaning in French or English and is therefore highly distinctive. Furthermore, the Complainant explains that the addition of the word "investments" does not lessen the inevitable confusion of the Disputed Domain Name with the Complainant's ARVELLA Trademarks.

Then, the Complainant's states that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name given that it does not own any trademark in relation to the Disputed Domain Name. The Complainant explains that it never authorized, licensed or otherwise permitted the Respondent to use any of its ARVELLA Trademarks. In addition, the Complainant highlights the fact that the Disputed Domain Name has been used to generate fraudulent email addresses as part of a phishing scam.

Lastly, the Complainant states that the Disputed Domain Name was registered and is being used in bad faith. The Complainant explains that there is no doubt that the Respondent was aware of the Complainant given the recent registration of the Disputed Domain Name and the fact that the Respondent has been impersonating the Complainant as part of a scam.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that the Complainant shall prove the following three elements:

- (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.

A. Identical or Confusingly Similar

According to the Policy, paragraph 4(a)(i), the Complainant shall prove that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

First of all, the Panel finds that the Complainant has provided evidence that it has rights in the ARVELLA Trademarks.

Then, the Panel wishes to remind that the first element of the UDRP serves essentially 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.

This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name. In cases where a domain name consists of a common, obvious, or intentional misspelling of a trademark, the domain name will be considered by panels to be confusingly similar to the relevant mark for purposes of the UDRP (see section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Regarding the Disputed Domain Name <arvellainvestments.com> the Panel finds that it is composed of:

- the ARVELLA Trademarks in their entirety;

- the word "investments"; and

- the generic Top-Level Domain ("gTLD") ".com", it being specified that the gTLD in a domain name is viewed as a standard registration requirement and as such is disregarded for the purpose of determining whether a domain name is identical or confusingly similar to a trademark.

According to prior UDRP panel decisions, it is sufficient that the disputed domain name incorporates the entirety of a trademark, in order to consider the domain name as confusingly similar to that mark for purposes of UDRP standing. The mere addition of a word to a mark does not prevent a finding of confusing similarity (see section 1.8 of the [WIPO Overview 3.0](#)).

The Panel considers that, in this case, the addition of the term "investments" to the ARVELLA Trademarks included in the Disputed Domain Name does not prevent a finding of confusing similarity.

Therefore, the Panel holds that the Disputed Domain Name is confusingly similar to the ARVELLA Trademarks and that the Complainant has established the first element of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

According to the Policy, paragraph 4(a)(ii), the Complainants shall demonstrate that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

The Policy, paragraph 4(c), outlines circumstances that if found by the Panel to be proved shall demonstrate the Respondent's rights or legitimate interests in the Disputed Domain Name.

These circumstances are:

- before any notice of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or
- the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

According to prior UDRP panel decisions, it is sufficient that a complainant shows *prima facie* that a respondent lacks rights or legitimate interests in a domain name in order to shift the burden of production to the respondent (see *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

Indeed, while the overall burden of proof in a UDRP proceedings is on the complainant, previous UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible 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 *prima facie* that a 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element (see section 2.1 of the [WIPO Overview 3.0](#)).

According to the Panel, the Complainant has shown *prima facie* that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. Indeed, it appears that the Respondent has no affiliation with the Complainant and has not received any authorization to use the ARVELLA Trademarks in any manner.

Moreover, the Panel finds that there is no evidence that the Respondent is commonly known by the Disputed Domain Name or that the Respondent has the intent to use the Disputed Domain Name in connection with a *bona fide* offering of goods and services. On the contrary, the Disputed Domain Name was registered to configure MX servers and generate email addresses as part of a phishing scam. In particular, the Panel notes that the Complainant has received several complaints from businesses and individuals that, in some cases, have fallen victim of such scams while thinking they were dealing with the Complainant.

In any case, the Respondent did not reply to the Complainant's contentions. Even if the Respondent had replied, the use of a domain name for illegal activity, such as fraudulent emails, can never confer rights or legitimate interests upon a respondent (see section 2.13 of the [WIPO Overview 3.0](#)).

Therefore, according to the Policy, paragraph 4(a)(ii) and 4(c), the Panel considers that the Respondent does not have rights or legitimate interests in the Disputed Domain Name <arvellainvestments.com>.

C. Registered and Used in Bad Faith

According to the Policy, paragraph 4(a)(iii), the Complainant shall prove that the Disputed Domain Name has been registered and is being used in bad faith.

Thus, paragraph 4(b) provides that any one of the following non-exclusive scenarios constitutes evidence of a respondent's bad faith:

- (i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of

the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

First, the Panel considers that it is established that the Complainant has been actively using the ARVELLA Trademarks before the registration of the Disputed Domain Name and that there is no doubt that the Respondent knew the Complainant since it has specifically targeted the Complainant by impersonating him. Therefore, there is a presumption of bad faith registration of the Disputed Domain Name. Additionally, given the identity of the Disputed Domain Name to the Complainant's corporate name "Arvella Investments", the general incorporation of the ARVELLA trademark along with the associated and descriptive term "investments", and the use of the Disputed Domain Name to impersonate the Complainant, the Panel finds that the Respondent's intentionally sought to target the Complainant and cause confusion with Internet users believing there to be a connection to the Complainant.

Moreover, the Panel points out that the Disputed Domain Name revolves to an inactive website and has been used to configure MX servers and to generate emails addresses that are being used as part of a phishing scam.

In this case, the Panel believes that such use of the Disputed Domain Name proves that the Respondent acts in bad faith. In addition, the Respondent has not provided any answer to the Complainant's contentions.

Considering all of the above, the Panel finds that it is not possible to conceive of any plausible actual or contemplated good faith registration and use of the Disputed Domain Name by the Respondent.

Therefore, in view of all the circumstances of this case, the Panel holds that the Respondent has registered and is using the Disputed Domain Name in bad faith according to the Policy, paragraph 4(a)(iii) and 4(b).

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 <arvellainvestments.com> be transferred to the Complainant.

/Christiane Féral-Schuhl/

Christiane Féral-Schuhl

Sole Panelist

Date: November 21, 2022