

## **ADMINISTRATIVE PANEL DECISION**

Dorval AM v. SOPHIE DENOYELLE

Case No. D2022-4681

### **1. The Parties**

The Complainant is Dorval AM, France, represented by Inlex IP Expertise, France.

The Respondent is SOPHIE DENOYELLE, France.

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

The disputed domain name <dorvalam.com> is registered with CloudFlare, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 7, 2022. On December 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 8, 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 (Data Redacted) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 12, 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 December 14, 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 December 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 16, 2023.

The Center appointed Louis-Bernard Buchman as the sole panelist in this matter on January 26, 2023. 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 French company registered in 1993, is one of the largest asset managers in France with USD 1.4 billion under management in 2022. The Complainant, specialized in flexible strategies and European equities, is an affiliate of Natixis Investment Managers, and is focused on long-term performance.

The Complainant owns many registered DORVAL trademarks, including European Union trademark No. 013908512 registered on August 10, 2015, French trademark No. 4240036 registered on January 13, 2016 and international trademark No. 1302506 registered on January 15, 2016 (together hereinafter referred to as: “the Mark”).

The Complainant also owns the <dorval-am.com> domain name, registered on June 25, 2015, which resolves to its official website.

The disputed domain name was registered on May 3, 2022.

The Complainant has submitted evidence that the disputed domain name resolved to an error 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 confusingly similar to the Mark insofar as the disputed domain name contains the Mark in its entirety. The Complainant also asserts that the addition of the letters “am” does not serve to distinguish the disputed domain name from the Mark.
- (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 it never licensed the Respondent to use the Mark in any manner or consented to such use. The Complainant also asserts that the Respondent never had any business connection or affiliation with the Complainant.
- (iii) The Complainant submits that the Respondent has registered and is using the disputed domain name in bad faith. The Complainant alleges that the Respondent is a serial cybersquatter whose nefarious activity has already resulted in two UDRP decisions in which the domain names she registered have been ordered to be transferred to the Complainant, and that she chose to register the disputed domain name with a fraudulent purpose by configuring MX servers on the disputed domain name.
- (iv) 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**

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. Requirements of paragraph 4(a) of the Policy**

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

In comparing the Mark with the disputed domain name, it is evident that the latter consists solely of the Mark, followed by the letters "am", and by the generic Top-Level Domain ("gTLD") ".com".

The addition of terms (or letters as it is the case in this proceeding) does not prevent a finding of confusing similarity between a domain name and a trademark, where the trademark remains recognizable. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8. Here, the Mark is clearly recognizable in the disputed domain name.

It is also well established that a gTLD, including, as is the case here, the gTLD ".com", does not generally affect the assessment of a domain name for the purpose of determining identity or confusing similarity.

The Panel finds that the disputed domain name is confusingly similar to the Mark, which it incorporates entirely.

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 commonly known by the disputed domain name or makes a legitimate noncommercial or fair use of the disputed domain name.

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

To counter any notion that the Respondent has such rights or legitimate interests, the Complainant has argued that the Respondent (i) has no business connection or affiliation with the Complainant, and (ii) received no license or consent from the Complainant to register or use the disputed domain name.

Moreover, the Panel finds the composition of the disputed domain name, incorporating the Complainant's distinctive trademark followed by the letters "am", which are strongly related to the Complainant's asset management activity, carries a risk of implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See [WIPO Overview 3.0](#), section 2.5.1.

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 and to its official domain name.

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, in certain circumstances, support a finding of bad faith. See [WIPO Overview 3.0](#), section 3.2.2.

In this case, considering that at the date of registration of the disputed domain name the Mark was already registered and used for several years, that both parties are located in France, being the Complainant one of the largest asset managers in France, given the Respondent's configuring of MX servers on the disputed domain name and the lack of response of the Respondent in this proceeding, the Panel finds it difficult to believe that the Respondent chose to register the disputed domain name randomly with no knowledge of the Mark. See [WIPO Overview 3.0](#), section 3.1.1.

The Respondent also registered two other domain names which were transferred to a complainant (operating also in the assets management business) further to UDRP proceedings initiated by the latter (see *Financiere de l'echiquier v. Sophie Denoyelle, Pharma*, WIPO Case No. [D2022-3532](#), and *Financiere de l'Echiquier v. Sophie Denoyelle, Pharma*, Case No. [D2022-2371](#)), which shows a pattern of conduct by the Respondent and reinforces the implausibility of a registration of the disputed domain name without the prior knowledge of the Mark by the Respondent.

In addition, it is well established that the mere passive holding of a domain name in appropriate circumstances does not prevent a finding of bad faith. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *DCI S.A. v. Link Commercial Corporation*, WIPO Case No. [D2000-1232](#); *Mary-Lynn Mondich and American Vintage Wine Biscuits, Inc. v. Shane Brown, doing business as Big Daddy's Antiques*, WIPO Case No. [D2000-0004](#); and *Alitalia –Linee Aeree Italiane S.p.A v. Colour Digital*, WIPO Case No. [D2000-1260](#).

Furthermore, the Panel notes that many UDRP panels have 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 (see *Audi AG v. Hans Wolf*, WIPO Case No. [D2001-0148](#)), considering the specificity of the activity.

The Panel finds it is indeed not possible to imagine any plausible future active use of the disputed domain names that would not be illegitimate, considering the specificity of the Complainant's asset management activity, as its use invariably results in taking unfair advantage of the Complainant's rights.

In addition, when registering the disputed domain name, the Respondent provided false or incomplete contact details that prevented the courier service from delivering the Center's written communications.

Finally, some UDRP panels have held that in certain circumstances, registrants of domain names have a 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 which would infringe upon or otherwise violate the rights of a third party. 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](#).

The Panel concludes in the light of all these circumstances that the Respondent's registration and use of the disputed domain name constitutes 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, <dorvalam.com>, be transferred to the Complainant.

*/Louis-Bernard Buchman/*

**Louis-Bernard Buchman**

Sole Panelist

Date: February 6, 2023