

## **ADMINISTRATIVE PANEL DECISION**

Arthur J. Gallagher & Co. and Arthur J. Gallagher Services (UK) Limited v.  
David Moxam  
Case No. D2024-2293

### **1. The Parties**

The Complainants are Arthur J. Gallagher & Co., United States of America (“United States”) and Arthur J. Gallagher Services (UK) Limited, United Kingdom, (collectively, the “Complainants”), represented by Browne Jacobson LLP, United Kingdom.

The Respondent is David Moxam, United States.

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

The disputed domain name <arthurgallagherandco.com> (the “Disputed Domain Name”) is registered with Wild West Domains, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 5, 2024. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. Also on June 5, 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 (Registrant Private) and contact information in the Complaint.

The Center sent an email communication to the Complainants on June 7, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint on June 11, 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 June 12, 2024. In accordance with the Rules, paragraph 5,

the due date for Response was July 2, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 4, 2024.

The Center appointed Lynda M. Braun as the sole panelist in this matter on July 11, 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 Arthur J. Gallagher & Co. (the "First Complainant") and Arthur J. Gallagher Services (UK) Limited (the "Second Complainant"), are both part of the international Arthur J Gallagher group founded in 1927, which is one of the world's largest insurance brokerage, risk management and consulting firms. As of December 31, 2023, the Complainants had a market capitalization of USD 48.7 billion.

The First Complainant, incorporated in Delaware, United States, is the parent company of the international group Arthur J. Gallagher companies and is the owner of the Arthur J Gallagher registered trademarks. The Second Complainant, incorporated in England and Wales, is a subsidiary of the Arthur J. Gallagher companies and is licensed to use the First Complainant's trademarks in the United Kingdom.

The First Complainant owns the following registered trademarks through the United States Patent and Trademark Office ("USPTO"): ARTHUR J. GALLAGHER & CO. (and design), United States Trademark Registration No. 1,041,938, registered on June 22, 1976, in international classes 35, 36, and 42; and GALLAGHER, United States Trademark Registration No. 5,694,350, registered on March 12, 2019, in international classes 9, 16, 35, 36, 41, 42, 44, and 45. The First Complainant also owns the following trademarks in the United Kingdom: GALLAGHER, United Kingdom Trademark Registration No. UK00801421259; and ARTHUR J. GALLAGHER & CO. (and design), United Kingdom Trademark Registration No. UK00906360036, based on its United States trademarks.

The aforementioned trademarks will hereinafter collectively be referred to as the "ARTHUR J. GALLAGHER & CO. Mark". The Complainants and their international group spend a significant amount of money promoting their trademarks and earning goodwill by sponsoring famous sports events such as the Gallagher Premiership Rugby, the Chicago Cubs, the Special Olympics and World Rugby.

The Complainants own the domain name <ajg.com>, registered on March 24, 1992. The domain name resolves to the Complainants' official website for the United States at "www.ajg.com/us" and for the United Kingdom at "www.ajg.com/uk". The Complainants' executives and employees use the work email "[name]@ajg.com".

The Disputed Domain Name was registered on December 20, 2023, and the record shows that it currently resolves to a landing page of the Registrar<sup>1</sup> with pay-per-click hyperlinks. The day after registering the Disputed Domain Name, the Respondent used the Disputed Domain Name to fraudulently create emails, using an email address incorporating the Disputed Domain Name, "[...]@arthurgallagherandco.com". The emails were sent to an individual who owed money to the Second Complainant and functioned as part of a scheme in which the Respondent posed as an executive of the Second Complainant in an attempt to have the individual make payments owed, which payments would inure to the benefit of the Respondent.<sup>2</sup> The Second Complainant learned that the fraudulent email originated seemingly from a group of restaurants in the Philippines unrelated to the Complainants in this proceeding. Screenshots of the email chain between the Second Complainant and its customer were provided by the Complainants as an Annex to the Complaint.

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<sup>1</sup> When the Complainants submitted the Complaint, the Disputed Domain Name resolved to a holding page containing a privacy policy.

<sup>2</sup> The email requested payment and provided bank details for payment to be made to that account, presumably an account created by the Respondent.

## **5. Parties' Contentions**

### **A. Complainants**

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name. Notably, the Complainants contend that:

- the Disputed Domain Name is confusingly similar to the Complainants' trademark because the Disputed Domain Name contains the ARTHUR J. GALLAGHER & CO. Mark, in its entirety, save without the "J." and using the word "and" instead of an ampersand, and then followed by the generic Top-Level Domain ("gTLD") ".com", and thus does not prevent a finding of confusing similarity; and

- the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, among other things, the Complainants have not authorized the Respondent to register a domain name containing the ARHTUR J. GALLAGHER & CO. Mark, the Respondent was not making a bona fide offering of goods or services, and the Respondent has never been commonly known by the ARTHUR J. GALLAGHER & CO. Mark or any similar name; and

- the Disputed Domain Name was registered and is being used in bad faith because, among other things, the Respondent used the Disputed Domain Name to pose as an executive of the Second Complainant and sent fraudulent emails to one of the Second Complainant's customers to request that they settle their outstanding debt by making payment to a bank account purportedly created by the Respondent.

### **B. Respondent**

The Respondent did not reply to the Complainants' contentions.

## **6. Discussion and Findings**

### **6.1 Preliminary Issue: Consolidation of the Complainants**

Although the Complainants did not submit a request for consolidation in this proceeding in their Complaint, the Panel has nevertheless decided to address this issue. Pursuant to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11, the consolidation of multiple complainants filing a joint complaint against one or more respondents is subject to the discretion of the appointed panel. The Panel has concluded that consolidation of the Complainants would be appropriate in the present proceeding and would not have any unfair prejudicial effect on the Respondent. Moreover, the Complainants have been the target of common conduct by the Respondent, who has engaged in bad faith registration and use of the Disputed Domain Name. Furthermore, the Panel notes that the Complainants in the present administrative proceeding are affiliated since the Second Complainant is a subsidiary of the First Complainant and is licensed to use the trademarks owned by the First Complainant in the United Kingdom. As such, the two entities have a sufficient common legal interest in the ARTHUR J. GALLAGHER & CO. Mark incorporated in the Disputed Domain Name. Therefore, the Panel considers that it is fair and equitable under the circumstances of the case to permit consolidation as the Complainants are not only affiliated companies as parent and subsidiary, but also have common interests.

### **6.2 Substantive Matters**

In order for the Complainants to prevail and have the Disputed Domain Name transferred to the Complainants, the Complainants must prove the following (Policy, paragraph 4(a)):

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainants have rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (iii) the Disputed Domain Name was registered and is being used in bad faith.

## A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a two-fold inquiry: a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to that trademark. The Panel concludes that in the present case, the Disputed Domain Name is confusingly similar to the ARTHUR J. GALLAGHER & CO. Mark as explained below.

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainants' trademark and the Disputed Domain Name. See [WIPO Overview 3.0](#), section 1.7.

It is uncontroverted that the Complainants have established rights in the ARTHUR J. GALLAGHER & CO. Mark based on its years of use as well as its registered trademarks for the ARTHUR J. GALLAGHER & CO. Mark before the USPTO and the United Kingdom trademark office. The consensus view of panels is that "registration of a mark is prima facie evidence of validity, which creates a rebuttable presumption that the mark is inherently distinctive". See *CWI, Inc. v. Domain Administrator c/o Dynadot*, WIPO Case No. [D2015-1734](#). The Respondent has not rebutted this presumption, and therefore the Panel finds that the Complainants have rights in the ARTHUR J. GALLAGHER & CO. Mark.

The Disputed Domain Name consists of the ARTHUR J. GALLAGHER & CO. Mark, almost in its entirety, except for the letter "J." and use of the term "and" instead of an ampersand, and then followed by the gTLD ".com". It is well established that a domain name that wholly (or nearly) incorporates a trademark may be deemed confusingly similar to that trademark for purposes of the Policy despite the addition of other terms. As stated in section 1.8 of [WIPO Overview 3.0](#), "where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element". Thus, the mere removal of the letter "J." as well as the use of the term "and" instead of an ampersand in the Disputed Domain Name does not prevent a finding of confusing similarity. See e.g., *Allianz Global Investors of America, L.P. and Pacific Investment Management Company (PIMCO) v. Bingo-Bongo*, WIPO Case No. [D2011-0795](#); and *Hoffmann-La Roche Inc. v. Wei-Chun Hsia*, WIPO Case No. [D2008-0923](#).

Finally, the addition of a gTLD such as ".com" in a domain name is a technical requirement. As such, it is well established that a gTLD may typically be disregarded when assessing whether a disputed domain name is identical or confusingly similar to a trademark. See *Proactiva Medio Ambiente, S.A. v. Proactiva*, WIPO Case No. [D2012-0182](#) and [WIPO Overview 3.0](#), section 1.11.1. Thus, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainants' ARTHUR J. GALLAGHER & CO. Mark.

Based on the available record, the Panel finds that the first element of the Policy has been established.

## B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name. Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving that a respondent lacks rights or legitimate interests in a domain name may result in the difficult 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 a prima facie case that the 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

In this case, given the facts as set out above, the Panel finds that the Complainants have made out a prima facie case. The Respondent has not submitted any arguments or evidence to rebut the Complainants' prima facie case. Furthermore, the Complainants have not authorized, licensed, or otherwise permitted the

Respondent to use its ARTHUR J. GALLAGHER & CO. Mark. Nor do the Complainants have any type of business relationship with the Respondent. There is also no evidence that the Respondent is commonly known by the Disputed Domain Name or by any similar name, nor any evidence that the Respondent was using or making demonstrable preparations to use the Disputed Domain Name in connection with a bona fide offering of goods or services. See Policy, paragraph 4(c).

The Respondent used emails created from the Disputed Domain Name to pose as an executive of the Second Complainant. Such fraudulent emails were sent to a customer of the Second Complainant purportedly to request the payment of an outstanding debt. Such use of the Disputed Domain Name to pose as an executive of the Second Complainant and perpetuate this fraudulent scheme does not confer rights or legitimate interests on the Respondent. See [WIPO Overview 3.0](#), section 2.13.1 (“Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.”). See also *CMA CGM v. Diana Smith*, WIPO Case No. [D2015-1774](#) (finding that the respondent had no rights or legitimate interests in the disputed domain name, holding that “such phishing scam cannot be considered a bona fide offering of goods or services nor a legitimate noncommercial or fair use of the Domain Name”).

In sum, the Panel concludes that the Complainants have established an un rebutted prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Panel finds that the Respondent is using the Disputed Domain Name for commercial gain with the intent to mislead and defraud the Second Complainant’s customers by incorporating the Disputed Domain Name into emails sent by the Respondent to those customers in the name of an executive of the Second Complainant. Such use cannot conceivably constitute a bona fide offering of a product or service within the meaning of paragraph 4(c)(i) of the Policy.

Based on the available record, the Panel finds that the second element of the Policy has been established.

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

The Panel finds that based on the record, the Complainants have demonstrated the existence of the Respondent’s bad faith registration and use of the Disputed Domain Name pursuant to paragraph 4(a)(iii) of the Policy.

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

The use of a domain name to intentionally attempt to attract Internet users to a respondent’s website or online location by creating a likelihood of confusion with a complainant’s mark as to the source, sponsorship, affiliation or endorsement of the registrant’s website or online location for commercial gain demonstrates registration and use in bad faith. Here, the Respondent’s registration and use of the Disputed Domain Name indicates that such registration and use had been done for the specific purpose of trading upon and targeting the name and reputation of the Complainants. See *Madonna Ciccone, p/k/a Madonna v. Dan Parisi and “Madonna.com”*, WIPO Case No. [D2000-0847](#) (“[t]he only plausible explanation for Respondent’s actions appears to be an intentional effort to trade upon the fame of Complainant’s name and mark for commercial gain”).

Moreover, the Panel concludes that the Respondent’s registration of the Disputed Domain Name was an attempt to disrupt the Complainants’ business for commercial gain. See *Banco Bradesco S.A. v. Fernando Camacho Bohm*, WIPO Case No. [D2010-1552](#). The Respondent’s use of the Disputed Domain Name was

also highly likely to confuse Internet users into incorrectly believing that the Respondent was authorized by or affiliated with the Complainants.

Other panels have held that the use of a domain name for illegal activity, as was present here, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel thus finds that the Respondent's registration and use of the Disputed Domain Name constitutes bad faith registration and use under the Policy due to the Respondent's use of the Disputed Domain Name to pose as the Second Complainant and create fraudulent emails purportedly sent by the Second Complainant's executive to a customer in an attempt to have the customer settle its outstanding debt, which debt would be paid to an account fraudulently created by the Respondent.

The Panel also finds that the Respondent knew that the Complainants had rights in the ARTHUR J. GALLAGHER & CO. Mark when registering the Disputed Domain Name, emblematic of bad faith registration and use. It strains credulity to believe that the Respondent did not know of the Complainants or their trademarks when registering the Disputed Domain Name. See *Myer Stores Limited v. Mr. David John Singh*, WIPO Case No. [D2001-0763](#) ("a finding of bad faith may be made where the respondent 'knew or should have known' of the registration and/or use of the trademark prior to registering the domain name"). The Panel finds that in the present case, the Respondent had the Complainants' trademarks in mind when registering and using the Disputed Domain Name. This is especially true since the Respondent's Disputed Domain Name and the emails the Respondent created incorporated the ARTHUR J. GALLAGHER & CO. Mark almost entirely.

In sum, the Panel concludes that the circumstances of this case, including the claim that the Disputed Domain Name had been used to pose as the Second Complainant to create fraudulent emails, and the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good faith use, support an inference of bad faith.

Based on the available record, the Panel finds that the third element of the Policy has been established.

## 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 <arthurgallagherandco.com> be transferred to the Complainants.

*/Lynda M. Braun/*

**Lynda M. Braun**

Sole Panelist

Date: July 25, 2024