

## **ADMINISTRATIVE PANEL DECISION**

AGFA-GEVAERT N.V. v. Privacy service provided by Withheld for Privacy ehf / rizky bagus haryanto  
Case No. D2022-1133

### **1. The Parties**

Complainant is AGFA-GEVAERT N.V., Belgium, represented by Novagraaf Belgium NV/SA, Belgium.

Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / rizky bagus haryanto, Indonesia.

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

The Disputed Domain Name <agfadirect.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 April 1, 2022. On the same date, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On the same date, 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 Complainant on April 5, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on April 6, 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 Respondent of the Complaint, and the proceedings commenced on April 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 12, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on May 13, 2022.

The Center appointed Richard W. Page as the sole panelist in this matter on June 10, 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**

Complainant owns numerous registrations of the AGFA Mark, including without limitation: European Union (“EU”) Registration No. 3353463 registered on January 24, 2005 in classes 1, 2, 7, 9, 10, 40 and 42; and EU Registration No. 008133167 for the word and device AGFA registered on February 17, 2010 in classes 1, 2, 7, 9, 10 and 42.

Complainant has been active in the graphics and photographic sector for many years and enjoys a worldwide reputation. Complainant has been active in the medical imaging and medical software sector for many years and previously Complainant was a manufacturer of cameras and films. Complainant owns various domain names containing the word “agfa”.

The Disputed Domain Name was registered on August 27, 2020. At some point in time, the Disputed Domain Name appears to have resolved to a website displaying online lotteries and offering related services. Currently, the Disputed Domain Name does not resolve to any active website.

#### **5. Parties’ Contentions**

##### **A. Complainant**

Complainant contends that the Disputed Domain Name is confusingly similar to the AGFA Mark, pursuant to paragraph 4(a)(i) of the Policy.

Complainant further contends that the dominant part of the Disputed Domain Name reproduces the entirety of the AGFA Mark. In addition, the descriptive term “direct” is added, which has no particular meaning or significance that would distinguish the Disputed Domain Name from the AGFA Mark. The generic Top-Level Domain (“gTLD”) “.com” need not be taken into consideration.

Complainant asserts that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, pursuant to paragraph 4(a)(ii) of the Policy.

Complainant further asserts that Respondent has not been commonly known by the name “Agfa”. Complainant further asserts that it has not licensed or otherwise authorized Respondent to use the AGFA Mark or any domain name including the AGFA Mark.

Complainant further asserts that the “www.agfadirect.com” website is in use. It is in Indonesian and is an online lottery website.

Complainant alleges that Respondent has registered and is using the Disputed Domain Name in bad faith, pursuant to paragraph 4(a)(iii) of the Policy.

Complainant further alleges that the AGFA Mark is famous and predated the Disputed Domain Name registration. Complainant further alleges that the AGFA Mark is so famous that Respondent could not have ignored its preexistence and Respondent must have been fully aware of it when selecting the Disputed Domain Name.

Complainant further alleges that the fact that Respondent has chosen to include the AGFA Mark in the Disputed Domain Name is a clear indication that the registration of the Disputed Domain Name was in bad faith.

Complainant further alleges that bad faith is found in cases where, by using the disputed domain name, 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 complainant's mark as to the source, sponsorship, affiliation, or endorsement of respondent's website or location or of a product or service on respondent's website or location.

Complainant further alleges that the word "agfa" consists of random letters strung together with no apparent meaning, and any use of the Disputed Domain Name would therefore likely to result in misleading Internet users into believing that the Disputed Domain Name is associated with Complainant.

Complainant suspects that Respondent has selected its AGFA Mark to draw the impression that Respondent is affiliated with Complainant, or endorsed by it. This is unacceptable for Complainant and demonstrates at the same time Respondent's bad faith.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: "A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable."

Even though Respondent has failed to file a Response or to contest Complainant's assertions, the Panel will review the evidence proffered by Complainant to verify that the essential elements of the claims are met. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)).

Paragraph 4(a) of the Policy directs that Complainant must prove each of the following:

- i) that the Disputed Domain Name registered by Respondent is identical or confusingly similar to the AGFA Mark in which Complainant has rights; and,
- ii) that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and,
- iii) that the Disputed Domain Name has been registered and is being used in bad faith.

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

Section 1.2.1 of the [WIPO Overview 3.0](#) states that registration of a trademark is *prima facie* evidence of Complainant having enforceable rights in the AGFA Mark.

Complainant owns numerous registrations of the AGFA Mark, including without limitation: EU Registration No. 3353463 registered on January 24, 2005 in classes 1, 2, 7, 9, 10, 40 and 42; and EU Registration No. 008133167 for the word and device AGFA registered on February 17, 2010 in classes 1, 2, 7, 9, 10 and 42. Respondent has not contested the registrations of the AGFA Mark. Therefore, the Panel finds that Complainant has enforceable trademark rights in the AGFA Mark for purposes of this proceeding.

Section 1.7 of the [WIPO Overview 3.0](#) says that inclusion of the entire trademark in a domain name will be considered confusingly similar. Also, Section 1.8 of the [WIPO Overview 3.0](#) instructs that the addition of other terms (whether descriptive, geographical, pejorative, meaningless or otherwise) does not prevent a

finding of confusing similarity. Also, Section 1.11.1 of the [WIPO Overview 3.0](#) instructs that gTLDs such as “.com” may be disregarded for purposes of assessing confusing similarity.

Complainant further contends the dominant part of the Disputed Domain Name reproduces the entirety of the AGFA Mark. In addition, the descriptive term “direct” is added, which has no particular meaning or significance that would prevent a finding of confusing similarity between the Disputed Domain Name and the AGFA Mark. The generic Top-Level Domain (“gTLD”) “.com” need not be taken into consideration.

The Panel finds that the record supports these contentions and that Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

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

Complainant contends that Respondent has no rights or legitimate interest in the Disputed Domain Name pursuant to paragraph 4(a)(ii) of the Policy.

Section 2.1 of the [WIPO Overview 3.0](#) states that once Complainant makes a *prima facie* case in respect of the lack of rights or legitimate interests of Respondent, Respondent carries the burden of demonstrating it has rights or legitimate interests in the Disputed Domain Name. Where Respondent fails to do so, Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

Paragraph 4(c) of the Policy allows three nonexclusive methods for the Panel to conclude that Respondent has rights or a legitimate interest in the Disputed Domain Name:

(i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a *bona fide* offering of goods or services; or

(ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Disputed Domain name, even if you have acquired no trademark or service mark rights; or

(iii) you [Respondent] are making a legitimate noncommercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the AGFA Mark.

Complainant asserts that Respondent has not been commonly known by the name “Agfa”. Complainant further asserts that it has not licensed or otherwise authorized Respondent to use the AGFA Mark or any domain name including the AGFA Mark.

The Panel finds that Respondent has engaged in the unauthorized use of the AGFA Mark in the Disputed Domain Name. Such activity can be neither *bona fide* nor legitimate. Furthermore, Respondent has not contested Complainant’s assertions that Respondent is not commonly known as “Agfa”.

Therefore, the Panel finds that Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

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

Complainant contends that Respondent registered and is using the Disputed Domain Name in bad faith in violation of paragraph 4(a)(iii) of the Policy.

Paragraph 4(b) of the Policy sets forth four nonexclusive criteria for Complainant to show bad faith registration and use of the Disputed Domain Name:

(i) circumstances indicating that you [Respondent] have registered or you have acquired the Disputed Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Disputed Domain Name registration to Complainant who is the owner of the AGFA Mark or to a competitor of Complainant, for

valuable consideration in excess of your documented out-of-pocket costs directly related to the Disputed Domain Name; or

(ii) you [Respondent] have registered the Disputed Domain Name in order to prevent the owner of the AGFA Mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you [Respondent] have registered the Disputed Domain Name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the Disputed Domain Name, you [Respondent] have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the AGFA Mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product on Respondent's website or location.

The four criteria set forth in the Policy paragraph 4(b) are nonexclusive. See, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). In addition to these criteria, other factors alone or in combination can support a finding of bad faith.

Complainant alleges that the AGFA Mark is famous and predated the Disputed Domain Name registration. Complainant further alleges that the AGFA Mark is so famous that Respondent could not have ignored its preexistence and Respondent must have been fully aware of it when selecting the Disputed Domain Name.

Complainant alleges that 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 Complainant's Mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

Complainant further alleges that the word "agfa" consists of random letters strung together with no apparent meaning, and any use of the Disputed Domain Name would therefore likely to result in misleading Internet users into believing that the Disputed Domain Name is associated with Complainant.

The Panel finds that Respondent has violated paragraph 4(b)(iv) of the Policy. The Panel also finds that Complainant has shown the additional factor of actual and constructive knowledge of Complainant's rights in the AGFA Mark when registering and using the Disputed Domain Name, pursuant to Section 3.2.2 of the [WIPO Overview 3.0](#).

Therefore, Complainant has satisfied the requirements of paragraph 4(a)(iii) of the Policy.

## **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 <agfadirect.com> be transferred to Complainant.

*/Richard W. Page/*

**Richard W. Page**

Sole Panelist

Date: June 24, 2022