

ADMINISTRATIVE PANEL DECISION

Holding Le Duff “HLD” v. Francois Francis
Case No. D2022-3890

1. The Parties

The Complainant is Holding Le Duff “HLD”, France, represented by Scan Avocats AARPI, France.

The Respondent is Francois Francis, Saudi Arabia.

2. The Domain Name and Registrar

The disputed domain name <groupeleduff.org> 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 October 17, 2022. On October 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 19, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 22, 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 October 24, 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 November 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 22, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 25, 2022.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on November 30, 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 which was established in 1976. It is specialized in restaurants and bakery café markets worldwide through its various restaurant brands such as “Brioche Dorée”, “Kamps”, “Bridor” etc. It further results from the Complainant’s undisputed evidence that the latter runs over 1.250 restaurants and bakeries in 100 countries and serves 1.000.000 customers every day, generating a total turnover of more than EUR 2 billion.

The Complaint is based, amongst others, on European Union Trademark registration GROUPE LE DUFF (verbal) no. 001146851 filed on April 21, 1999 and registered on June 20, 2000 for goods and services in classes 29, 30, 32, 35 and 42. This mark has duly been renewed and is in force.

The disputed domain name was registered on September 12, 2022.

It results from the Complainant’s documented allegations that the disputed domain name does not resolve to any active website (“This site can’t be reached”). However, MX servers have been activated in relation with the disputed domain name and at least one of the Complainant’s clients received fraudulent emails from an email address ending on “@groupleduff.org” requesting non legitimate payments by sending false bank details.

5. Parties’ Contentions

A. Complainant

Firstly, the Complainant points out that the disputed domain name is confusingly similar to its prior trademark GROUPE LE DUFF, since it wholly incorporates the Complainant’s trademark.

Secondly, the Complainant alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain name. In particular, the Complainant submits that the Respondent has not given the Respondent any authorization or permission to register or use its trademark GROUPE LE DUFF. Furthermore, the Respondent is not in any way related to the Complainant; neither is it an authorized distributor nor does it carry out any activity for or has any business with the Complainant. Finally, the Respondent is not currently and has never been known under the name “groupe le duff”.

Thirdly, the Complainant contends that the Respondent registered and uses the disputed domain name in bad faith. The Complainant’s prior trademarks were registered many years before the disputed domain name and are well known in France and abroad. Therefore, the Respondent could not have been unaware of the Complainant’s prior trademarks when it registered and used the disputed domain name. MX records have been activated in relation with the disputed domain name, indicating that the Respondent intended to use it to set up an online phishing campaign using email communications pretending to be from the Complainant’s employees in order to mislead its clients regarding the origin of the said communications and obtain non legitimate payments. At least one of the Complainant’s clients received fraudulent emails.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements in order to obtain an order that the disputed domain name should be transferred or cancelled:

- (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.

The Panel is satisfied that the registrant of record for the disputed domain name is the Respondent and will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must establish rights in a trademark or service mark and subsequently establish that the disputed domain name is identical or confusingly similar to said mark.

The Complainant is the registered owner of European Union Trademark registration GROUPE LE DUFF (verbal) registered on June 20, 2000 and duly renewed.

The disputed domain name entirely incorporates this trademark. As noted in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7, in cases where a domain name incorporates the entirety of a trademark, or at least where a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for the purposes of UDRP standing. The Panel finds the Complainant's GROUPE LE DUFF mark to be fully included and therefore readily recognizable in the disputed domain name.

The generic Top-Level Domain ".org" may be disregarded, as it is viewed as a standard registration requirement (see [WIPO Overview 3.0](#), section 1.11.1).

Hence, this Panel finds that the disputed domain name is identical or confusingly similar to the Complainant's trademark GROUPE LE DUFF pursuant to the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name. In the Panel's view, based on the un rebutted allegations stated above, the Complainant has made a *prima facie* case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

No content is displayed on the website to which the disputed domain name resolves. Such use can neither be considered a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue in the sense of paragraph 4(c)(i) and (iii) of the Policy (see, e.g., *Boehringer Ingelheim Pharma GmbH & Co.Kg v. Mrs. Toy Rösler*, WIPO Case No. [D2022-1094](#)). In addition, the disputed domain name consists of the Complainant's trademark GROUPE LE DUFF so that this Panel finds it most likely that the Respondent selected the disputed domain name with the intention to take advantage of the Complainant's registered trademark GROUPE LE DUFF by registering a domain name consisting of said trademark, thus misleading Internet users through the implied affiliation (see section 2.5.1 of the [WIPO Overview 3.0](#)).

Finally, the Panel does not dispose of any elements that could lead the Panel to the conclusion that the Respondent is commonly known by the disputed domain name or that it has acquired trademark rights pursuant to paragraph 4(c)(ii) of the Policy.

It is acknowledged that once the Panel finds such *prima facie* case is made, the burden of production shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the disputed domain name. Since the Respondent in the case at hand failed to come forward with any allegations or evidence in this regard, this Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant is therefore deemed to have satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Pursuant to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith.

According to the Complainant's undisputed allegations, the Respondent does not actively use the disputed domain name. With comparative reference to the circumstances set out in paragraph 4(b) of the UDRP deemed to establish bad faith registration and use, prior UDRP panels have found that the apparent lack of active use (e.g., to resolve to a website) of the domain name without any active attempt to sell or to contact the trademark holder (passive holding), does not as such prevent a finding of bad faith under the doctrine of passive holding (see, e.g., *Boehringer Ingelheim Pharma GmbH & Co. Kg v. Mrs. Toy Rösler*, WIPO Case No. [D2022-1094](#) with further references). The Panel must therefore examine all the circumstances of the case to determine whether the Respondent is acting in bad faith. Factors that have been considered relevant in applying the passive holding doctrine include (see [WIPO Overview 3.0](#), section 3.3):

- (i) the degree of distinctiveness or reputation of the complainant's mark;
- (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use;
- (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement); and
- (iv) the implausibility of any good faith use to which the domain name may be put.

In the case at hand, the Panel finds that the circumstances listed hereinafter and surrounding the registration suggest that the Respondent was aware that he has no rights or legitimate interests in the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith (see *CCA and B, LLC v. Domain Administrator, Fundacion Privacy Services LTD*, WIPO Case No. [D2021-1532](#); *Actelion Pharmaceuticals, Ltd v. Whois Agent, Whois Privacy Protection Service, Inc / Jean-Paul Clozel, supra*; *America Online, Inc. v. Antonio R. Diaz*, WIPO Case No. [D2000-1460](#)):

- (i) the fact that the Respondent appears to be engaged in a phishing scheme since the disputed domain name has been connected to active MX records and at least one of the Complainant's clients received fraudulent emails from an email address ending on "@groupleduff.org" requesting non legitimate payments by sending false bank details;
- (ii) the fact that the details disclosed for the Respondent by the Registrar were incomplete, noting the mail courier's inability to deliver the Center's written communications;
- (iii) the Respondent's failure to respond to this Complaint;

(iv) the distinctiveness of the trademark GROUPE LE DUFF which has existed since many years; and

(v) the trademark GROUPE LE DUFF is fully and identically incorporated in the disputed domain name.

In addition, due to these circumstances this Panel concludes that the Respondent knew or should have known the trademark GROUPE LE DUFF when it registered the disputed domain name, and that there is no plausible legitimate active use that the Respondent could make of the disputed domain name.

In the light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant is therefore deemed to also have satisfied the third element, 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, <groupeleduff.org>, be transferred to the Complainant.

/Tobias Malte Müller/

Tobias Malte Müller

Sole Panelist

Date: December 14, 2022