

ADMINISTRATIVE PANEL DECISION

Gonet & Cie SA v. Jessica C Drewes

Case No. D2022-4754

1. The Parties

The Complainant is Gonet & Cie SA, Switzerland, represented by Watt Law Sàrl, Switzerland.

The Respondent is Jessica C Drewes, Tunisia.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 12, 2022. On December 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On December 13, 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 December 14, 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 17, 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 13, 2023.

The Center appointed Nick J. Gardner as the sole panelist in this matter on January 19, 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 is a Swiss bank. It was founded in 1845. It has an Internet presence via a website linked to the domain name <gonet.ch>. It relies in this proceeding on a trademark it owns which comprises a white letter G on a red square background – Swiss registration No. 696692, registered on August 15, 2016. The Panel will refer to this trademark as the “Letter G trademark”.

The Disputed Domain Name was registered on February 6, 2022. It does not now resolve to a website but the filed evidence shows it has previously been linked to a website (the “Respondent’s Website”) which impersonated the Complainant and which was designed to obtain confidential information such as usernames and passwords from the Complainant’s customers.

5. Parties’ Contentions

A. Complainant

The Complainant’s contentions can be summarized as follows.

The Disputed Domain Name is confusingly similar to the Complainant’s own domain name <gonet.ch>. The Respondent also reproduces the Complainant’s Letter G trademark on the Respondent’s Website as part of its impersonation of the Complainant.

The Respondent has no rights or legitimate interests in the term “GONET” or “gonetaccess”.

The Disputed Domain Name was registered and is being used in bad faith. The Complainant says the use of the Disputed Domain Name in connection with manifestly fraudulent “phishing” activity is clear evidence of bad faith. It says the Respondent’s motive was dishonest financial gain. It also says the Respondent’s name and address are fictitious which is further evidence of bad faith

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Matters

The Panel notes that no communication has been received from the Respondent. However, given the Notification of Complaint and Written Notice were sent to the relevant addresses disclosed by the Registrar, then the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to “employ reasonably available means calculated to achieve actual notice”. Accordingly, the Panel considers it is able to proceed to determine this Complaint and to draw inferences from the Respondent’s failure to file any Response. While the Respondent’s failure to file a Response does not automatically result in a decision in favor of the Complainant, the Panel may draw appropriate inferences from the Respondent’s default (see, e.g., *Verner Panton Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#)).

6.2 Substantive Matters

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

- (i) the Disputed Domain Name is identical with 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

This issue is not entirely straightforward. The Panel agrees with the Complainant that the Disputed Domain Name is confusingly similar to the Complainant's own domain name <gonet.ch>. However, that is not what the Policy requires – it requires confusing similarity to a trademark. The Panel also agrees that the Respondent has replicated the Complainant's Letter G trademark on the Respondent's Website as part of its impersonation of the Complainant. However, the Panel has difficulty in seeing how it can be said that the Disputed Domain Name is confusingly similar to the Letter G trademark – they each contain the letter "g" but that does not seem sufficient.

However, the Panel considers that the term "GONET" itself is one in which it would appear the Complainant has unregistered rights. The Panel does not consider the term "GONET" to be descriptive. The Complainant has traded under it for over 150 years and is a well established and appropriately regulated bank in Switzerland. The Panel considers that the Complainant's customers and no doubt others must recognise the term "GONET" as a source identifier for the Complainant's services. It is also a matter of public record that the Complainant sponsors annually the Geneva Open tennis tournament, which must result in its name receiving widespread publicity and recognition. Whilst the filed evidence is not particularly comprehensive, the Panel concludes that the Complainant does have unregistered trademark rights in the term "GONET".

In addition, were there any doubt about this, it is relevant that the Respondent itself thought it worthwhile to use this term in the Disputed Domain Name. As the panel noted in *NEOVIA, Hi-Nutrients International Ltd. v. WhoisGuard Protected, WhoisGuard, Inc. / Deniz Hus* WIPO Case No. [D2019-0600](#): "The Respondent did not provide arguments to the contrary; rather, in the Panel's view, the Respondent cannot dispute that, given it deliberately targeted the source identifier in an apparent fraud attempt. Such targeting of the Complainants is sufficient to establish limited trademark rights in the HI-NUTRIENTS trademark for the purposes of the Policy." See *PEMF Supply, LLC v. Domain Administrator, See PrivacyGuardian.org / Gregory Lewis, American Healthcare Foundation*, WIPO Case No. [D2019-0235](#) ("[...] in light of the use of the PEMF SUPPLY mark that was submitted in this proceeding, the targeting of Complainant by Respondent is sufficient to establish Complainant has limited unregistered trademark rights in the PEMF SUPPLY mark for the purposes of the Policy"). See also *Greenspring Associates, Inc. v. Lisa Knowles, Victoria capital pty*, WIPO Case No. [D2019-0265](#): "To that extent, Complainant has in fact used the domain name <gspring.com> as a source identifier for its services. One person who cannot dispute that fact is Respondent, who (as is discussed below) deliberately targeted that source identifier (<gspring.com>) to attempt to perpetrate a fraud via confusion. The Domain Name differs from the GSPRING mark only to the extent that the Domain Name replaces the "i" with an "I". The visual similarity between the "i" and the "I" – especially when the font is small – is obvious".

Accordingly, the Panel is satisfied on the evidence as filed that the Complainant has shown it has unregistered trademark rights in the term "GONET" as a source identifier for its services. The Panel will refer to the "GONET trademark" in the remainder of this decision in relation to such rights.

The Panel finds the Disputed Domain Name is confusingly similar to the GONET trademark. Previous UDRP panels have consistently held that domain names are identical or confusingly similar to a trademark for purposes of the Policy "when the domain name includes the trademark, or a confusingly similar

approximation, regardless of the other terms in the domain name” (*Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. [D2000-0662](#)). It is established that, where a mark is recognizable within the disputed domain name, the disputed domain name is considered to be confusingly similar to the mark (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) at section 1.7).

It is also established that the addition of a terms (such as here “access”) to a disputed domain name would not prevent a finding of confusing similarity between the domain name and the mark ([WIPO Overview 3.0](#) at section 1.8).

It is also well established that the Top-Level Domain (“TLD”), in this case “.com”, is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test. See [WIPO Overview 3.0](#) at section 1.11.

Accordingly, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant’s trademark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a domain name:

- (i) before any notice to the respondent of the dispute, 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
- (ii) the respondent has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or
- (iii) 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.

None of these apply in the present circumstances. The Complainant has not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use the terms GONET or “gonetaccess”. The Complainant has prior rights in the GONET trademark, which precede the Respondent’s acquisition of the Disputed Domain Name. The Complainant has therefore established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name (see, for example, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

Moreover, the impersonating, phishing use of the Disputed Domain Name can never confer rights or legitimate interests on the Respondent.

The Panel finds that the Respondent has failed to produce any evidence to establish its rights or legitimate interests in the Disputed Domain Name. Accordingly, the Panel finds the Respondent has no rights or any legitimate interests in the Disputed Domain Name and the second condition of paragraph 4(a) of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration 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 your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have 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 you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you 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 complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.

In the present case, the Panel concludes that the deliberate use of the Complainant's GONET trademark as part of the Disputed Domain Name, in combination with the word "access", is intended to attract customers of the Complainant who may then be misled into providing confidential information. That falls squarely within the type of circumstances to which the Policy refers to in (iv) above. The Respondent is clearly engaged in activity which is intended to obtain data which can then in all probability be used in further fraudulent activity directed against the Complainant or its customers. See *Australia and New Zealand Banking Group Limited v. Bashar Ltd*, WIPO Case No. [D2007-0031](#), and the cases therein referred to, for further analysis of why "phishing" activities amount to use in bad faith. See also *Grupo Financiero Inbursa S.A. de CV v ibuirisa*, WIPO Case No. [D2006-0614](#), to similar effect.

The fact that the Respondent's name and address appear to be fictitious is a further indication of bad faith.

Accordingly, the Panel finds that the Disputed Domain Name has been registered and is being used in bad faith and the third condition of paragraph 4(a) of the Policy has been fulfilled

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 <gonetaccess.com> be transferred to the Complainant.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: February 2, 2023