

## **ADMINISTRATIVE PANEL DECISION**

### **Foundation of the Society of Retina Specialists v. Roger Hartlieb Case No. D2023-4043**

#### **1. The Parties**

The Complainant is Foundation of the Society of Retina Specialists, Ireland, represented by BDB Pitmans LLP, United Kingdom ("UK" or "United Kingdom").

The Respondent is Roger Hartlieb, United Kingdom.

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

The disputed domain name <euretinacongress.org> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on September 27, 2023. On September 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 27, 2023, 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 (Unknown identity, Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 2, 2023, 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 2, 2023.

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 October 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 30, 2023. The Respondent sent to the Center an informal communication on October 10, 2023, but did ultimately not submit any formal Response.

Accordingly, the Center notified the Respondent with the Commencement of Panel Appointment Process on October 31, 2023.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on November 15, 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 following facts are undisputed.

The Complainant, an organization of retina specialists, has been operating and organizing annual conferences for around 19 years operating under the name of EURETINA, including through promotion through its principal website “www.euretina.org”. This website has been used since 2000. The Complainant now has over 4,500 members and its annual conferences attracts thousands of delegates. In addition, it organizes several other events.

The Complainant has registered trade mark rights for the word mark “EURETINA European Society of Retina Specialists”, in the United Kingdom under trade mark number UK00908596967 and in the European Union under trade mark number 008596967, both registrations are for good in classes 16, 35, 41, 42 and were registered on February 1, 2010.

The disputed domain name was registered on June 21, 2021. The disputed domain name currently resolves to an inactive website. At the time of the Complaint, the disputed domain name resolved to a website which is similar to the website operated by the Complainant and offers tickets to the Complainant's conference. An unwitting attendee of the conference emailed the Complainant after having registered on the Respondent's website.

#### **5. Parties' Contentions**

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

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that Respondent set up a fraudulent scheme to sell tickets. The Respondent set up the disputed domain for the sole purpose of profiting commercially from the Complainant's goodwill by selling non-existent tickets to the conference.

##### **B. Respondent**

The Respondent did not reply to the Complainant's contentions, except that the Respondent informed the Center by email that “The website in question is closed, and we will not start the website again.”

#### **6. Discussion and Findings**

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

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 Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#)), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms, here “congress”, may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds 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.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible 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. 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.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise, such as (i) use of the disputed domain name (or demonstrable plans for such use) with a *bona fide* offering; (ii) being commonly known by the disputed domain name; or (iii) legitimate noncommercial fair use.

It follows clearly from the facts of the matter that have not been rebutted by the Respondent, that the Respondent has been using the disputed domain name for fraudulent purposes.

Panels have 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. [WIPO Overview 3.0](#), section 2.13.1.

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

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

The Panel refers to its considerations under 6.C of this Decision.

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.

In the present case, the Panel notes that the Respondent is using the disputed domain name to intentionally attempt to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's trademark and the Complainant's activities. Given the use the Respondent has been making of the disputed domain name, which is an unlawful replication of the Complainant's website, the Respondent must have been in bad faith, also when registering the disputed domain name.

Panels have 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) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy. The fact that the disputed domain name currently resolves to an inactive website does not prevent a finding of bad faith.

Based on the available record, the Panel finds 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, <euretinacongress.org> be transferred to the Complainant.

*/Willem J. H. Leppink/*

**Willem J. H. Leppink**

Sole Panelist

Date: November 29, 2023