

## **ADMINISTRATIVE PANEL DECISION**

Financiere B & B Hotels v. Sylvain Moreau  
Case No. D2024-3170

### **1. The Parties**

The Complainant is Financiere B & B Hotels, France, represented by Fiducial Legal By Lamy, France.

The Respondent is Sylvain Moreau, Switzerland, self-represented.

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

The disputed domain name <wegrow-together.com> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 1, 2024. On August 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 6, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 6, 2024, 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 August 7, 2024. The Respondent sent two informal emails to the Center on August 6, 2021.

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 August 9, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 29, 2024. The Response was filed with the Center on August 21, 2024. The Respondent confirmed by email on August 21, 2024, that the Response filed on August 21, 2024, may be regarded as the complete Response. The Complainant transmitted by email the supplemental filing on August 22, 2024. The Respondent sent three further emails to the Center on August 22, 2024.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on August 27, 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 Complainant is a French company which was incorporated in April 2003.

In the Complaint, the Complainant has included evidence that it owns three registered trademarks for WE GROW TOGETHER:

- (a) French Registered Trademark No 4828757, which was filed on December 23, 2021 and registered on May 20, 2022;
- (b) International Registration No 1645471, which was filed and registered on December 30, 2021 designating the European Union, Norway, and Morocco; and
- (c) United Kingdom (UK) Registered Trademark No UK00003894663, which was filed on March 29, 2023 and registered on August 25, 2023.

Each of these trademarks is registered in respect of a range of goods and services in International Classes 9, 16, 35, 41, and 43.

The services specified in International Class 43 include hotel services, temporary accommodation, services for providing food and beverages and reservations of hotel rooms and temporary accommodation. The services covered by International Class 41 in both the French and International Registrations include education and training, organizing and conducting conferences and exhibitions, teaching services and teaching services for the hotel trades. Although the details of the services covered by the UK registration have not been included in the Complaint, the Panel notes that the International Class 41 services are rather different: "Game services provided online (from a computer network); electronic desktop publishing; electronic publication of books and journals online; writing of texts other than advertising texts; entertainment services; providing online games from downloadable digital files authenticated by cryptographic and/or digital tokens, including non-fungible tokens [NFTs]."

The Complainant has also registered 14 domain names based on "we grow together" such as <we-grow-together.com> and <we-grow-together.fr>. All save <wegrowtogether.university> were registered on January 10, 2024. <wegrowtogether.university> was registered on December 30, 2021.

According to the Whois report, the disputed domain name was registered on June 13, 2024.

The Complainant states that the disputed domain name is not currently used. According to the evidence in the Complaint, the disputed domain name is parked with the Registrar. The landing page for disputed domain name also includes the Registrar's typical advertisement for its domain brokerage service offering (for a fee) to inquire if the disputed domain name may be for sale.

#### **5. Discussion and Findings**

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of a disputed domain name, the Complainant must demonstrate each of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

- (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.

Paragraph 15(a) of the Rules directs the Panel to decide the 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.

### **A. Supplemental Filing**

Before addressing the substantive requirements under the Policy, the Panel deals with the Complainant's request to file a supplemental filing.

Apart from documents requested by the Panel pursuant to paragraph 12 of the Rules, neither the Policy nor the Rules expressly provide for supplemental filings. Their admissibility is therefore in the discretion of the Panel bearing in mind the requirements under paragraph 10 of the Rules to ensure that the proceeding is conducted with due expedition and both parties are treated equally, with each party being given a fair opportunity to present its case.

Where unsolicited supplemental filings are admitted, it is usually because the material corrects some error or addresses something raised in a Response which could not reasonably have been anticipated or which was not otherwise appropriate to deal with until a respondent's position on a particular point was clear.

For the sake of completeness and bearing in mind that the Respondent has submitted several emails addressing aspects of the Complainant's unsolicited supplemental filing, the Panel admits both the Complainant's supplemental filing and the Respondent's emails into the record in this proceeding.

### **B. Identical or Confusingly Similar**

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

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.

The Complainant has proven ownership of the three Registered Trademarks for WE GROW TOGETHER identified in section 4 above.

The comparison of the disputed domain name to the Complainant's trademark simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of "likelihood of confusion" under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties, the date they were acquired and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See e.g. [WIPO Overview 3.0](#), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top-Level Domain (gTLD) component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

Disregarding the ".com" gTLD, the disputed domain name consists of the Complainant's registered trademark with the embellishment of a hyphen and the omission of spaces. As this requirement under the

Policy is essentially a standing requirement, the addition of this term does not preclude a finding of confusing similarity. See e.g. [WIPO Overview 3.0](#), section 1.8. Apart from anything else, the Complainant's trademark remains visually and aurally recognisable within the disputed domain name.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is identical with the Complainant's trademark and the requirement under the first limb of the Policy is satisfied.

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

In the circumstances of this case, it is appropriate to consider the third requirement under the Policy next.

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g. *Group One Holdings Pte Ltd v. Steven Hafto* WIPO Case No. [D2017-0183](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

The mere fact that the disputed domain name was registered after the Complainant acquired its Registered Trademarks is insufficient alone to establish this link, especially when both the trademark and the disputed domain name concern the common and grammatical English expression "We Grow Together".

The Complainant further contends that its trademark is famous. The Complainant contends there is no plausible circumstance in which the Respondent could legitimately use the disputed domain name. Nor is there any plausible situation in which the Respondent could have registered the disputed domain name without knowledge of the Complainant.

Further, the Complainant contends that the Respondent "clearly" registered the disputed domain name with no specific intention to use it as there has been no public use of the disputed domain name even though it was registered on June 13, 2024. The Panel is not prepared to give this contention much consideration in the present circumstances where barely six weeks had passed before the Complaint was filed.

The Complainant claims its trademark is famous as a result of developing a reputation in its trademark through its registrations and its domain names. Apart from the fact of the registrations, however, the Complainant has not provided any evidence of use or promotion of its trademark or even of the domain names. Given the lack of distinctiveness of the expression, "We Grow Together", this alone is fatal to the claim. Moreover, the Respondent has submitted evidence of Google searches which at least on the pages submitted (including the first page of results) do not list the Complainant or its trademark. Accordingly, the Panel is unable to make a finding that the Complainant's trademark is famous.

The present case appears to be very different than the case relied on by the Complainant: *Arcelormittal (SA) v. Renata Paola Cardona Ulin*, WIPO Case No. [D2023-1441](#). In that case, Arcelormittal (SA) was one of the largest steel producing companies in the world and the panel made a specific finding that its trademark was widely known. Unlike "We Grow Together", "arcelormittal" is not a plain English expression or (at least insofar as Google Translate indicates) any other language. Further, the respondent in that case did not submit a response or otherwise try to explain why he or she registered the domain name in dispute.

On the evidence in this proceeding, the Complainant's trademark does not have the fame, or apparent distinctiveness, of TELSTRA in *Telstra Corporation v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) or ARCELORMITTAL so that it can fairly be said there are no other plausible uses of the disputed domain name.

The Complainant's reliance on *Whitehall Specialties, Inc. v. Registration Private, Domains By Proxy, LLC, Perfect Privacy, LLC, WhoisGuard Protected, WhoisGuard, Inc. / Lindsey Gartner, Stefan Freter, Nick Bahnweg*, WIPO Case No. [D2021-0716](#) is also misplaced. In that case, there was evidence the respondent was using the disputed domain name in connection with a phishing exercise or, at the very least, to send fraudulent emails. As in *Arcelormittal (SA) v. Renata Paola Cardona Ulin*, supra, there was no response from the respondent.

In the present case, the Respondent has submitted a Response. The Respondent denies any knowledge of the Complainant's trademark. The Respondent states he is a pupil of Geoff Lawton and claims he registered the disputed domain name in connection with a project he is starting to establish a Permaculture school under the name "Wegrowtogether" on land he owns in Spain.

The Respondent has not provided any documentary materials in support of this claim. However, the Panel's searches on the Internet reveal that Geoff Lawton is a British-born Australian permaculture consultant, designer, teacher, and speaker working around the world.<sup>1</sup>

The Respondent also states that prior to registering the disputed domain name he undertook Google searches of the expression "We grow together". These searches did not disclose any information about the Complainant or its trademark. The searches did disclose a website at "www.wegrowtogether.nyc" relating to a baby growth and development center. There were also a number of other uses of "We grow together" – none of whom were by the Complainant.

Further, there is also no evidence that the Respondent has used the disputed domain name in any way to target the Complainant or its trademark.

In its supplemental filing, the Complainant relies on the fact the Respondent undertook Google searches before registering the disputed domain name to argue that the Respondent should also have undertaken trademark searches and such a search would have revealed the Complainant's registered trademark. There are numerous cases where a failure to conduct appropriate trademark searches has contributed to findings of abusive registration. But, as the summary included in [WIPO Overview 3.0](#), sections 3.2.2 and 3.2.3 indicates, such a finding depends on the facts and circumstances of each particular case leading to a conclusion of wilful blindness – at least where both parties are not based in the United States of America. Typically, these cases involve circumstances where the respondent had some reason to suspect the existence of an incumbent, or the disputed domain name is distinctive and not descriptive or comprised merely of dictionary terms and there is evidence of an attempt to take advantage of the complainant's trademark. On the evidence in this proceeding these factors are absent in this case.

In responding to the Complainant's supplemental filing, the Respondent did also say that, if the Complainant had approached him before filing the Complaint and making what the Respondent considers to be allegations against him "bordering on defamation", he may have been prepared to transfer the disputed domain name to the Complainant for twice the EUR 12.16 it cost him to register the disputed domain name. The Complainant seizes on this to invoke paragraph 4(b)(i) of the Policy which provides that evidence of registration and use in bad faith may be found in:

"(i) circumstances indicating that [the Respondent] has registered or [the Respondent has] acquired the [disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the [disputed] 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 [the Respondent's] documented out-of-pocket costs directly related to the [disputed] domain name."

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<sup>1</sup>See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.8, on general powers of panels to conduct limited factual research into matters of public record if the panel considers such information useful to assessing the case merits and reaching a decision.

The Panel is not prepared to treat this statement by the Respondent as falling within the scope of paragraph 4(b)(i) of the Policy in the circumstances of this case. Apart from the comparatively trivial amount (although it does formally satisfy the requirements of the paragraph), it is not evidence of the Respondent's intentions when he registered the disputed domain name.

It may be arguable that the Respondent's proposed activities infringe the Complainant's trademark registered in the European Union. Despite filing an unsolicited supplemental filing, the Complainant has not made submissions addressing this point. Whether or not there is or would be an infringement is not clear to the Panel. In these circumstances, it would not be appropriate to treat the present case as a case of cybersquatting.

Accordingly, the Complainant has not established that the Respondent has registered and is using the disputed domain name in bad faith. Therefore, the Complaint must fail.

#### **D. Rights or Legitimate Interests**

As the Complaint must fail, no good purpose would be served by addressing this requirement under the Policy.

#### **E. Reverse Domain Name Hijacking**

Paragraph 15(e) of the Rules provides that, if after considering the submissions, the Panel finds that the Complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or to harass the domain-name holder, the Panel shall declare in its decision that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding. The mere lack of success of the complaint is not, on its own, sufficient to constitute reverse domain name hijacking. [WIPO Overview 3.0](#), section 4.16.

The very rudimentary evidence filed by the Complainant in support of some extraordinarily extravagant allegations brings this case very close to qualifying as abusive. After almost 25 years of operation of the Policy, the Complainant and their advisers should be well aware that it is not sufficient merely to point to the fact of registration of a trademark, or a domain name, to support a claim that the trademark is famous.

After careful consideration and with more than some hesitation, the Panel will not make a finding of reverse domain name hijacking in this proceeding. The Respondent's identity was unknown until the Registrar's verification response (which the Panel does not find objectionable in itself) and it appears that the Complainant's cease and desist letters prior to filing the Complaint went unanswered.

### **6. Decision**

For the foregoing reasons, the Complaint is denied.

*/Warwick A. Rothnie/*

**Warwick A. Rothnie**

Sole Panelist

Date: September 10, 2024