

ADMINISTRATIVE PANEL DECISION

**TOUAX SCA – SGTR – CITE – SGT – CMTE – TAF – SLM TOUAGE
INVESTISSEMENTS REUNIES v. Igor NOUTAI**

Case No. D2024-4124

1. The Parties

The Complainant is TOUAX SCA – SGTR – CITE – SGT – CMTE – TAF – SLM TOUAGE INVESTISSEMENTS REUNIES, France, represented by Nameshield, France.

The Respondent is Igor NOUTAI, France.

2. The Domain Name and Registrar

The disputed domain name <taouxcontainerservices.com> is registered with Wix.com Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 8, 2024. On October 8, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 11, 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 (Not identified) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 14, 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 October 14, 2024.

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 17, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 6, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 7, 2024.

The Center appointed Louis-Bernard Buchman as the sole panelist in this matter on November 11, 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 group of companies, dating back 170 years, which is one of the European leaders in leasing, sales and technical and financial management of sustainable transport equipment, such as freight railcars, river barges and containers.

The Complainant owns the International trademark TOUAX, registered under No. 971690 on February 29, 2008 (hereinafter referred to as: "the Mark").

The Complainant is also inter alia the registrant of the domain name <touax-container.com> registered on January 19, 2012, which resolves to its official website.

The disputed domain name was registered on August 17, 2024.

The Complainant has submitted evidence that the disputed domain name resolved to a website displaying the corporate name of one of the Complainant's affiliated companies, TOUAX CONTAINER SERVICES, and offering for sale containers competing with those of the Complainant. At the time of this decision, the disputed domain name resolves to a parking page of the Registrar.

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:

- (i) the disputed domain name reproduces the Mark, in which the Complainant has rights, and is confusingly similar to the Mark insofar as the disputed domain name contains the Mark in its entirety, which remains recognizable in the disputed domain name;
- (ii) it never authorized the Respondent to use the Mark in any manner and it never had any affiliation with the Respondent, who has no rights or legitimate interests in respect of the disputed domain name;
- (iii) the Respondent has registered and is using the disputed domain name in bad faith; in particular, the Respondent had knowledge of the Mark when registering the disputed domain name, and by creating confusion with the Mark, the Respondent is using the disputed domain name in bad faith.

The Complainant requests that the disputed domain name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural Aspects - Failure to Respond

Under the Rules, paragraphs 5(f) and 14(a), the effect of a failure to submit a formal response by the Respondent is that, in the absence of exceptional circumstances, the Panel shall proceed to a decision on the basis of the Complaint.

Under paragraph 4(a) of the Policy, it is the Complainant's burden to establish that all three of the required criteria for a transfer of the disputed domain name have been met, even in the absence of a formal response.

Under paragraph 14(b) of the Rules, the Panel is empowered to draw such inferences from the Respondent's failure to file a formal response as it considers appropriate under the circumstances.

In this case, the Panel finds that the Respondent has failed to rebut any of the reasonable factual assertions that are made and supported by evidence submitted by the Complainant.

In particular, by failing to respond, the Respondent has failed to offer the Panel any of the types of evidence set forth in paragraph 4(c) of the Policy or otherwise, from which the Panel might conclude that the Respondent has any rights or legitimate interests in the disputed domain name, such as making legitimate noncommercial or fair use of the disputed domain name.

Moreover, as discussed below, the Respondent has failed to provide any exculpatory information or reasoning that might have led the Panel to question the Complainant's arguments that the Respondent has acted in bad faith.

6.2. Requirements of paragraph 4(a) of the Policy

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. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

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 notes that as aforesaid, the Respondent did not rebut these assertions and finds that despite the inversion of the letters "a" and "ou" in the disputed domain name and the addition of the term "containerservices", the Mark is recognizable within the disputed domain name.

Although the addition of this descriptive term "containerservices" may bear on the assessment of the second and third elements, the Panel finds that the above-noted differences do 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.

Regarding the generic Top-Level Domain ("gTLD") ".com" respectively in the disputed domain name, it is well established that a gTLD does not generally affect the assessment for the purpose of determining identity or confusing similarity. [WIPO Overview 3.0](#), section 1.11.1.

Accordingly, the disputed domain name is confusingly similar to the Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available 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.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

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 finds that the Respondent’s decision to register the disputed domain name, confusingly similar to the Mark and one of the Complainant’s official domain names <ouax-container.com>, reflects the Respondent’s specific targeting of the Mark, the reputation of which was recognized by a prior panel (see *TOUAX SCA – SGTR – CITE – SGT – CMTE – TAF – SLM TOUAGE INVESTISSEMENTS REUNIES v. LILIANE Liliane*, WIPO Case No. [D2022-2790](#)), his knowledge of the composition of the Complainant’s corporate group by referring to the affiliate TOUAX CONTAINER SERVICES, and his clear intent to capitalize on the Complainant’s rights, demonstrated by his attempt to attract Internet users for commercial gain by using the disputed domain name to resolve to a site offering for sale containers competing with those of the Complainant.

Furthermore, some UDRP panels have held that in certain circumstances, registrants of domain names have a duty to abstain from registering and using a domain name, which is either identical or confusingly similar to a prior trademark held by others and which would infringe upon or otherwise violate the rights of a third party. See Policy, paragraph 2(b); *Nike, Inc. v. B. B. de Boer*, WIPO Case No. [D2000-1397](#); *Nuplex Industries Limited v. Nuplex*, WIPO Case No. [D2007-0078](#); *Mobile Communication Service Inc. v. WebReg, RN*, WIPO Case No. [D2005-1304](#); *BOUYGUES v. Chengzhang, Lu Ciagao*, WIPO Case No. [D2007-1325](#); *Media General Communications, Inc. v. Rarenames, WebReg*, WIPO Case No. [D2006-0964](#); and *mVisible Technologies, Inc. v. Navigation Catalyst Systems, Inc.*, WIPO Case No. [D2007-1141](#).

As a consequence, the Panel finds that the registration and use of the disputed domain name by the Respondent constitutes bad faith under the Policy.

Based on the available record, the Panel finds that the Complainant has established the third element 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 <taouxcontainerservices.com> be transferred to the Complainant.

/Louis-Bernard Buchman/

Louis-Bernard Buchman

Sole Panelist

Date: November 13, 2024