

ADMINISTRATIVE PANEL DECISION

Agfa-Gevaert N.V. v. Mohammed Zubair

Case No. D2022-0559

1. The Parties

Complainant is Agfa-Gevaert N.V., Belgium, represented by Novagraaf Belgium NV/SA, Belgium.

Respondent is Mohammed Zubair, Canada.

2. The Domain Name and Registrar

The disputed domain name <agfahealthcareinc.com> 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 February 17, 2022. On February 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 18, 2022, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details. Complainant filed an amended Complaint on February 21, 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 Respondent of the Complaint, and the proceedings commenced on February 25, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 17, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on March 18, 2022.

The Center appointed Gabriel F. Leonardos as the sole panelist in this matter on March 23, 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

Complainant, Agfa-Gevaert N.V., is a company active globally which acts in the photographic sector, specifically medical imaging, and software. Complainant enjoys a worldwide reputation as a player in the photography sector, acting in every continent and operating nine production facilities around the world.

Complainant owns several trademark registrations for the sign AGFA in the European Union (“EU”), including one register for AGFA HEALTHCARE, as can be seen below:

Registration No.	Trademark	Jurisdictions	International Classes	Date of Registration
003353463	AGFA	EU	1, 2, 7, 9, 10, 40 and 42	January 24, 2005
008133167	AGFA	EU	1, 2, 7, 9 10 and 42	February 17, 2010
009440801	AGFA	EU	1, 2, 7, 9 and 10	March 20, 2011
011649803	AGFA	EU	2	August 7, 2013
013086251	AGFA	EU	1, 2, 3, 5, 7, 9, 10, 17, 24 and 42	March 2, 2015
015553662	AGFA	EU	9	January 6, 2017
015598113	AGFA	EU	1, 2, 3, 7, 9, 10, 17, 24 and 42	February 27, 2017
016044059	AGFA HEALTHCARE	EU	1, 5, 9, 10 and 42	March 22, 2017

Moreover, Complainant owns a variety of 61 domain names containing the trademark AGFA, including generic Top-Level and country code Top-Level domain names, such as <agfagraphics.com>, <agfagraphics.org>, <agfagraphics.info>, <agfagraphics.blog>, <agfagraphics.eu>, <agfagraphics.uk>, <agfagraphics.us>, and <agfagraphics.be>.

The disputed domain name <agfahealthcareinc.com> was registered on June 7, 2021, and resolves to an inactive webpage.

5. Parties' Contentions

A. Complainant

Complainant pleads that the disputed domain name <agfahealthcareinc.com> is confusingly similar to its registered trademarks AGFA and AGFA HEALTHCARE, since it fully incorporates Complainant's trademark and tradename AGFA HEALTHCARE.

Complainant affirms that Respondent creates a confusion, considering specially that the disputed domain name uses the trademark AGFA in its entirety, as consumers may believe that this domain name is linked to Complainant.

Therefore, according to Complainant, the disputed domain name <agfahealthcareinc.com> presents a high risk of confusion to consumers, who will likely believe it is linked with Complainant's trademark AGFA HEALTHCARE, fulfilling paragraph 4(a)(i) of the Policy and paragraph 3(b)(viii) and 3(b)(ix)(1) of the Rules.

In addition, Complainant states that Respondent does not have any rights or legitimate interests in respect of the disputed domain name, nor is Respondent commonly known by the disputed domain name. Further, Respondent has not been authorized, or licensed to use Complainant's trademark AGFA HEALTHCARE as a domain name nor is Respondent associated with Complainant.

Complainant indicates that the website which resolves from the disputed domain name is inactive.

This way, Complainant states that no legitimate use of the disputed domain name could be reasonably claimed by Respondent, thus paragraph 4(a)(ii) of the Policy and paragraph 3(b)(ix)(2) of the Rules has been fulfilled.

Moreover, Complainant states that it is impossible that Respondent was not aware of Complainant's rights and well-known reputation, given that the registration of the trademarks AGFA and AGFA HEALTHCARE far predate the domain name registration. Thus, Complaint sustains that the disputed domain name <agfahealthcareinc.com> has been registered in bad faith.

Complainant also pleads that the word "agfa" consists of random letters strung together with no apparent meaning, and any use in the disputed domain name would therefore likely result in misleading consumers into believing that the disputed domain name is associated with Complainant. Likewise, Complainant notes that prior UDRP panels have agreed with this conclusion (see *Agfa-Gevaert N. V. v. Domain Administrator*, See *PrivacyGuardian.org*, WIPO Case No. [D2019-1495](#)).

Complainant finally indicates that Respondent has not responded any of their attempts of contact to voluntarily proceed with the transfer of the disputed domain name, which would also be interpreted as a sign of Respondent's bad faith.

In conclusion, Complainant sustains that, by the registration of the disputed domain name, Respondent intentionally attempted to create a likelihood of confusion with Complainant's trademarks AGFA and AGFA HEALTHCARE, as Respondent could not ignore the preexistence of Complainant's globally well-known trademarks, which constitutes registration and use in bad faith pursuant to paragraph 4(b)(iv) of the Policy.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

To succeed in a UDRP complaint, Complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied, as following:

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

- (ii) 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 burden of proving these elements is upon Complainant.

Respondent had 20 days to submit a response in accordance with paragraph 5(a) of the Rules and failed to do so. Paragraph 5(f) of the Rules establishes that if a respondent does not respond to the complaint, in the absence of exceptional circumstances, the panel's decision shall be based upon the complaint.

A. Identical or Confusingly Similar

Complainant has duly proven that it owns prior trademark rights for AGFA and AGFA HEALTHCARE, and that the disputed domain name <agfahealthcareinc.com> is constituted by both trademarks in their entirety.

The addition of the letters "inc" after "agfahealthcare" does not prevent a finding of confusing similarity with Complainant's trademarks AGFA and AGFA HEALTHCARE, as both trademarks are fully integrated in the disputed domain name, and this sole addition cannot avoid confusing similarity.

Thus, the Panel finds that the disputed domain name <agfahealthcareinc.com> is confusingly similar to Complainant's trademarks, and so the requirement of the first element of paragraph 4(a) of the Policy is satisfied.

B. Rights or Legitimate Interests

The consensus view of UDRP panels on the burden of proof under paragraph 4(a)(ii) of the Policy is summarized in section 2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") as follows: "[w]hile 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."

In this case, noting the facts and contentions listed above, the Panel finds that Complainant has made out a *prima facie* case showing that Respondent lacks rights or legitimate interests in the disputed domain name, so the burden of production shifts to Respondent. As Respondent has not replied to Complainant's contentions, the Panel has considered Complainant's un rebutted *prima facie* case to be sufficient to demonstrate that Respondent has no rights or legitimate interests in the disputed domain name <agfahealthcareinc.com>.

Furthermore, Respondent has not used the disputed domain name in the context of a *bona fide* that could demonstrate legitimate interests, since the evidence shows that the disputed domain name <agfahealthcareinc.com> resolves to a website which is currently inactive, as duly proven by the Annex 7 to the Complaint.

Therefore, the Panel finds that the requirement of the second element of paragraph 4(a) of the Policy is also satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists a number of circumstances that, without limitation, are deemed evidence of

registration and use of a domain name in bad faith.

Respondent has registered the disputed domain name that fully incorporates Complainant's trademarks AGFA and AGFA HEALTHCARE, plus the sole addition of the letters "inc". The Panel finds that it is duly demonstrated that Respondent was aware of Complainant's rights to the trademarks AGFA and AGFA HEALTHCARE at the time of the registration – as Complainant enjoys a worldwide reputation with the use of the referred trademarks, as recognized by the Panel in previous decisions (*Agfa-Gevaert N.V. v. Domain Administrator*, See *PrivacyGuardian.org*, WIPO Case No. [D2019-1495](#)).

With that in sight, the Panel finds that Respondent registered the disputed domain name with the intention of attracting Internet users and consumers that in search of authentic AGFA services.

Moreover, the Panel finds that the word "agfa" consists of random letters strung together with no apparent meaning, which indicates that the use of the trademark AGFA in a domain name that is unauthorized by Complainant will most likely be of bad faith.

In addition, the registration of the disputed domain name in the present circumstances allows a finding of bad faith registration and use under the passive holding doctrine – as can be seen on Annex 7 to the Complaint, the disputed domain name resolves to a website which is inactive. As discussed in *Telstra Corporation Limited v. Nuclear Marshmallows*, [WIPO Case No. D2000-0003](#), depending on the circumstances of the case, the passive holding of a domain name can indicate the use in bad faith:

"[...] paragraph 4(b) recognizes that inaction (e.g. passive holding) in relation to a domain name registration can, in certain circumstances, constitute a domain name being used in bad faith. Furthermore, it must be recalled that the circumstances identified in paragraph 4(b) are 'without limitation' that is, paragraph 4(b) expressly recognizes that other circumstances can be evidence that a domain name was registered and is being used in bad faith."

In this sense, the Panel finds that the circumstances of the present case perfectly indicate that the disputed domain name was registered and is being used in bad faith, especially considering that Complainant enjoys a worldwide reputation with the use of the trademarks AGFA and AGFA HEALTHCARE.

In light of the above, the Panel finds that the disputed domain name <agfahealthcareinc.com> has been registered and is being used in bad faith. Therefore, the requirement of the third element of paragraph 4(a) of the Policy is satisfied.

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 <agfahealthcareinc.com> be transferred to Complainant.

/Gabriel F. Leonardos/

Gabriel F. Leonardos

Sole Panelist

Date: April 30, 2022