

## **ADMINISTRATIVE PANEL DECISION**

**Exel Industries v. Super Privacy Service LTD c/o Dynadot / Aslim Beyoglu**  
Case No. D2022-0821

### **1. The Parties**

The Complainant is Exel Industries, France, represented by Domgate, France.

The Respondent is Super Privacy Service LTD c/o Dynadot, United States of America / Aslim Beyoglu, Turkey.

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

The disputed domain name <groupeexelindustries.com> (the “Domain Name”) is registered with Dynadot, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 9, 2022. On March 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 10, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on March 16, 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 March 18, 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 March 25, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 14, 2022. The Respondent did not submit any response. The Center notified the

Respondent's default on April 19, 2022.

The Center appointed Jon Lang as the sole panelist in this matter on April 26, 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**

The Complainant is an international group created in France in 1952 and has been listed on the Paris stock exchange since 1997. It is a leading agricultural machinery manufacturer with an international presence and employs over 3,500 employees in 27 countries. The Complainant's revenue for 2020 was EUR 877 million, 81% of which was generated outside of France.

The Complainant owns several trademarks for EXEL and GROUPE EXEL INDUSTRIES, registered in numerous jurisdictions, for example, European Union trademark GROUPE EXEL INDUSTRIES No.°001402056, registered on January 8, 2002 and United Kingdom trademark GROUPE EXEL INDUSTRIES No.°UK00901402056, registered on the same date.

The Complainant also owns a considerable domain name portfolio containing the signs Exel or Exel Industries, in particular <exel-industries.com>.

The Domain Name was registered on December 30, 2021.

Initially the Domain Name resolved to a Sedo webpage indicating that it was for sale for USD 1,288. On January 7, 2022, an email was sent to the Registrar (Dynadot, LLC) and to Sedo attaching a cease-and-desist letter to be sent on to the Domain Name owner. Sedo confirmed the next day that "the domain has been blocked from Sedo's website and services and we have notified the affected account holder of the complaint and resulting action". Shortly after that, the Domain Name was again being offered for sale with Dan.com for the amount of USD 25,000. At one point, the Complainant noticed that the Dan.com webpage was indicating that the Domain Name was no longer for sale. However, the Domain Name was then again for sale with Dan.com for USD 25,000. Several communications were sent to the Domain Name owner via the Registrar's online contact form with no response.

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

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

The following is a summary of the main assertions of the Complainant.

The Domain Name is identical to a trademark or service mark in which the Complainant has rights.

The Complainant's trademarks are well known throughout the world, in particular in the agricultural and industrial sectors.

The Domain Name comprises only the Complainant's registered trademark GROUPE EXEL INDUSTRIES (a combination of terms, rather than an expression that someone would use descriptively), followed by the generic Top-Level Domain ("gTLD") extension ".com", which is irrelevant in determining similarity/identity. The Domain Name is therefore identical to the Complainant's trademarks, and very similar to its company name.

The Complainant's rights largely predate registration of the Domain Name.

The Respondent has no rights or legitimate interests in respect of the Domain Name.

Attempts were made to contact the Domain Name owner directly or through intermediaries. If the Respondent had rights or legitimate interests in the Domain Name, he would have replied.

The Respondent is clearly not making any *bona fide* use, nor any legitimate noncommercial or fair use of the Domain Name.

To the best of the Complainant's knowledge, the Respondent is not the owner of any GROUPE EXEL INDUSTRIES trademark and is certainly not commonly known by the Domain Name.

The Complainant has not authorized the Respondent to use its trademarks.

The Respondent knew of the GROUPE EXEL INDUSTRIES trademarks and the existence of the Complainant. He has no right or legitimate interests in the Complainant's trademarks and he registered the Domain Name with the *mala fide* intention of profiting from the registration.

The domain name was registered and is being used in bad faith.

The sale of a domain name wholly incorporating another's mark is an indication of bad faith.

The Complainant also has pending European Union trademark application No. 018631901 for GROUPE EXEL INDUSTRIES, filed on December 30, 2021 and French trademark application No. 4828978 for GROUPE EXEL INDUSTRIES, filed on December 24, 2021. Registration of the Domain Name containing the precise three words of the trademark GROUPE EXEL INDUSTRIES took place on the same day the Complainant filed the above European Union trademark application and one week after the filing of the corresponding French trademark application. This cannot be coincidence.

The Respondent was also the respondent in a previous UDRP case, *i.e.*, *Oncopeptides AB v. Super Privacy Service LTD c/o Dynadot / Sanem Erdinc, Aslim Beyoglu, and Soyhan Kibar*, WIPO Case No. [D2020-2542](#), in which domain names corresponding to European Union Trademark applications were registered a few hours after the applications were filed. The panel in this case considered that "taking into account the timing of the registration of the Domain Names, and the fact that the Domain Names are identical to the Complainant's trademarks, (...) the Respondents knew of the Complainant, at least the Complainant's nascent trademark rights, when the Respondents registered the Domain Names". The panel also stated that "the Domain Names are listed for sale for an inflated price. The Respondents have engaged in a pattern of harvesting data from new trademark applications, in order to register domain names. The use of a privacy protection service and the fact that the Respondents have not replied to the Complainant's contentions, further point to bad faith."

The silence of the Respondent and the fact that the Domain Name was for sale on two successive selling platforms confirms bad faith.

Circumstances clearly indicate that the Respondent registered the Domain Name for the purpose of selling it to the Complainant or a third party for valuable consideration in excess of the Respondent's out-of-pocket costs directly related to the Domain Name, which is an indication of registration and use of the Domain Name in bad faith.

The Respondent used the Domain Name to advertise the fact that it was available for sale, also suggesting bad faith.

Registration of a domain name containing another's trademark will in most cases have the effect of preventing that trademark owner from reflecting its trademark in a website.

Therefore, the Respondent has registered and is using the Domain Name in bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy requires a complainant to prove that a respondent has registered a domain name which is: (i) identical or confusingly similar to a trademark or service mark in which a complainant has rights; and (ii) that the respondent has no rights or legitimate interests in respect of the domain name; and (iii) that the domain name has been registered and is being used in bad faith. A complainant must prove each of these three elements to succeed.

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

The Complainant is the registered owner of the GROUPE EXEL INDUSTRIES trademark and therefore clearly has rights in that mark for the purposes of the Policy.

Ignoring the gTLD ".com" (as the Panel may do for comparison purposes), the Domain Name comprises only the GROUPE EXEL INDUSTRIES trademark. The Domain Name and trademark are therefore identical. Accordingly, the Panel finds that paragraph 4(a)(i) of the Policy has been established.

### **B. Rights or Legitimate Interests**

By its allegations, the Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name.

Accordingly, the burden of production shifts to the Respondent to come forward with arguments or evidence demonstrating that he does in fact have such rights or legitimate interests. The Respondent has not done so and accordingly, the Panel is entitled to find, given the *prima facie* case made out by the Complainant, that the Respondent indeed lacks rights or legitimate interests in the Domain Name. Despite the lack of any answer to the Complaint however, the Panel is entitled to consider whether there would be anything inappropriate in such a finding.

A respondent can show he has rights or legitimate interests in a domain name in various ways even where, as is the case here, he is not licensed by or affiliated with a complainant. For instance, he can show that he has been commonly known by the domain name or that he 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. Here, however, there is no evidence to suggest that the Respondent is commonly known by the Domain Name. Further, given the use to which the Domain Name has been put, namely to re-direct Internet users first to a Sedo website and then to Dan.com where the Domain Name is/has been offered for sale, it would be difficult to conclude that there is anything noncommercial or, given that the Domain Name and the Complainant's GROUPE EXEL INDUSTRIES trademark are identical, fair about the Respondent's use. As to an absence of an intent to mislead (for commercial gain), the Respondent's choice of the Domain Name, the only element being the Complainant's GROUPE EXEL INDUSTRIES trademark, suggests the very opposite.

A respondent can also show that it is using a domain name in connection with a *bona fide* offering of goods or services. However, it seems clear that the Respondent set out to acquire a domain name that adopted and was identical to the Complainant's GROUPE EXEL INDUSTRIES trademark which inevitably would create a misleading impression of association with the Complainant, which has then been offered for sale in the hope of making a profit. These circumstances cannot amount to a *bona fide* offering of goods or services for the purposes of the Policy.

The Respondent has chosen not to attempt to justify his actions despite having every opportunity to do so. That, perhaps, is not surprising given that it appears to the Panel that there is very little the Respondent could say to challenge the Complainant's assertion that the Respondent lacks rights or legitimate interests in the Domain Name.

The Panel finds that the Complainant has fulfilled the requirements of paragraph 4(a)(ii) of the Policy.

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

Paragraph 4(b) of the Policy provides a number of non-exclusive scenarios, which may evidence a respondent's bad faith. They include, for instance, a respondent registering a domain name in order to prevent an owner of the trademark or service mark to which it is said to be confusingly similar or identical, from reflecting the mark in question in a corresponding domain name (provided that the respondent has engaged in a pattern of such conduct). A respondent registering a domain name primarily for the purposes of disrupting the business of a competitor is another scenario, as is a respondent intentionally attempting to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation or endorsement of its website or of products or services on it.

If circumstances are such as to indicate that a respondent has registered or 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 to a competitor of that complainant for valuable consideration in excess of out-of-pocket costs directly related to the domain name, that too can be indicative of registration and use of a domain name in bad faith.

A complainant does not have to demonstrate a precise literal application of one of the paragraph 4(b) scenarios. They are non-exclusive and illustrative only, and as long as there is evidence demonstrating that a respondent is seeking to take unfair advantage of, or to abuse a complainant's trademark, such behaviour would satisfy the general principle underlying the bad faith requirement of the Policy.

The Complainant asserts, *inter alia*, that the Respondent registered the Domain name for the purpose of selling it to the Complainant or a third party for valuable consideration in excess of the Respondent's out-of-pocket costs directly related to the Domain Name.

The mere practice of registering a domain name for subsequent resale (including for profit) does not in itself support a claim that the respondent registered the domain name in bad faith with the primary purpose of selling it to a trademark owner (or its competitor). Such a claim often requires a highly fact-specific analysis. Section 3.1.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), provides some helpful guidance here, suggesting that where "[...] circumstances indicate that the respondent's intent in registering the disputed domain name was in fact to profit in some fashion from or otherwise exploit the complainant's trademark, panels will find bad faith on the part of the respondent. While panel assessment remains fact-specific, generally speaking such circumstances, alone or together, include: (i) the respondent's likely knowledge of the complainant's rights, (ii) the distinctiveness of the complainant's mark, (iii) a pattern of abusive registrations by the respondent, [...] (vi) threats to 'sell to the highest bidder' or otherwise transfer the domain name to a third party, (vii) failure of a respondent to present a credible evidence-

backed rationale for registering the domain name, [...] (x) a respondent's past conduct or business dealings [...].

Particularly where the domain name at issue is identical or confusingly similar to a highly distinctive or famous mark, panels have tended to view with a degree of skepticism a respondent defense that the domain name was merely registered for legitimate speculation (based for example on any claimed dictionary meaning) as opposed to targeting a specific brand owner.”

It seems unlikely, given the distinctiveness and extensive use of the GROUPE EXEL INDUSTRIES trademark, that the Respondent would not have known of the Complainant and its trademark at the time of registration of the Domain Name. The Respondent has targeted the Complainant as he has done before to a different trademark owner (*Oncopptides AB v. Super Privacy Service LTD c/o Dynadot / Sanem Erdinc, Aslim Beyoglu, and Soyhan Kibar*, WIPO Case No. [D2020-2542](#)). As UDRP panels have held in the past, establishing a pattern of bad faith conduct requires more than one, but as few as two instances of abusive domain name registration (see section 3.1.2 of the [WIPO Overview 3.0](#)). The Respondent has provided no explanation for his registration of an identical and obviously misleading Domain Name, let alone any credible evidence-backed rationale, has participated in similar conduct previously and has offered the Domain Name for sale at a price vastly in excess of out-of-pocket expenses.

Given the foregoing, the Panel concludes that the Domain Name has been registered primarily with the intention of selling, renting, or otherwise transferring it to the Complainant or a competitor of the Complainant, for profit. Given such finding, there is no need to consider other grounds upon which a finding of bad faith registration and use could be based.

In all the circumstances, the Panel finds that, for the purposes of the Policy, there is evidence of both registration and use of the Domain Name in bad faith.

## **7. Decision**

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name <groupeexelindustries.com> be transferred to the Complainant.

*/Jon Lang/*

**Jon Lang**

Sole Panelist

Date: May 10, 2022