

## **ADMINISTRATIVE PANEL DECISION**

Gecina v. Domains By Proxy, LLC / jacques gillot  
Case No. D2022-1521

### **1. The Parties**

The Complainant is Gecina, France, represented by Fidal, France.

The Respondent is Domains By Proxy, LLC, United States of America (“United States”) / jacques gillot, Israel.

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

The disputed domain name <groupegecina.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 April 27, 2022. On April 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 28, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on April 29, 2022, providing the registrant and contact information disclosed by the Registrar, and requesting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on May 2, 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 May 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 23, 2022. On April 29, May 2, and May 3, 2022, the Center received email communications from the Respondent which are considered further below. However, the Respondent did not file a formal Response and, on May 24, 2022, the Center accordingly notified the commencement of panel appointment process.

The Center appointed Antony Gold as the sole panelist in this matter on May 27, 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 a company with its head office in Paris, France, which owns, manages and develops real estate. The Complainant's portfolio includes offices, together with residential and student residences, primarily located in or around Paris. As at December 2021, the value of assets under the Complainant's management was EUR 20.1 billion.

The Complainant trades as GECINA and this trading style is protected by various trade mark registrations. These include, by way of example, French trade mark, registration number 3326335, for GECINA (word and device), in multiple classes, registered on November 22, 2004. The Complainant also owns domain names incorporating its GECINA mark, namely <gecina.fr> and <gecina.com>.

The disputed domain name was registered on April 4, 2022. As of April 27, 2022, it resolved to a parking page containing pay-per-click ("PPC") links to "Location Gite", "Recrutement" and "Compte Enterprise en Ligne" (that is "Online Business Account").

On April 6, 2022, an email address associated with the disputed domain name was used to send an email, seemingly from the Complainant's Portfolio Director and including one of the Complainant's stylized word marks as part of the email signature, to a prospective investor, attaching a presentation brochure and purporting to solicit an investment in the Complainant. The email stated that, in order that the requested investment could be validated, the recipient was required to provide personal data, including a copy of his identity card or passport, proof of address and bank account details.

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

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

The Complainant says that the disputed domain name is confusingly similar to its GECINA trade mark in that it incorporates its mark in full. The additional descriptive term "groupe" does not distinguish the disputed domain name from its mark and, in fact, increases the potential for confusion to Internet users.

The Complainant says also that the Respondent has no rights or legitimate interests in respect of the disputed domain name. In addition to using the disputed domain name to resolve to a parking page containing PPC links, the Respondent has sent an email from an email address linked to the disputed domain name as part of a phishing scheme. Moreover, several other of the Complainant's clients have said that they have received similar emails from addresses associated with the disputed domain name. Such evidence of fraudulent intent cannot comprise a *bona fide* offering of goods and services nor a legitimate noncommercial or fair use of the disputed domain name. Additionally, the Respondent is not commonly known by the disputed domain name, nor is it making use of a business name which incorporates the term "Gecina", nor does it have any trade mark rights in this term. Furthermore, the Complainant has not licensed, permitted or otherwise consented to the Respondent's use of its GECINA trade mark.

Lastly, the Complainant says that the disputed domain name was registered and is being used in bad faith. The fact that the disputed domain name has been used to send a fraudulent email claiming to offer real estate investment opportunities in order to collect personal information from one of the Complainant's clients, proves that the disputed domain name was registered in bad faith. As the Respondent has reproduced the Complainant's stylized GECINA mark and has attached fake appendices to its email, ostensibly related to the Complainant, it was evidently aware of the Complainant's mark as at the date of registration and has been claiming a connection with the Complainant in order to give credibility to its scam and phishing

operation. Such fraudulent conduct is in breach of the Respondent's obligations under paragraph 2 of the Policy and comprises bad faith use.

## **B. Respondent**

The Respondent did not serve a formal response to the Complainant's contentions. However, on April 29, 2022, following the Center's request that the Complainant submit an amendment to the Complaint, the Respondent sent an email to the Center asking what the problem was. On May 2, 2022, the Respondent sent a further email to the Center asserting, "i am not agreeing with this procedure and no way to transfer this domain because its not fraudulent unless youo [sic] have some proof! and you don't". In a further email to the Center, dated May 3, 2022, the Respondent asserted that he was not using "any name or trademark" and that he was not doing anything wrong.

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following three elements in order to succeed in its Complaint:

- (i) the disputed domain name is identical or confusingly similar to a trade mark 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.

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

The Complainant has provided details of its trade mark registrations for GECINA, an example having been provided above. It has thereby established its rights in this mark.

The generic Top-Level Domain, in the disputed domain name, that is the ".com" component, is typically disregarded for the purposes of the comparison made under the first element as it is a technical requirement of registration. It is not generally considered relevant, for the purpose of the comparison, that the mark relied on by a complainant has design elements; see section 1.10 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)).

The disputed domain name features the Complainant's GECINA trade mark in full, preceded by the term "groupe". This additional component does not prevent the disputed domain name from being found confusingly similar to the Complainant's mark. As explained at section 1.8 of the [WIPO Overview 3.0](#): "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element".

The Complainant's GECINA mark is recognizable within the disputed domain name and the Panel therefore finds that it is confusingly similar to a trade mark in which the Complainant has rights.

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

Paragraph 4(c) of the Policy provides, without limitation, examples of circumstances whereby a respondent might demonstrate that it has rights or legitimate interests in a domain name. In summary, these are if a respondent has used or prepared to use the domain name in connection with a *bona fide* offering of goods and services, if a respondent has been commonly known by the domain name, or if a respondent has made a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark in issue.

So far as the first of these circumstances is concerned, the Complainant has asserted that the Respondent has been using an email address associated with the disputed domain name in order to send a phishing email and has provided a copy of the relevant email and its attachments. Whilst, in its emails to the Center, summarized above, the Respondent has made a number of generalized denials that it has done nothing wrong, it has not in any way, attempted to address the substantive allegations made in the Complaint. As explained at section 4.2 of the [WIPO Overview 3.0](#): “conclusory statements unsupported by evidence will normally be insufficient to prove a party’s case”.

Balancing the documentary evidence submitted by the Complainant against the bare denials by the Respondent, the Panel concludes, on at least a balance of probabilities, that the Respondent has been using the disputed domain name in the manner alleged by the Complainant. Such use does not comprise a *bona fide* use of the disputed domain name; see, for example, *Werfenlife S.A. v. Sean Hamilton*, WIPO Case No. [D2020-3257](#). See also section 2.13.1 of the [WIPO Overview 3.0](#) which explains that “Panels have categorically 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”.

The Respondent has also used the disputed domain name in order to resolve to a parking page containing PPC links. Such use does not represent a *bona fide* offering of goods or services if the links compete with, or capitalize on, the reputation and goodwill of the Complainant’s mark. Whilst (save, perhaps, for “Location Gite”) the links on the Respondent’s webpage are not directly referable to the Complainant’s activities, the Respondent is nonetheless using the repute of the Complainant’s mark and the confusing similarity to it of the disputed domain name in order to attract Internet users to its webpage, and thereby derive a commercial benefit from the Complainant’s mark without its consent. Such use does not therefore amount to a *bona fide* offering of goods and services.

There is no evidence that the Respondent has been commonly known by the disputed domain name and the second circumstance under paragraph 4(c) of the Policy is therefore inapplicable. Lastly, the use which the Respondent is making of the disputed domain name does not comprise either a legitimate noncommercial or a fair use of it.

The Panel accordingly finds that the Respondent has no rights or legitimate interests with respect to the disputed domain name.

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

The fact that the Respondent had sent a phishing email to a prospective investor, purporting to be the Complainant, within a few days of the registration of the disputed domain name establishes that the Respondent was aware of the Complainant as at the date of its registration of the disputed domain name and that it was registered by the Respondent so that it could profit unfairly from the confusing similarity between the disputed domain name and the Complainant’s GECINA mark. The Respondent’s registration of the disputed domain name was therefore in bad faith; see *Beam Suntory Inc. v. Ken Robert*, WIPO Case No. [D2019-3027](#).

Use of a domain name for purposes other than to host a website, may constitute bad faith; see section 3.4 of the [WIPO Overview 3.0](#). In particular, use of the disputed domain name for the purpose of sending a phishing email is analogous to the circumstance of bad faith and use set out at paragraph 4(b)(iv) of the Policy in that the Respondent has intentionally attempted to induce the recipient to respond to it by creating a likelihood of confusion with the Complainant’s name and mark as to the source of its email; see for example, *Sarepta Therapeutics, Inc. v. Domain Privacy Service FBO Registrant, The Endurance International Group, Inc. / Name Redacted*, WIPO Case No. [D2020-3239](#).

Use of a domain name to point to a parking page hosting PPC sponsored links can constitute bad faith use if the combination of the characteristics of the domain name and the nature of the links on the website to which

it resolves are intended to mislead Internet users. The fact that some of the links on the Respondent's website do not have an obvious connection with the Complainant's business does not, in these circumstances, prevent the Respondent's parking page comprising bad faith use because the Respondent has been using the repute of the Complainant in order to attract Internet users to its website and thereby derive income from those visitors who click on the links which are displayed; see *Yahoo! Inc. v. Hildegard Gruener*, WIPO Case No. [D2016-2491](#).

For the above reasons finds that the disputed domain name was registered and is being used in bad faith.

## **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 <groupegecina.com> be transferred to the Complainant.

*/Antony Gold/*

**Antony Gold**

Sole Panelist

Date: June 9, 2022