

## **ADMINISTRATIVE PANEL DECISION**

Les Editions P Amaury v. Privacy Service Provided by Withheld for Privacy ehf / Rosie Lynch  
Case No. D2022-1959

### **1. The Parties**

The Complainant is Les Editions P Amaury, France, represented by Me Haas, France.

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / Rosie Lynch, United Kingdom.

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

The disputed domain names <arenaballondor.com> and <arenagoldenball.com> are registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 30, 2022. On May 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On May 30, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on June 1, 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 June 1, 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 June 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 4, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 6, 2022.

The Center appointed John Swinson as the sole panelist in this matter on July 11, 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, a société anonyme from Paris, France, is a well-known French media group in the field of sport publishing. One of its publications is the daily sports newspaper L'Equipe.

In 1956, the company L'Equipe, as editor of the France Football periodical, created a trophy award called Ballon d'Or to distinguish the best European footballer of the year selected amongst a list of nominees established by France Football, and elected by a jury of journalists who were correspondents of this magazine in the countries of the European Union.

The Ballon d'Or has been awarded to prestigious footballers, such as the current President of Liberia, George Weah in 1995, Zinedine Zidane in 1998, the Ronaldo Luís Nazário de Lima who won this trophy twice in 1997 and 2002, Lionel Messi, and Cristiano Ronaldo, the latter two having won the Ballon d'Or four and seven times respectively.

The Complainant owns several trademark registrations, including French trademark for BALLON D'OR (Registration No. 1457058, registered on March 23, 1988), European Union Registration No. 004327326 for a figurative trademark of a golden soccer ball trophy, and European Union Registration No. 018144414 for the words BALLON D'OR and a ball logo.

The Respondent did not file a response, so little is known about the Respondent.

The disputed domain name <arenaballondor.com> was registered on March 4, 2021. The disputed domain name <arenagoldenball.com> was registered on November 25, 2021.

At the present time, the disputed domain name <arenaballondor.com> resolves to a website that sells trophies that are smaller representations of the Complainant's Ballon d'Or trophy. The website is titled "ARENABALLONDOR®" and "Arena BALLON DOR", and includes the words "You Are The Champion" in a number of places.

The terms of service on this website state: "This website is operated by ArenaBallonDor®" and "Our store is hosted on Shopify Inc. They provide us with the online e-commerce platform that allows us to sell our products and services to you." At the bottom of the terms of service, it is stated: "A brand By E-COM 92 LTD. Company number: 12220696" with an address in London. According to UK government records, this company was incorporated on September 21, 2019 and dissolved on March 30, 2021.

At the present time, the disputed domain name <arenagoldenball.com> redirects to the website at <arenaballondor.com>.

On April 15, 2022, the Complainant sent a cease-and-desist letter to the Respondent but did not receive a response to that letter.

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

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

The Ballon d'Or award has acquired a worldwide prestige and notoriety and today constitutes the highest distinction in the world of football. The award was created by the Complainant in 1956.

The Complainant owns the registered trademarks referred to in section 4 as well as other relevant registered trademarks.

The reputation of the BALLON D'OR trademarks has been recognized on several occasions by the French and foreign courts.

The website at the disputed domain names is available in several languages. It is a commercial website selling mainly customizable Ballon d'Or trophies. It uses the distinctive colors of the BALLON D'OR trademarks: gold and black.

The disputed domain names incorporate the Complainant's trademark or an English translation of the Complainant's trademark.

The addition of the term "arena" to the disputed domain names does not prevent a finding of confusing similarity. On the contrary, it reinforces the idea that the activities of the Respondent are linked to the Complainant and its trademarks.

The Complainant has not granted to the Respondent any authorization to use or register a domain name composed of its BALLON D'OR trademarks. The Respondent is not a licensed distributor of the Complainant. Before any notification of the dispute, the Respondent did not use the disputed domain names in connection with a *bona fide* offering of goods and services. The Respondent is not commonly known by the disputed domain names or a name corresponding to them. The Respondent does not make a legitimate non-commercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the BALLON D'OR trademarks.

The Respondent is clearly using the fame of the Ballon d'Or trophy and award ceremony and of the BALLON D'OR trademarks to sell non-authorized reproductions of the trophy.

The Respondent obviously targeted the Complainant and its well-known and reputed BALLON D'OR trademarks when registering the disputed domain names.

Moreover, the Respondent's address is Kemp House in London, where 34,216 other companies are also located. A search on companies located at this address with the name "Rosie Lynch" did not provide any result. A search on companies located at this address with the name "Lynch" provided four results which are not related to someone called Rosie Lynch. The disclosed personal data of the Registrant seem therefore to be unreliable or possibly false. This is further evidence of bad faith in registering the disputed domain names.

## **B. Respondent**

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

## **6. Discussion and Findings**

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

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

The onus of proving these elements is on the Complainant.

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. Identical or Confusingly Similar**

Paragraph 4(a)(i) of the Policy provides that the Complainant must establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

Disputed domain name <arenaballondor.com>

The Complainant owns trademark registrations for BALLON D'OR. The disputed domain name <arenaballondor.com> includes "ballondor" in full and adds the word "arena" at the beginning of the domain name.

Previous UDRP panels have consistently held that domain names are identical or confusingly similar to a trademark for purposes of the Policy when the domain name includes the trademark, or a confusingly similar approximation, regardless of other terms in the disputed domain name. See, for example, *Consumer Reports, Inc. v. Wu Yan, Common Results, Inc.*, WIPO Case No. [D2017-0371](#); and *Captain Fin Co. LLC v. Private Registration, NameBrightPrivacy.com / Adam Grunweg*, WIPO Case No. [D2021-3279](#)

The Panel concludes that the disputed domain name <arenaballondor.com> is confusingly similar to the Complainant's trademark.

Disputed domain name <arenagoldenball.com>

The term BALLON D'OR is in French, and translates into English as "golden ball". A domain name that consists or is comprised of a translation or transliteration of a trademark will normally be found to be identical or confusingly similar to such trademark for purposes of standing under the Policy, where the trademark – or its variant – is incorporated into or otherwise recognizable, through such translation/transliteration, in the domain name. See section 1.14 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel concludes that the disputed domain name <arenagoldenball.com> is confusingly similar to the Complainant's trademark.

The Complainant succeeds on the first element of the Policy.

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

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain names.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

(i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or

(ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or

(iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The *onus* of proving this requirement, like each element, falls on the Complainant.

Previous UDRP panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden of production will shift to the respondent to rebut that *prima facie* case.

The Complainant asserts that the Complainant has not granted to the Respondent any authorization to use or register a domain name composed of its BALLON D'OR trademarks. The Complainant also asserts that the Respondent is not a licensed distributor of the Complainant. The Complainant states that before any notification of the dispute, the Respondent did not use the disputed domain names in connection with a *bona fide* offering of goods and services. The Complainant also states that the Respondent is not commonly known by the disputed domain names or a name corresponding to them. The Complainant asserts that the Respondent does not make a legitimate noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the BALLON D'OR trademarks.

The Respondent is using the website at the disputed domain names to promote and sell what appears to be smaller representations of the Complainant's famous Ballon d'Or trophy without the Complainant's authorization.

The Complainant has a registered trademark, referred to above in Section 4, for a figurative trademark of a golden soccer ball trophy. The Respondent's goods advertised on the website at the disputed domain names are very similar to this registered trademark. The goods that the Respondent sells could not be the genuine Ballon d'or trophy. The Complainant creates one trophy per year. However, users are likely to be confused as to the whether the products sold on the website are sponsored or endorsed by the Complainant. The Respondent's website states that the Respondent has over 2,500 happy customers.

The Panel considers that, based upon the above, the Complainant has established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the disputed domain names and thereby the burden shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the disputed domain names.

The Respondent has chosen not to file a formal Response. The Respondent has not produced any evidence to establish its rights or legitimate interests in the disputed domain names.

Accordingly, none of the circumstances listed in paragraph 4(c) apply in the present circumstances. The Panel finds on the evidence before the Panel that the Respondent has no rights or any legitimate interests in the disputed domain names.

The Complainant succeeds on the second element of the Policy in relation to the disputed domain names.

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

Paragraph 4(a)(iii) of the Policy provides that the Complainant must establish that the Respondent registered and subsequently used the disputed domain names in bad faith.

The Respondent is clearly aware of the Complainant and the Complainant's famous Ballon d'Or trophy. The

Respondent is obviously targeting the Complainant and its trademarks.

There is no obvious reason for the Respondent to register the disputed domain names other than for the purpose of attempting to trade off the Complainant's goodwill in its BALLON D'OR trademark.

The Complainant also provided evidence that suggests that the Respondent's addresses details in the Registrar's records are false.

The Panel finds that the Respondent has intentionally attempted to attract for commercial gain Internet users to its website by creating likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the website under paragraph 4(b)(iv) of the Policy.

The Complainant succeeds on the third element of the Policy in relation to the disputed domain names.

## **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 names <arenaballondor.com> and <arenagoldenball.com> be transferred to the Complainant.

*/John Swinson/*

**John Swinson**

Sole Panelist

Date: July 25, 2022