

## **ADMINISTRATIVE PANEL DECISION**

**TOURCOM v. Redacted for Privacy through Privacy service provided by  
Withheld for Privacy ehf/ chon nguyen**  
Case No. D2022-3753

### **1. The Parties**

The Complainant is TOURCOM, France, represented by AB INITIO, France.

The Respondent is, / chon nguyen, United States of America (“United States” or “US”).

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

The disputed domain name <hillstourcom.art> (the “Disputed Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 7, 2022. On October 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On October 7, 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 (Redacted For Privacy through Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 10, 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 October 11, 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 October 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 1, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 2, 2022.

The Center appointed Nick J. Gardner as the sole panelist in this matter on November 10, 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 French “groupement d’intérêt économique” (economic interest grouping) whose members are individual licensed travel agencies. Established in 1990, the Complainant has carried on business under the name “TourCom” since that date. The Complainant’s membership comprises approximately 1,200 associated travel agencies in France. Further details as to the Complainant’s business appear in the discussion below.

The Complainant owns a number of registered trademarks, which comprise or include the term “tourcom” in many jurisdictions worldwide. For example, the Complainant owns European Union Trade Mark Registration No. 004995742 for TOURCOM, registered on March 29, 2007. These trademarks are collectively referred to in this decision as the “TOURCOM trademark”.

The Complainant is also the owner of the domain name <tourcom.fr>, which it registered on March 13, 2000, and which resolves to its official website at “www.tourcom.fr”, which provides information (in French) to its members and to actual or potential customers.

The Disputed Domain Name was registered on August 27, 2022. There is no evidence that it has ever resolved to an active website or been otherwise used in any manner.

There is no evidence before the Panel about the Respondent beyond his name and address.

#### **5. Parties’ Contentions**

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

The Complainant’s contentions can be summarized as follows.

The Disputed Domain Name is similar to the TOURCOM trademark.

The Respondent has no rights or legitimate interests in the term “tourcom”.

In consequence, the Complainant alleges that the Disputed Domain Name was registered and is being used in bad faith. The Complainant says that “given the Complainant’s goodwill and reputation, it is inconceivable that the Respondent could have registered the Disputed Domain Name without knowledge of the Complainant’s rights over its TOURCOM Signs”. It also says that “Moreover, the Disputed Domain Name carries a risk of implied affiliation, as customers may falsely believe that the Disputed Domain Name represents a travel agency that is part of or affiliated with the Complainant” and that “Circumstances are indicating that the domain name was registered by the Respondent primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the Respondent’s out-of-pocket costs directly related to the domain name: the Respondent is not making any *bona fide* offering of services nor making a legitimate noncommercial or fair use of the Disputed Domain Name. The website at the Disputed Domain Name has not been developed in full, which further reveals that the Respondent lack rights or legitimate interests, without any evidence of an actual and legitimate business behind the Disputed Domain Name”.

The Complainant seeks the transfer of the Disputed Domain Name from the Respondent to the Complainant in accordance with paragraph 4(i) of the Policy.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **Preliminary Matters**

The Panel notes that no communication has been received from the Respondent. However, given the Complaint and Written Notice were sent to the relevant addresses disclosed by the Registrar, then the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to "employ reasonably available means calculated to achieve actual notice". Accordingly, the Panel considers it is able to proceed to determine this Complaint and to draw inferences from the Respondent's failure to file any Response. While the Respondent's failure to file a Response does not automatically result in a decision in favour of the Complainant, the Panel may draw appropriate inferences from the Respondent's default (see, e.g., *Verner Panton Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#)).

The Panel also notes this is a case where the originally named Respondent ("Redacted For Privacy through Privacy service provided by Withheld for Privacy ehf") appears to be a privacy or proxy service.

The Panel in this case adopts the approach of most UDRP panels, as outlined in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 4.4.5, as follows:

"Panel discretion

In all cases involving a privacy or proxy service and irrespective of the disclosure of any underlying registrant, the appointed panel retains discretion to determine the respondent against which the case should proceed.

Depending on the facts and circumstances of a particular case, e.g., where a timely disclosure is made, and there is no indication of a relationship beyond the provision of privacy or proxy registration services, a panel may find it appropriate to apply its discretion to record only the underlying registrant as the named respondent. On the other hand, e.g., where there is no clear disclosure, or there is some indication that the privacy or proxy provider is somehow related to the underlying registrant or use of the particular domain name, a panel may find it appropriate to record both the privacy or proxy service and any nominally underlying registrant as the named respondent."

In the present case, the Panel considers the substantive Respondent to be chon nguyen and references to the Respondent are to that person.

### **Substantive Matters**

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

- (i) the Disputed Domain Name is identical with 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;
- (iii) the Disputed Domain Name has been registered and is being used in bad faith.

## A. Identical or Confusingly Similar

The Complainant has rights in the TOURCOM trademark. The Disputed Domain Name simply adds to this trademark the word “hills”. The Panel finds the Disputed Domain Name is confusingly similar to this trademark. 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 the other terms in the domain name” (*Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. [D2000-0662](#)). It is established that, where a mark is the distinctive part of a disputed domain name, the disputed domain name is considered to be confusingly similar to the registered mark (*DHL Operations B.V. v. DHL Packers*, WIPO Case No. [D2008-1694](#)).

It is also accepted that the addition of a descriptive term or dictionary word (such as here “hills”) to a disputed domain name has little, if any, effect on a determination of confusing similarity between the domain name and the mark (*Quixtar Investments, Inc. v. Dennis Hoffman*, WIPO Case No. [D2000-0253](#)); furthermore, mere addition of a generic or descriptive term does not prevent a finding of confusing similarity under the first element (*PRL USA Holdings, Inc. v. Spiral Matrix*, WIPO Case No. [D2006-0189](#)).

It is also well established that the generic Top-Level Domain (“gTLD”), in this case “.art”, does not affect the Disputed Domain Name for the purpose of determining whether it is identical or confusingly similar. See, for example, *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. [D2000-0429](#). The gTLD may however be relevant in assessing the question of whether a domain name has been registered and used in bad faith – see further below.

Accordingly, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant’s trademark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled

## B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a domain name:

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

(ii) the respondent has been commonly known by the 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 domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

None of these apply in the present circumstances. The Complainant has not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use the TOURCOM trademark. The Complainant has prior rights in the TOURCOM trademark, which precede the Respondent’s acquisition of the Disputed Domain Name. The Complainant has therefore established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name (see, for example, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

The Panel finds that the Respondent has failed to produce any evidence to establish his rights or legitimate interests in the Disputed Domain Name. Accordingly, the Panel finds the Respondent has no rights or any legitimate interests in the Disputed Domain Name and the second condition of paragraph 4(a) of the Policy has been fulfilled.

### C. Registered and Used in Bad Faith

Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

- (i) circumstances indicating that you have registered or you have 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 service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

On the evidence provided on record the Respondent has made no use of the Disputed Domain Name in the time he has owned it. [WIPO Overview 3.0](#) at section 3.3 addresses this situation as follows:

“Can the ‘passive holding’ or non-use of a domain name support a finding of bad faith?”

From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or ‘coming soon’ page) would not prevent a finding of bad faith under the doctrine of passive holding.

While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.”

Overall it does not generally matter that the Respondent has not as yet used the Disputed Domain Name. “Passive holding” can itself amount to bad faith registration and use where the holding involves a domain name deliberately chosen because of its association with the Complainant. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), *Jupiters Limited v. Aaron Hall*, WIPO Case No. [D2000-0574](#), *Ladbroke Group Plc v. Sonoma International LDC*, WIPO Case No. [D2002-0131](#), *Westdev Limited v. Private Data*, WIPO Case No. [D2007-1903](#); *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#), *Intel Corporation v. The Pentium Group*, WIPO Case No. [D2009-0273](#) and *Advance Magazine Publishers Inc. and Les Publications Conde Nast S.A. v. ChinaVogue.com* WIPO Case No. [D2005-0615](#).

In the present case, the Panel adopts the approach as set out in [WIPO Overview 3.0](#) (see above) and the above cases. It does not find it straightforward to apply these principles to the present facts. The Panel considers that the factors to be taken into account are as follows.

First is the fact that the term TOURCOM appears to be a coined term and not a dictionary word. The Complainant says it coined it as an abbreviation of the separate words “tourism” and “communication”. Conceivably a third party could independently coin the same combination but if such was to be alleged the

Panel considers credible and appropriate supporting evidence would be required to show how that had happened. Given the lack of Response the Panel has no way of knowing how or why the Respondent arrived at the Disputed Domain Name.

The second issue to consider is the extent of the Complainant's business and its associated reputation. The Complainant says: "The Complainant is a leader in the tourism industry, is located in 80 countries, and consists of approximately 1200 associated travel agencies in France alone". The Complainant and its agencies offer travel services worldwide, providing guidance and information in connection with their proposed destinations all over the world. The Complainant's activity may be viewed through its website: "www.tourcom.fr".

As far as the Panel can see the Complainant is not simply a business in the form of a corporation carrying out all of its own underlying economic activity (either directly or via subsidiaries) in its own right. Rather it appears to be a membership based organisation whose individual members are travel agencies which are businesses in their own right. The Complainant appears to provide some forms of centralised services to those individual members, including marketing under the TOURCOM trademark. These services are no doubt provided for the individual benefit of members and in return presumably for membership fees and possibly other charges. To quote from the Complainant's website: "Vous êtes dirigeant d'une agence de voyages et vous souhaitez adhérer au réseau TourCom. Cette démarche va vous permettre de profiter des nombreux services mis à la disposition de nos adhérents : des tarifs préférentiels avec les fournisseurs référencés, bénéficier d'incentive au prorata de votre volume d'affaires, une assistance juridique, un accès à plus de 80 réceptifs référencés, à une centrale de paiement garantie, à un portail numérique vous permettant de profiter de tous les services proposés par TourCom, etc." This translates as "You are in charge of a travel agency and you wish to join the TourCom network. This approach will allow you to take advantage of the many services made available to our members: preferential rates with referenced suppliers, benefit from incentives in proportion to your volume of business, legal assistance, access to more than 80 referenced receptions,<sup>1</sup> to a guaranteed payment center, to a digital portal allowing you to take advantage of all the services offered by TourCom, etc".

No evidence has been provided as to the scale of the Complainant's business in terms of financial figures and the Panel is not sure what is meant by the statement in the Complaint that the Complainant "is located in 80 countries" though suspects this may be a reference to the 80 "referenced receptions" mentioned in the above passage – which possibly refers to other organisations in other countries providing reciprocal services to the Complainant's members. The filed evidence would appear to indicate that the Complainant's business is primarily (or possibly exclusively) based in France. There is no evidence before the Panel to suggest that the Complainant has had at any time any reputation in the US (or anywhere else outside France).

The third issue to consider is the structure of the Disputed Domain Name. It does not seem to the Panel that it is formed in a way which is manifestly seeking to take advantage of the Complainant's reputation (whether in France or elsewhere) in the field of travel or tourism. On the other hand, the reproduction of the Complainant's trademark in its entirety could also serve the purpose of facilitating user confusion by taking some advantage of the inclusion of the Complainant's trademark in the Disputed Domain Name. The Complainant says that "The [Disputed Domain Name ] contains the term TOURCOM in verbatim and, as it, merely suggests to the public the Complainant's business which is dedicated to tourism since many years and may, as such, refer to touristic landscape including hills as focal attraction". It seems to the Panel that the combination of "tourcom" with the word "hills" might conceivably have been derived with a view (as the Complainant suggests) for use in some sort tourism business (hence taking advantage of the Complainant's trademark) but with a focus on tourist destinations involving hills. Even this analysis seems to the Panel somewhat unlikely absent any further evidence to show this was the Respondent's motive. It is also worth noting that the word "hills" in English is used as opposed to the French word of that meaning ("collines") despite the fact that the Complainant's activities appears to be directed entirely at a French speaking customer base (e.g., its website appears to be entirely in French). It is also worth noting that the Disputed

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<sup>1</sup> The term "réceptifs référencés" does not appear to translate readily into English – it appears to refer to third party persons or organisations providing some form of reciprocal services.

Domain Name uses the gTLD ".art" which does not seem to be immediately relevant to the Complainant's field of business.

The fourth issue is the fact that no Response has been filed. The Complainant's allegations are very clear and the Respondent has been provided with the opportunity to rebut them if he is able to do so. If he has a case of independent derivation, or some form of legitimate use for the Disputed Domain Name, he could readily have provided that information.

The fifth issue is the fact that the Respondent has both masked his identity by use of a privacy service and, it would appear, provided untrue information as to (at least) his address. The Panel does not regard use of a privacy service as particularly significant – such use is commonplace nowadays for all sorts of reasons, which do not in themselves lead to any adverse inferences being drawn. However in the present case the Respondent details as provided by the Registrar include an address for the Respondent which appears to be fictitious. In accordance with normal practice, the Center arranged for delivery of the amended Complaint to be effected by courier at the Respondent's address as provided by the Registrar. The courier company reported that the address was wrong.

The sixth issue is that the Panel considers it more likely than not that the Respondent would have carried out at least some basic Internet searches on the term "hillstourcom" when he registered the Disputed Domain Name. Assuming he did so, the Panel thinks it more likely than not such searches would have identified the Complainant and should have alerted the Respondent to the Complainant's prior rights. Again, this calls for an explanation from the Respondent.

The Panel considers that not all of the above factors are immediately supportive of the Complainant's case, which is certainly not as straightforward as the Complainant suggests. However, taking the factors as a whole the Panel considers that an inference of bad faith registration and use may be drawn, particularly given that the Disputed Domain Name contains the Complainant's trademark in its entirety, and that trademark is a coined word without any other meaning (so far as the Panel is aware). That inference might have been rebutted by an appropriate credible explanation from the Respondent with supporting evidence. However no Response has been filed and no such explanation has been provided. In the absence of any such explanation the Panel finds that it is more likely than not that the Respondent has registered and used the Disputed Domain Name in bad faith. The Panel's view in this regard is also reinforced by the fact that the Respondent appears to have provided fictitious address details

The evidence before the Panel does not provide sufficient material for the Panel to reach a conclusion on exactly what the Respondent's motive was. So far as the Policy is concerned, paragraph 4(b) of the Policy provides a non-exhaustive list of factors evidencing registration and use in bad faith (see above). In the present circumstances factor (ii) is not applicable but the Panel cannot clearly determine which, if any, of the other factors may apply. However the Panel notes that in any event this list is non exhaustive and for the reasons explained above the Panel accepts the Complainant's case that on balance the relevant facts support a finding that the Disputed Domain Name has been registered and is being used in bad faith.

The Panel finds that the Disputed Domain Name has been registered and is being used in bad faith. Accordingly the third condition of paragraph 4(a) of the Policy has been fulfilled.

## **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 <hillstourcom.art> be transferred to the Complainant.

*/Nick J. Gardner/*

**Nick J. Gardner**

Sole Panelist

Date: November 24, 2022