

## **ADMINISTRATIVE PANEL DECISION**

Holding Le Duff “HLD” v. Charlotte Campigna

Case No. D2022-4166

### **1. The Parties**

The Complainant is Holding Le Duff “HLD”, France, represented by Scan Avocats AARPI, France.

The Respondent is Charlotte Campigna, France.

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

The disputed domain name <fr-groupeleduff.com> is registered with Hostinger, UAB (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 3, 2022. On November 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 4, 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 (Domain Admin, Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 6, 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 November 7, 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 November 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 1, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 5, 2022.

The Center appointed Louis-Bernard Buchman as the sole panelist in this matter on December 13, 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 French corporation founded in 1976, is one of world leaders of the bakery café market, operating 10 production facilities and more than 1,500 bakery cafés in 100 countries worldwide, with 30,000 employees serving daily one million customers, and with a turnover of EUR 2.05 billion in 2019.

The Complainant owns several GROUPE LE DUFF registered trademarks, including, *inter alia*, French trademark No. 99786142, registered on October 1, 1999, European Union trademark No. 001146851, registered on July 31, 2000, European Union trademark No. 016543894, registered on September 12, 2017, International trademark No. 1390842, registered on October 2, 2017, French trademark No. 4782583, registered on July 5, 2021, and European Union trademark No. 018507447, registered on November 12, 2021 (together referred to hereinafter as: the “Mark”).

The Complainant also owns a large portfolio of domain names, including, *inter alia*, <groupeleduff.com>, registered on October 22, 2003 and <groupeleduff.fr>, registered on October 26, 2003.

The disputed domain name was registered on September 19, 2022.

The Respondent is apparently located in France.

The disputed domain name resolved to a parking page, and at the time of the Decision, it does not resolve to an active website.

#### **5. Parties’ Contentions**

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

(i) The Complainant submits that the disputed domain name reproduces the Mark, in which the Complainant has rights, and is confusingly similar to the Mark insofar as the disputed domain name contains the Mark in its entirety preceded by the country-code letters “fr”.

(ii) The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Furthermore, the Complainant contends that it never authorized the Respondent to use the Mark in any manner and that the Respondent has never had any affiliation with the Complainant.

(iii) The Complainant submits that the Respondent has registered and is using the disputed domain name in bad faith. The Complainant alleges that the Respondent had knowledge of the Mark when registering the disputed domain name.

(iv) The Complainant requests that the disputed domain name be transferred to the Complainant.

##### **B. Respondent**

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

## 6. Discussion and Findings

### 6.1. Procedural Aspects – Failure to Respond

Under the Rules, paragraphs 5(f) and 14(a), the effect of a failure to submit a Response by the Respondent is that, in the absence of exceptional circumstances, the Panel shall proceed to a decision on the basis of the Complaint.

Under paragraph 4(a) of the Policy, it is the Complainant's burden to establish that all three of the required criteria for a transfer of the disputed domain name have been met, even in the absence of a response.

Under paragraph 14(b) of the Rules, the Panel is empowered to draw such inferences from the Respondent's failure to file a Response as it considers appropriate under the circumstances.

In this case, the Panel finds that the Respondent has failed to rebut any of the reasonable factual assertions that are made and supported by evidence submitted by the Complainant.

In particular, by failing to respond, the Respondent has failed to offer the Panel any of the types of evidence set forth in paragraph 4(c) of the Policy or otherwise, from which the Panel might conclude that the Respondent has any rights or legitimate interests in the disputed domain name, such as making legitimate noncommercial or fair use of the disputed domain name.

Moreover, as discussed below, the Respondent has failed to provide any exculpatory information or reasoning that might have led the Panel to question the Complainant's arguments that the Respondent has acted in bad faith.

### 6.2. Requirements of Paragraph 4(a) of the Policy

#### A. Identical or Confusingly Similar

In comparing the Mark with the disputed domain name, it is evident that the latter consists of the Mark, preceded by the two country-code letters for France "fr" and a hyphen, and followed by the generic Top-Level Domain ("gTLD") ".com".

It is well established that a gTLD is generally disregarded in the assessment of a domain name for the purpose of determining identity or confusing similarity. See the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.11.1.

The Panel finds that the disputed domain name is confusingly similar to the Mark, and that the addition of the letters "fr" and a hyphen before the Mark does not prevent a finding of confusing similarity, because the Mark remains recognizable within the disputed domain name. See [WIPO Overview 3.0](#), section 1.8.

Thus, the Complainant has satisfied the requirement of paragraph 4(a)(i) of the Policy.

#### B. Rights or Legitimate Interests

Although a complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, previous UDRP panels have recognized that with regard to paragraph 4(a)(ii) of the Policy, this could result in the often impossible task of proving a negative proposition, requiring information that is primarily, if not exclusively, within the knowledge of a respondent.

Thus, the consensus view of previous UDRP panels is that paragraph 4(c) of the Policy shifts the burden of production of evidence to the respondent to come forward with evidence of rights or legitimate interests in a domain name, once the complainant has made a *prima facie* case showing, as the Panel finds the Complainant has made out in this case, based on the facts and arguments set out above. See *Document*

*Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#); and [WIPO Overview 3.0](#), section 2.1.

As previously noted, the Respondent offered no reason for selecting the disputed domain name. There is no evidence that the Respondent is commonly known by the disputed domain name or uses (or has made *bona fide* preparations to use) the disputed domain name in a business or otherwise.

The disputed domain name does not direct the public to an active website, but rather to a parked page of the hosting provider.

No information is provided on what rights or legitimate interests the Respondent may have in the disputed domain name.

In addition, the combination in the disputed domain name of the letters “fr” and a hyphen with the Mark is confusing and carries a risk of implied affiliation. See [WIPO Overview 3.0](#), section 2.5.1.

To counter any notion that the Respondent has such rights or legitimate interests, the Complainant has argued that the Respondent (i) has no affiliation with the Complainant and (ii) received no authorization from the Complainant to register or use the disputed domain name, which the Respondent failed to deny.

In the circumstances, the Panel concludes that the Complainant has established the requirement of paragraph 4(a)(ii) of the Policy with respect to the disputed domain name.

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

As noted above, the Respondent has failed to provide any exculpatory information or persuasive reasoning that might have led the Panel to question the Complainant's arguments that the Respondent acted in bad faith by creating confusion to the detriment of the Complainant in registering and using the disputed domain name, confusingly similar to the Mark.

First, the registration of a domain name that is confusingly similar to a trademark by an entity that has no relationship to that mark may be, depending on the circumstances, evidence of opportunistic bad faith. See *Ebay Inc. v. Wangming*, WIPO Case No. [D2006-1107](#); *Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.*, WIPO Case No. [D2000-0163](#).

Second, it is well-established that the mere passive holding of a domain name may in appropriate circumstances be evidence not only of bad faith registration, but also of bad faith use. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *DCI S.A. v. Link Commercial Corporation*, WIPO Case No. [D2000-1232](#); *Mary-Lynn Mondich and American Vintage Wine Biscuits, Inc. v. Shane Brown, doing business as Big Daddy's Antiques.*, WIPO Case No. [D2000-0004](#); and *Alitalia – Linee Aeree Italiane S.p.A v. Colour Digital*, WIPO Case No. [D2000-1260](#).

Third, it was established in prior UDRP decisions that where the respondent knew or should have known of a trademark prior to registering the domain name, such conduct may be, in certain circumstances, sufficient evidence of bad faith registration and use. See *Weetabix Limited v. Mr. J. Clarke*, WIPO Case No. [D2001-0775](#).

Here, considering that at the date of registration of the disputed domain name the Mark was already registered and used for many years, and that the Mark has been recognized by previous UDRP panels as highly distinctive and notorious (see for instance *Holding Le Duff “HLD” v. VistaPrint Technologies Ltd*, WIPO Case No. [DCO2016-0025](#) and *Holding Le Duff “HLD” v. KeM Tech KSF Europe*, WIPO Case No. [D2020-1527](#)), the Panel finds it difficult to believe that the Respondent chose to register the disputed domain name randomly with no knowledge of the Mark. See *Barney's Inc. v. BNY Bulletin Board*, WIPO Case No. [D2000-0059](#); *Kate Spade, LLC v. Darmstadter Designs*, WIPO Case No. [D2001-1384](#), citing *Cellular One Group v. Paul Brien*, WIPO Case No. [D2000-0028](#); and *SembCorp Industries Limited v. Hu Huan Xin*, WIPO Case

No. [D2001-1092](#).

Prior UDRP panels have held that bad faith use of a domain name by a respondent may also result from the fact its good faith use is in no way plausible, considering the specificity of the activity (see *Audi AG v. Hans Wolf*, WIPO Case No. [D2001-0148](#)). The Panel has been unable to determine any current or plausible future active use of the disputed domain name in good faith from the evidence before it, considering *inter alia* the specificity of the Complainant's activity and absence of any response from the Respondent.

Finally, prior UDRP panels have held that in certain circumstances, registrants of domain names would have a duty to abstain from registering and using a domain name which is either identical or confusingly similar to a prior trademark held by others and which would infringe upon or otherwise violate the rights of a third party. See Policy, paragraph 2(b); *Nike, Inc. v. B. B. de Boer*, WIPO Case No. [D2000-1397](#); *Nuplex Industries Limited v. Nuplex*, WIPO Case No. [D2007-0078](#); *Mobile Communication Service Inc. v. WebReg, RN*, WIPO Case No. [D2005-1304](#); *BOUYGUES v. Chengzhang, Lu Ciagao*, WIPO Case No. [D2007-1325](#); *Media General Communications, Inc. v. Rarenames, WebReg*, WIPO Case No. [D2006-0964](#); and *mVisible Technologies, Inc. v. Navigation Catalyst Systems, Inc.*, WIPO Case No. [D2007-1141](#).

The Panel concludes in the light of all these circumstances that the Respondent's registration and use of the disputed domain name constitute bad faith, and that the requirements of paragraph 4(a)(iii) of the Policy are also satisfied in this case.

## 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, <fr-groupeleduff.com>, be transferred to the Complainant.

*/Louis-Bernard Buchman/*

**Louis-Bernard Buchman**

Sole Panelist

Date: December 22, 2022