

## **ADMINISTRATIVE PANEL DECISION**

Holding Le Duff “HLD” v. Chris saber  
Case No. D2022-4167

### **1. The Parties**

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

The Respondent is Chris saber, United States of America (“United States”).

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

The disputed domain name <groupeleduffs.com> is registered with NameCheap, Inc. (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 3, 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 (Privacy Service Provided by Withheld for Privacy ehf) 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 Federica Togo 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 is specialized in restaurants and bakeries. The Complainant is the registered owner of several trademarks worldwide for GROUPE LE DUFF, *e.g.* European Union trademark registration No. 001146851 GROUPE LE DUFF registered on June 20, 2000, for goods and services in classes 29, 30, 32, 35 and 42. This trademark has been duly renewed and is in force.

The disputed domain name was registered on July 13, 2022. Furthermore, the undisputed evidence provided by the Complainant proves that the disputed domain name resolved to a parking page displaying Pay-Per-Click (“PPC”) links. The disputed domain name is currently inactive.

#### **5. Parties’ Contentions**

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

It results from the Complainant’s allegations that it was established in 1976 and is specialized in restaurants and bakeries worldwide. It is currently developing its activity both in France and abroad and has over 1,250 restaurants and bakeries in 100 countries worldwide and serves 1,000,000 circa customers daily. In order to increase its activities and the recognition of its trademarks in the consumer mind in France and abroad, the Complainant regularly launches massive investments plans and acquires well-known restaurant and bakery chains. Furthermore, the Complainant received several awards for the quality of its products and for its business success.

In addition, the Complainant owns and operates the website at the domain name <groupeleduff.com> (registered on October 22, 2003) in order to promote its products and services.

The Complainant contends that its trademarks GROUPE LE DUFF and LE DUFF are well known and widely used in France and worldwide.

The Complainant further contends that the disputed domain name is confusingly similar to the Complainant’s trademarks GROUPE LE DUFF, since it incorporates the Complainant’s GROUPE LE DUFF trademark, with the addition of the final letter “s” which is hardly noticeable.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainant, it has never given any authorization to any third party to register or to use its GROUPE LE DUFF and LE DUFF trademarks. The Respondent is not in any way related to its business and does not carry out any activity for or has any business with it. In particular, the Respondent has not been licensed, contracted or otherwise permitted by the Complainant in any way to use the prior GROUPE LE DUFF and LE DUFF trademarks or to register for any domain name incorporating these prior trademarks, nor has the Complainant acquiesced in any way to such use or registration of its trademarks by the Respondent.

Finally, the Complainant contends that the disputed domain name was registered and was being used in bad faith. According to the Complainant, because of the strong reputation and the leading position of its prior trademarks in France and abroad in the field of restaurant and bakery café market, it is highly likely that the Respondent knew of the existence of the Complainant’s prior intellectual property rights at the time the disputed domain name was registered. In addition, the mere absence of rights or legitimate interests of the Respondent should point out that the disputed domain name has not been registered in good faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs this Panel to “decide a 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”. Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements in order to obtain an order that the disputed domain name be transferred or cancelled:

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

The Panel will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

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

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

It results from the evidence provided that the Complainant is the registered owner of several trademark registrations for GROUPE LE DUFF, e.g. European Union trademark registration No. 001146851 GROUPE LE DUFF registered on June 20, 2000, for goods and services in classes 29, 30, 32, 35 and 42. This trademark has been duly renewed and is in force.

Prior UDRP panels have found that a domain name is confusingly similar to a complainant's trademark where the domain name incorporates the complainant's trademark in its entirety (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) at section 1.7). This Panel shares this view and notes that the Complainant's registered trademark GROUPE LE DUFF is fully included in the disputed domain name, followed by the letter “s”.

Furthermore, it is the view of this Panel that the addition of the letter “s” in the disputed domain name results to be a common, obvious or intentional misspelling of the Complainant's trademark and cannot prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark since the disputed domain name contains sufficiently recognizable aspects of the relevant mark (see [WIPO Overview 3.0](#) at section 1.9).

Finally, the generic Top-Level Domain “.com” of the disputed domain name may be disregarded under the first element confusing similarity test (see [WIPO Overview 3.0](#) at section 1.11.1).

In the light of the above, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

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

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must further establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests to the disputed domain name. In the Panel's view, based on the undisputed allegations stated above, the Complainant has made a *prima facie* case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

According to the Complaint, which has remained unchallenged, the Complainant has no relationship in any way with the Respondent and did, in particular, not authorize the Respondent's use of the trademark GROUPE LE DUFF or the registration of the disputed domain name.

Furthermore, the Panel notes that there is no evidence showing that the Respondent might have been commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

In addition, the disputed domain name merely consists of the Complainant's trademark GROUPE LE DUFF followed by the letter "s", so that this Panel finds it most likely that employing a misspelling in this way signals an intention on the part of the respondent to confuse users seeking or expecting the Complainant.

Furthermore, it results from the undisputed evidence before the Panel that the disputed domain name resolves to a parking website comprising PPC links that compete with or capitalize on the reputation and goodwill of the Complainant's trademark or otherwise mislead Internet users (*i.e.*, a parking page displaying PPC links). Prior UDRP panels have found that the use of a domain name to host a parked page comprising PPC links does not represent *bona fide* offering of goods or services, where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users (see [WIPO Overview 3.0](#) at section 2.9, with further references). This Panel shares this view. Therefore, such use can neither be considered as *bona fide* offering of goods or services nor 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.

It is acknowledged that once the panel finds a *prima facie* case is made by a complainant, the burden of production under the second element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds, in the circumstances of this case, that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

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

According to paragraph 4(a)(iii) of the Policy, the Complainant must, lastly, establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in its paragraph 4(b) may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith. One of these circumstances is that the Respondent by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

It is the view of this Panel that these circumstances are met in the case at hand. The Complainant's trademarks have existed for many years. Therefore, this Panel has no doubt that the Respondent positively knew or should have known that the disputed domain name consisted of the Complainant's trademarks when the Respondent registered the disputed domain name. Registration of the disputed domain name by the Respondent in awareness of the GROUPE LE DUFF mark and in the absence of rights or legitimate interests in this case amounts to registration in bad faith.

The disputed domain name does not currently resolve to an active website. In this regard, the Panel notes that the passive holding does not preclude a finding of bad faith (see *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)). However, the Complainant also proved that the disputed domain name resolved to a parking website comprising PPC links that compete with or capitalize on the reputation and goodwill of the Complainant's trademark or otherwise mislead Internet users, so that the Panel is satisfied that the disputed domain name, incorporating in its entirety the Complainant's trademark followed by the letter "s", is being used to intentionally attempt to attract, for commercial gain, Internet users to the Respondent's website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the Respondent's website or location, or of a product or service on the Respondent's website or location.

Finally, the further circumstances surrounding the disputed domain name's registration and use confirm the findings that the Respondent has registered and is using the disputed domain name in bad faith: (1) the disputed domain name consists of a misspelling of the Complainant's trademark (*i.e.* typosquatting); (2) the Respondent failed to submit a response or to provide any evidence of actual or contemplated good faith use; (3) the Respondent concealing its identity through the use of a privacy service; (4) the implausibility of any good faith use to which the disputed domain name may be put.

In the light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith pursuant to paragraph 4(a)(iii) of the Policy.

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

*/Federica Togo/*

**Federica Togo**

Sole Panelist

Date: December 22, 2022