

ADMINISTRATIVE PANEL DECISION

Gestion Strada Inc. v. Guiying Li
Case No. D2022-4747

1. The Parties

The Complainant is Gestion Strada Inc., Canada, represented by Norton Rose Fulbright Canada LLP, Canada.

The Respondent is Guiying Li, China.

2. The Domain Name and Registrar

The disputed domain name <louis-gameau.com> is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 9, 2022. On December 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 22, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 January 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 30, 2023.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on February 3, 2023. 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 through its affiliate and licensee, Louis Garneau Sports Inc., owns and operates an active lifestyle brand based in Quebec involved in the design and sale of *inter alia* cycling apparel and equipment in association with the trademark LOUIS GARNEAU.

Louis Garneau Sports Inc. was founded by Mr. Louis Garneau, a former international cyclist that competed from 1970 to 1983 and won the title of Canadian champion in individual pursuit in 1978 and participated to 1984 Los Angeles Olympics. Mr. Garneau is the president of Gestion Strada Inc., the Complainant in this proceeding.

The Complainant, in addition to the domain name <louisgarneau.com>, used in connection with the Complainant's activities, is the owner, amongst many others, of the trademark registration no. TMA507108 for LOUIS GARNEAU, registered on January 26, 1999, subsequently renewed, in Canada.

The disputed domain name <louis-gameau.com> was registered on September 21, 2022, and resolves to an online shop reproducing the Complainant's trademark LOUIS GARNEAU and purportedly offering the Complainant's products.

5. Parties' Contentions

A. Complainant

According to the Complainant, the name "Louis Garneau" was adopted in 1984, by the Complainant or its predecessors in title which have developed substantial goodwill and reputation for its cycling apparel and equipment, conveyed by its name and trademarks, including but not limited to, the trademark LOUIS GARNEAU.

Also according to the Complainant, its activities or the activities of its predecessors in title have been publicly advertised in Canada since at least as early as 1984 in association with the LOUIS GARNEAU trademark through its website, launched on or around 1997, and advertising campaigns, which lead the LOUIS GARNEAU trademark to become a distinctive identifier associated with the Complainant's activities both in Canada and internationally for the development, design, manufacture and sale of *inter alia* cycling apparel and equipment.

The Complainant contends that the Respondent is wrongfully attempting to pass itself off to internet users as being the Complainant and/or affiliated with the Complainant in what appears to be a scheme to pass off counterfeit products as legitimate LOUIS GARNEAU cycling apparel and equipment or dupe unsuspecting internet users into providing personal information including credit card information to the Respondent in a phishing scheme.

The Complainant further contends that the disputed domain name incorporates the entirety of the Complainant's LOUIS GARNEAU trademark with the mere addition of a hyphen between the words "louis" and "garneau", what does not confer a whole new meaning on a domain name.

As to the absence of rights or legitimate interests, the Complainant argues that:

- (a) the Respondent has not been authorized or licensed by the Complainant to use the LOUIS GARNEAU trademark in any way, including in respect of the disputed domain Name, and has no connection or affiliation with the Complainant;
- (b) the Respondent has not made a *bona fide* use of the disputed domain name, given that the website associated with the disputed domain name unequivocally support the position that the Respondent's intention is to impersonate the Complainant in order to mislead innocent customers into providing their

Personal Information under the guise of obtaining LOUIS GARNEAU cycling apparel and equipment at a rebate;

(c) given the Respondent's extensive and significant use of the LOUIS GARNEAU trademark and the Respondent's imitation of the Complainant, it is virtually inconceivable that the Respondent was unaware of the Complainant's rights in relation to the LOUIS GARNEAU trademark;

(d) the Respondent is engaged in impersonating the Complainant in order to mislead potential customers into providing their confidential Personal Information for illicit purposes; and

(e) there is no evidence that the Respondent, whom registered the disputed domain name on September 21, 2022, has become commonly known by the disputed domain name.

The registration and use of the disputed domain name in bad faith, according to the Complainant, arises from the Respondent's use of the disputed domain name to impersonate the Complainant in connection with the use being made of the disputed domain name in connection with a phishing scam.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

(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 Complainant must prove in this administrative proceeding that each of the aforementioned three elements is present in order to obtain the transfer of the disputed domain name.

In accordance with paragraph 14(a) of the Rules, if the Respondent does not submit a Response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

A. Identical or Confusingly Similar

The Complainant has established rights in the LOUIS GARNEAU trademark.

The disputed domain name includes the entirety of the Complainant's trademark, with the addition of a hyphen to separate the names "louis" and "garneau". It is well accepted that the first element functions primarily as a standing requirement and that the threshold test for confusing similarity involves a "reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name". And, in cases "where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark" (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([WIPO Overview 3.0](#)), section 1.7).

The first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a non-exclusive list of circumstances that may indicate a respondent's rights to or legitimate interests in a domain name. These circumstances are:

- (i) before any notice of the dispute, the respondent's 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 (as an individual, business, or other organization) has been commonly known by the domain name, even if it has not acquired 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.

The Respondent, in not responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights to or legitimate interests in the disputed domain name. This entitles the Panel to draw any such inferences from such default as it considers appropriate pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden of proof is still on the Complainant to make a *prima facie* case against the Respondent.

In that sense, and as the evidence submitted clearly indicates, the Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, given that the Respondent has been using the confusingly similar disputed domain name, the composition of which carries a risk of implied affiliation to the Complainant, in connection with an online shop that impersonates the Complainant and offers purportedly the Complainant's products. Such use cannot be considered a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name.

C. Registered and Used in Bad Faith

The Policy indicates in paragraph 4(b)(iv) that bad faith registration and use can be found in respect of a disputed domain name, where, by using the disputed domain name, a respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

In this case, both the registration and use of the disputed domain name in bad faith can be found in view of the Respondent's webpage, which mimics the Complainant's website in an attempt to impersonate the Complainant and mislead Internet users.

The Respondent's use of the disputed domain name not only clearly indicates full knowledge of the Complainant's trademark but also an attempt of misleadingly diverting consumers for its own commercial gain.

Other factors corroborate a finding of bad faith, such as the indication of what appears to be a false address in the Whois data and, consequently, the Center not being able to have communications fully delivered to the Respondent, as well as the Respondent's lack of reply to the proceeding, failing thereby to invoke any circumstance which could demonstrate good faith in the registration and use of the disputed domain name.

For the reasons above, the Respondent's conduct has to be considered, in this Panel's view, as bad faith registration and use of the disputed domain name.

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 <louis-gameau.com> be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: February 17, 2023