

## **ADMINISTRATIVE PANEL DECISION**

42 v. Moriah Butterfield

Case No. D2023-0489

### **1. The Parties**

The Complainant is 42, France, represented by Scan Avocats AARPI, France.

The Respondent is Moriah Butterfield, United States of America (“United States”).

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

The disputed domain name <loveoflearning42.org> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 2, 2023. On February 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 2, 2023, 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, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 9, 2023, 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 February 10, 2023.

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 February 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 22, 2023.

The Center appointed Ganna Prokhorova as the sole panelist in this matter on March 30, 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 is a free and non-profit private computer programming school founded in 2013 under its 42 mark.

The Complainant has 47 campuses in 26 countries. The Complainant owns trademark registrations for its 42 mark in numerous jurisdictions, including the following:

- European Union Trade Mark registration no. 018037820, 42 (figurative), registered on August 13, 2019, for services in international class 41; and
- International trademark registration no. 1488612, 42 (figurative), registered on June 26, 2019, for services in international classes 35, 38, 41, and 42, and designating, *inter alia*, United States.

The Complainant is also the owner of numerous domain name registrations incorporating its trademark 42, including <42.fr> registered on May 26, 2004.

The disputed domain name was registered on October 18, 2022, and redirects toward a parking page which displays links to educational services.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant asserts that each of the elements enumerated in paragraph 4(a) of the Policy and the corresponding provisions in the Rules have been satisfied. In particular, the Complainant asserts that:

(1) the disputed domain name is confusingly similar to its 42 trademark in which the Complainant has rights. The disputed domain name contains the trademark 42 in its entirety. The Complainant is the owner of numerous 42 prior registered trademarks and domain names. The Complainant trademarks are well known in France and worldwide. The Complainant is widely known to the public under the name 42 in the educational field. The disputed domain name reproduces identically the Complainant's 42 trademarks with the mere addition of the terms "love of" and "learning" which refers directly to its main activity, the generic Top-Level Domain ("gTLD") ".org" being disregarded;

(2) the Respondent has no right or legitimate interests in respect of the disputed domain name. The Complainant has never given any authorization or permission to the Respondent to register or to use its trademarks 42. The Respondent does not own any trademark right under its name and is not currently known under the terms "love of learning 42". The Respondent is not in any way related to the Complainant. It is not an authorized distributor of 42 and it does not carry out any activity for or has any business with it. The Respondent is not commonly known by the disputed domain name. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name;

(3) the disputed domain name was registered and is being used in bad faith. The Complainant 42 prior trademarks and domain names were registered many years before the disputed domain name was registered and are well known in France and abroad. The Complainant is widely known to the public under the name "42" for educational services. The Respondent could not have been unaware of the Complainant's prior trademarks and domain names "42" when it registered and used the disputed domain name in view of the renown of these prior rights and the reproduction of its trademarks within the domain name, with the mere addition of the expression "loveoflearning" which is directly related to the Complainant's core business. Any search for "42" conducted with a search engine such as Google leads in the first place to websites relating to the Complainant and its activities. The mere absence of right or legitimate interest of the Respondent should point out that the disputed domain name has not been registered in good faith. The use of the disputed domain name to redirect Internet users to a parking related to educational services confirms the Respondent's bad faith.

## B. Respondent

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

## 6. Discussion and Findings

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

- (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 bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complaint.

Moreover, the Panel has taken note of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") and, where appropriate, will decide consistent with the consensus views captured therein.

### A. Identical or Confusingly Similar

According to paragraph 4(a)(i) of the Policy it should be established that the disputed domain name is identical or confusingly similar to a mark in which the complainant has rights.

The Panel confirms that for the purposes of paragraph 4(a)(i) of the Policy the Complainant has satisfied the threshold requirement of having relevant trademark rights for 42 in jurisdictions throughout the world.

The disputed domain name contains the Complainant's trademark 42 in its entirety. Prior UDRP panels have recognized that confusing similarity is established for purposes of the Policy where the disputed domain name incorporates the complainant's trademark in its entirety. See [WIPO Overview 3.0](#), section 1.7.

The Panel also notes that the Complainant uses the term "42: Learn to Code" on its website at the domain name <42.fr >.

The addition of the term "loveoflearning" (also noting the use of "42: Learn to Code" by the Complainant) does not prevent a finding of confusing similarity. See [WIPO Overview 3.0](#), section 1.8 and similar cases *LEGO Juris A/S v. Beats*, WIPO Case No. [D2019-0012](#); *Accenture Global Services Limited v. Carolina Rodrigues*, WIPO Case No. [D2021-1456](#); *42 v. Nourah Alsawi*, WIPO Case No. [D2022-4841](#).

The gTLD ".org" may be disregarded for purposes of comparison under the first element, as it is viewed as a standard registration requirement. See [WIPO Overview 3.0](#), section 1.11.1.

For all of the above-mentioned reasons, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademark and therefore finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

### B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* case demonstrating that the Respondent has no rights or legitimate interests in the disputed domain name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

In the present case, the Complainant's un rebutted evidence establishes that its "42" trademark was registered and is well known within its industry prior to registration of the disputed domain name. The disputed domain name is confusingly similar to the Complainant's trademarks and the Complainant has certified that the Respondent is unauthorised by it.

The Complainant has submitted that the Respondent is neither affiliated with the Complainant in any way nor has it been authorized by the Complainant to use and register the disputed domain name, that the Respondent has no rights or legitimate interests in the disputed domain name, and that the Respondent has not made and is not making a legitimate noncommercial or fair use of the disputed domain name and is not commonly known by the disputed domain name in accordance with paragraph 4(c)(ii) of the Policy.

The Respondent has not explained why it chose the disputed domain name. Normally, if the Respondent has any rights or legitimate interests, the Respondent would have reasonably been expected to assert them (*Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. [D2004-0110](#)). Given what is stated below in relation to bad faith, the Respondent either knew or should have known that its actions would have taken unfair advantage of the Complainant's trademarks, and the use which it has made of the disputed domain name cannot confer rights or legitimate interests.

Moreover, previous UDRP panels have found that the use of a domain name to host a parked page comprising commercial links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users. The disputed domain name resolves to a website including links related to the Complainant's activity in the educational sector (see section 2.9 of the [WIPO Overview 3.0](#)).

There is thus no evidence that any of the circumstances set out in paragraph 4(c) of the Policy pertain, nor any others which may confer rights or legitimate interests on the Respondent. The Complainant has satisfied paragraph 4(a)(ii) of the Policy by virtue of having made out an un rebutted *prima facie* case.

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

Under the third UDRP element, the Complainant is required to prove that the disputed domain name was registered and is being used in bad faith.

The Complainant claims that the Respondent registered the domain name in bad faith, and the Panel agrees.

The Complainant has previously demonstrated the strong reputation of its 42 prior trademarks in France and abroad in the educational field.

Therefore, it is highly likely that the Respondent knew of the existence of the Complainant's 42 trademark at the time the disputed domain name was registered for at least the following reasons:

- (i) The Complainant's 42 trademarks are used in commerce since 2012, many years before the disputed domain name was registered;
- (ii) The Complainant opened a 42 school in the United States, where the Respondent is located;
- (iii) A simple search via Google or any other search engine using the keyword "42" (or "42 Learn") demonstrates that nearly all results relate to the Complainant's websites or business. Thus, the Respondent was or should have been aware of the Complainant's activity when it registered the disputed domain name;

- (iv) The disputed domain name resolves to a parking website containing links related to the educational field;
- (v) The disputed domain name is confusingly similar to the Complainant 42 trademarks, its domain names and the Complainant's use of "42: Learn to Code" on its websites;
- (vi) It is highly unlikely, in view of the strong reputation of the Complainant that Respondent's choice to register a domain name confusingly similar to the Complainant 42 trademark was purely coincidental, especially in view of the addition of the descriptive term "love of learning" which is directly related to the field of activity of the Complainant – being the only logical conclusion for the connection of such otherwise unrelated terms in the absence of an explanation by the Respondent;
- (vii) The Complainant is internationally known under the trademark 42 in the educational field and has opened numerous schools under the trademark 42 around the world;
- (viii) The notoriety of the Complainant's trademarks, especially in the field of education, is such that a "*prima facie* presumption is raised that the Respondent registered the [disputed domain name] for the purpose of selling it to Complainant or one of its competitors" (see *Arthur Guinness Son & Co. v./ Steel Vertigogo*, WIPO Case No. [D2001-0020](#));
- (ix) The registration and use of a domain name which is evidently connected with a famous or well-known trademark, by someone with no connection with said trademark, suggests opportunistic bad faith (see *Sanofi-aventis, Aventis Inc. v. Hostmaster, Domain Park Limited*, WIPO Case No. [D2007-1641](#));
- (x) The Respondent used a privacy service to conceal its identity when registering the disputed domain name, which further illustrates his bad faith.

It is therefore highly unlikely that the Respondent was unaware of the existence of the Complainant and its well-known reputation and 42 trademarks while it registered the disputed domain name. On the contrary, considering the reputation of the Complainant, the fact that the disputed domain name is confusingly similar to the Complainant's 42 trademarks – and indeed the Complainant's domain names and websites – and the use of the disputed domain name containing commercial links in the same business area as the Complainant, it is most likely that the Respondent registered the disputed domain name having the Complainant's trademarks in mind.

As regards bad faith use of the disputed domain name, the Complainant has demonstrated that the Respondent is using a domain name reproducing identically the Complainant's 42 trademarks with the mere addition of a descriptive expression related to its activity, in order to redirect to a website which contains links to educational services. In particular, the disputed domain name resolves toward a parking page which displays links in French to educational services such as "*Formation Commerce à Distance*" (Distance Business learning) or "*Cours Particulier Domicile*" (Private Tutoring at Home)". These links lead to a list of several services directly competing with those of the Complainant. As it is well established, the use of a domain name to redirect Internet users toward a parking page containing sponsored links directly linked to the complainant's core business is evidence of bad faith (see for example, *Association des Centres Distributeurs E. Leclerc - A.C.D. Lec v. Kouassi, Gbodo Hugues*, WIPO Case No. [D2021-0370](#)). Accordingly, the Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website.

For the reasons set out above, the Panel concludes that the disputed domain name was registered and is being used in bad faith, within the meaning of 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, <loveoflearning42.org> be transferred to the Complainant.

*/Ganna Prokhorova/*

**Ganna Prokhorova**

Sole Panelist

Date: April 13, 2023