

ADMINISTRATIVE PANEL DECISION

L'air Liquide, Société Anonyme pour l'Etude et l'Exploitation des Procédés
Georges Claude v. Paul Fitzpatrick
Case No. D2023-0965

1. The Parties

The Complainant is L'air Liquide, Société Anonyme pour l'Etude et l'Exploitation des Procédés Georges Claude, France, represented by SafeBrands, France.

The Respondent is Paul Fitzpatrick, United States of America ("United States" or "US"), represented by ENVISAGE LAW, United States.

2. The Domain Names and Registrar

The disputed domain names <airliquideemployees.com> and <airliquideshareholders.com> are registered with Name.com, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 2, 2023. On March 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 5, 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 (Whois Agent, Domain Protection Services, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 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 amendment to the Complaint on March 10, 2023.

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 March 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 4, 2023. On March 15, 2023, the Respondent's

representatives requested an additional four calendar days to respond to the Complaint pursuant to paragraph 5(b) of the Rules. On March 17, 2023, the Center granted said request, noting that the due date for Response was now April 8, 2023. The Response was filed with the Center on April 7, 2023.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on April 21, 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 French company registered at the French Trade Register under number 552 096 281 with its head office in Paris, France. It specializes in gas, technologies, and services for industry and health. The Complainant owns several trademarks for the sign AIR LIQUIDE, including, for example, International Registered Trademark No. 670023 for the figurative mark AIR LIQUIDE represented in standard characters, registered on March 4, 1997 in respect of goods and services in Classes 5, 10, and 42. The Complainant is also the registrant of the domain name <airliquide.com>, registered since January 13, 1995.

The disputed domain name <airliquideemployees.com> was registered on June 10, 2022. The disputed domain name <airliquideshareholders.com> was registered on October 6, 2022. The Respondent appears to be a private individual with an address in Ohio, United States. The Respondent states that it is the president of 1792 Exchange, a “non-profit alliance of families protecting faith-based and conservative institutions and philanthropy, and helping corporations move back toward neutral to protect free exercise, free speech, and free enterprise”.

According to a screenshot produced by the Complainant dated July 27, 2022, the disputed domain name <airliquideemployees.com> originally pointed to a parking page containing sponsored advertising links, the majority of which related to human resources. On July 27, 2022, the Complainant’s representatives issued a cease and desist letter to the Respondent, or possibly to its predecessor in interest, regarding said disputed domain name. Thereafter (according to a screenshot produced by the Complainant dated September 19, 2022) the website to which this disputed domain name pointed was changed to a website which is headed with the disclaimer “THIS WEBSITE IS NOT ASSOCIATED WITH NOR ENDORSED BY AIR LIQUIDE”.

Below a reproduction of the disputed domain name in capital letters (larger in typeface size than the said disclaimer) the website goes on to address the Complainant’s employees, asserting that the Complainant is aligned with certain opinions and posing eight questions, such as, for example, whether the employee requested a religious exemption from taking the COVID-19 vaccination and was denied, and whether, if the employee is in the United States, it is interested in forming a union at the Complainant. The call to action if the employee answers “yes” to any of the questions is to click a contact button to make contact with the Respondent. The website’s privacy policy makes clear the fact that the Respondent collects personal data that a user provides “through any forms, applications, surveys, or any other means in which data is collected through the Services” that “includes, but is not limited to, name, email address, phone number, social security number, and physical address”.

The Respondent’s said website had reverted to an “under construction” page provided by “Clearer Technology” by February 23, 2023, according to the Complainant’s related screenshot. However, by the date of this Decision, the substantive page described above had been restored, subject to minor adjustments to address its message not only to the Complainant’s employees but also to the Complainant’s customers and shareholders. The disputed domain name <airliquideshareholders.com>, which was registered after the Complainant first made contact with the then registrant of the disputed domain name, points to the same web page.¹

¹ As the evidence indicated that the content on the Respondent’s website had varied over time, the Panel considered it appropriate to visit the website associated with each of the disputed domain names during preparation of this Decision. On the topic of a panel conducting

5. Parties' Contentions

A. Complainant

In summary, the Complainant contends as follows:

Identical or confusingly similar

The disputed domain names consist of the Complainant's AIR LIQUIDE trademark as the dominant and distinctive element combined with the English generic terms "employees" and "shareholders" that can refer to the Complainant's activities. Where the distinctive element of a disputed domain name is a registered trademark and the only variation is the addition of a generic word, such variation does not typically negate confusing similarity between the trademark and the disputed domain name.

Rights or legitimate interests

The Respondent obtained no authorization from the Complainant to use the AIR LIQUIDE trademark as a domain name and has no rights in such mark. Through data comparisons, the Complainant has identified that the Respondent is linked to an entity named Clearer Technology that has been the subject of several decisions regarding the same activities. From these cases, it appears that the Respondent has a *modus operandi* to register a well-known trademark with a generic term such as "employees" to appear to act for the benefit of the employees of a targeted company but with the intent to disrupt business and collect data.

The website at the disputed domain name <airliquideemployees.com> was originally a parking page, suggesting that the Respondent registered the disputed domain name for financial profits. Following receipt of the Complainant's cease and desist letter, the Respondent posted a supposed legitimate alert website for the Complainant's employees which solicited their personal data. Said website did not determine the purposes for which such employees' data would be processed, suggesting that the Respondent wished to collect this for fraudulent purposes by pretending to work in their interests.

The Respondent proposed a settlement with the Complainant through its attorneys and, when the Complainant informed it that it did not wish to reach a financial settlement, the Respondent changed the website to reflect the under construction message from Clearer Technology. The disputed domain name <airliquideshareholders.com> was registered by the Respondent after receipt of the Complainant's cease and desist letter regarding <airliquideemployees.com>.

The Respondent is not making a *bona fide* offering of goods and services via the disputed domain names and plans to take unfair advantage of the Complainant's mark thereby. Based on other decisions made against the Respondent, it may suggest that it has a legitimate interest in the disputed domain names in order to negotiate a financial settlement in return for their transfer, which could not be considered to be a legitimate interest or a noncommercial use of the disputed domain names.

Registered and used in bad faith

The disputed domain names incorporate the Complainant's well-known trademark and have been registered through a proxy provider in order not to disclose the Respondent's information. The Respondent could not have been unaware of the Complainant's rights at the time of registration and, based on its *modus operandi*, it has a habit of registering well-known third party trademarks in their entirety without authorization. A Respondent which has already been the subject of several adverse decisions under the Policy provides an indication of bad faith. As indicated in the previous related cases under the Policy, the Respondent attempts to impersonate the Complainant by making Internet users believe that the disputed domain names belong to or at least are affiliated with the Complainant. The Respondent attempts to collect data without any

legitimacy for fraudulent purposes and there is a risk of data theft for the purposes of identity theft. The Respondent has never clarified the purposes of any data collection.

The Respondent's websites are holding pages which cannot be associated with a good faith activity and constitute passive holding of the disputed domain names. The Respondent's attempt to settle this matter for financial compensation and its collection and processing of personal data could indicate the Respondent's bad faith.

B. Respondent

In summary, the Respondent contends as follows:

General

The disputed domain names use the Complainant's business name plus the dictionary word "employees" to comment on the Complainant's business policies, to inform and elicit information regarding employment discrimination, and to inquire if employees are interested in forming a union. This is a fair use and legitimate free speech practice of commenting on the social policy of businesses operating in the United States. The Complainant has more than 20,000 employees in the United States. The Respondent's speech and purposes are protected by United States law. The Complainant's attempt to remove the disputed domain names from the Respondent lacks merit under the Policy and United States law.

Identical or confusingly similar

The disputed domain names will not cause confusion and should not be deemed confusingly similar. The Complainant applies a test that is confined to a comparison of the disputed domain names and the Complainant's mark. As both Parties have business operations in the United States, it is appropriate to apply United States principles and law to this proceeding in accordance with paragraph 15(a) of the Rules. According to United States law, the Panel should analyze whether the disputed domain names are similar in the context of their use on the relevant website. The Respondent's landing page does not appear to be affiliated with the Complainant in any way and provides a conspicuous disclaimer. Said website looks nothing like the Complainant's website and does not incorporate the Complainant's logo, typeface or color scheme. It is not designed to confuse anyone. It is critical of the Complainant and elicits information that is contrary to the Complainant's legal interests, such that it is evident to the viewer that it is not sponsored or endorsed by the Complainant.

Rights or legitimate interests

The Respondent is not related to Clearer Technology/Gabriel Joseph [respondent in certain previous cases under the Policy], and is not employed by it or its agent. The Respondent is making a legitimate noncommercial, fair use of the disputed domain names. The Respondent is engaging in free speech criticism of the Complainant using disputed domain names which fall somewhere between <trademark.TLD> and the obvious criticism domain name <trademarksucks.TLD> on the spectrum of disputes involving a complainant's trademark. The additional terms are not obviously critical and would normally require a further examination of the broader facts and circumstances, particularly including the associated website content.

The Respondent uses the disputed domain names to educate the Complainant's employees and the general public regarding the Complainant's policies, to collect information regarding whether and to what extent the Complainant has abused the rights of its employees, and to critique the Complainant's social activism. The disputed domain names are used to include details of the Complainant's engagement regarding Environmental, Social, and Governance issues. This is a nominative fair use to identify the company that is the subject of the site. Criticism in the United States is protected when used non-commercially and for genuine purposes and is "legitimate use" for the purposes of proceedings under the Policy. Even if the Panel declines to follow United States law, noncommercial free speech is neither confined to the United States nor limited to applications of its law (referencing the European Convention on Human Rights and the

Universal Declaration of Human Rights). The Respondent's site does not show any intent to tarnish the trademark at issue, such as associating the mark with unrelated unwholesome activities.

The Complainant alleges that the Respondent's predecessor's attorney offering to settle this matter indicates that the Respondent was seeking a financial settlement. The Respondent has never attempted to negotiate such a settlement. The Respondent's predecessor asked to speak with the Complainant's CEO regarding its Environmental Social Governance activism. The Respondent has no desire to sell the disputed domain names nor to profit from them in any way. The Respondent's predecessor did not purposely place the parking page on the disputed domain names and was unaware that this was happening until notified. Such pages are automatically placed by the Registrar and a registrant cannot opt out unless it has another website to which to forward the domain name concerned. The Respondent does not receive revenue from such parking pages. The Respondent's predecessor replaced the parking page shortly after being notified. Websites take time to develop and require research. The Respondent provides evidence of the Complainant's ranking by the Human Rights Campaign. Some may consider such a ranking as an accolade but others, including the Respondent, do not. The fact that the Complainant does not agree with the Respondent's point of view does not negate the legitimacy of the Respondent's use of the disputed domain name.

A panel under the Policy denied transfer in a case involving the Respondent's predecessor in a similar domain name dispute involving an almost identical website, namely, *Corning Incorporated v. Gabriel Joseph, Clearer Technology*, WIPO Case No. [D2022-3136](#) ("*Corning*") as it shows a *prima facie* case of noncommercial fair use.

Registered and used in bad faith

The Respondent uses a proxy provider as specifically allowed by the 2013 Registrar Accreditation Agreement. The Complainant asserts that the Respondent has a habit of registering well-known third party trademarks as domain names but the Respondent is not the third party against whom the Complainant makes the allegations. With regard to personal data collection, the Respondent only collects information where a person purposely chooses to respond and engage in a dialog. The Respondent's privacy policy is compliant with US laws and the General Data Protection Regulation and provides an opt-out against personal information collection. The Respondent does not intend to sell the disputed domain names to the Complainant.

Where a respondent has rights and legitimate interests in a disputed domain name such as a criticism website, the registration and use of the name is not in bad faith.

6. Discussion and Findings

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

- (i) the disputed domain name is identical 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; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The first element of the Policy is usually addressed in a two-part process. First, the Complainant must show that it has UDRP-relevant rights in a trademark. Secondly, the disputed domain name is compared to such trademark, typically in a straightforward side-by-side analysis in which the Top-Level Domain ("TLD") of the

disputed domain name is usually disregarded as being required for technical reasons only. Identity may generally be found if the remaining portion of the disputed domain name is alphanumerically identical to the trademark concerned. Confusing similarity may typically be found if the trademark is recognizable within the relevant portion of the disputed domain name, whether or not accompanied by other terms.

As a preliminary matter on this topic, the Panel must review the Respondent's arguments that the general approach of UDRP panels described above should not be applicable and instead that an approach which the Respondent states is consistent with United States law should apply because both Parties have a place of business within that jurisdiction. This issue was addressed in some detail in a very similar case (both factually similar and in terms of the respondent's contentions) involving a respondent that the Respondent in the present case describes as its "predecessor", namely *The Chemours Company LLC v. WhoIs Agent, Domain Protection Services, Inc. / Gabriel Joseph, Clearer Technology*, WIPO Case No. [D2022-3013](#). For the sake of brevity, the Panel will not rehearse that panel's reasoning in full, beyond stating that it agrees entirely with the reasoning as it relates to this topic, notably the commentary regarding the relevant aspects of the cases of *1066 Housing Association Ltd. v. Mr. D. Morgan*, WIPO Case No. [D2007-1461](#) and *Green Bay Packers, Inc. v. Moniker Privacy Services / Montgomery McMahon*, WIPO Case No. [D2016-1455](#), its corresponding interpretation of paragraph 15(a) of the Rules, and its citation of section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). In all of these circumstances, the Panel declines to adopt the approach suggested by the Respondent.

Turning to the assessment itself, the Panel finds that the Complainant has UDRP-relevant rights in the mark described in the factual background section above. Although the Complainant describes this as a "word mark", and the mark appears to consist exclusively of a representation in standard characters, it is classed on the register extract as figurative. Section 1.10 of the [WIPO Overview 3.0](#) notes that the assessment of identity or confusing similarity involves comparing the (alpha-numeric) domain name and the textual components of the relevant mark, adding that design or figurative/stylized elements are largely disregarded to the extent that they would be incapable of representation in domain names. Here, although the mark is noted as figurative, there are no design, figurative or stylized elements to excise, and accordingly the words AIR LIQUIDE may be compared directly to the disputed domain names. As noted above, the TLD is disregarded in each of the disputed domain names. It may be seen that, absent a space that is of no consequence given that domain names may not contain spaces for technical reasons, the Complainant's mark forms the first part of both disputed domain names, followed respectively by the words "employees" and "shareholders". The Panel is satisfied that the Complainant's mark is recognizable in both of the disputed domain names. The addition of the respective other terms would not prevent a finding of confusing similarity under the first element (see section 1.8 of the [WIPO Overview 3.0](#)).

In all of the above circumstances, the Panel finds that the disputed domain names are confusingly similar to a trademark in which the Complainant has rights and therefore that the Complainant has carried its burden with regard to the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists several ways in which the Respondent may demonstrate rights or legitimate interests in the disputed domain names:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are 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.”

While the ultimate burden of proof on this element remains with the Complainant, as with all three elements, panels recognize the difficulties in proving the negative, and typically hold that it is sufficient for a complainant to raise a *prima facie* case on this topic. If such a case is made out, the evidential burden of production shifts to the respondent to rebut it by bringing forward evidence of its rights or legitimate interests in the domain name(s) concerned. In the present case, the Panel finds that the Complainant has established the requisite *prima facie* case. The Complainant asserts that the Respondent has received no authorization from the Complainant to use its AIR LIQUIDE trademark in a domain name. It also notes that it has not identified any registered rights that the Respondent might have in such mark. Furthermore, the Complainant has identified a connection between the Respondent and an entity that has been involved in multiple previous cases under the Policy discussed below. The Complainant goes on to note that the Respondent is not making a *bona fide* offering of goods or services via the disputed domain names and plans to take unfair advantage of the Complainant’s mark thereby, including in the collection of personal data related to the Complainant’s employees and/or shareholders.

In these circumstances, the burden of production shifts to the Respondent to bring forward evidence of its rights and legitimate interests. The essence of the Respondent’s case is that it is making a legitimate noncommercial or fair use of the disputed domain names in connection with criticism of the Complainant and is attempting to engage with the Complainant’s employees, shareholders and customers who may feel the same way as the Respondent does regarding the Complainant’s environmental, social, or governance policies. This is essentially the same argument made in previous related cases under the Policy.

The cases of which the Panel is aware are:

Complaint denied:

Leidos, Inc. v. Gabriel Joseph / Clearer Technology, NAF Claim No. 2005102 (<leidosemployees.com>) dated September 8, 2022 (“Leidos”)

Corning Incorporated v. Gabriel Joseph, Clearer Technology, WIPO Case No. [D2022-3136](#) (<corningemployees.com> and <corningshareholders.com>) dated November 28, 2022 (“Corning”)

Complaint upheld:

Boehringer Ingelheim Pharma GmbH & Co.KG v. Clearer Technology, CAC-UDRP-104652 (<boehringeremployees.com> and <boehringeringelheimemployees.com>) dated July 22, 2022

Bank of America Corporation v. Clearer Technology / Gabriel Joseph, NAF Claim Number 2002927 (<bankofamericaemployees.com> and <boaemployees.com>) dated August 16, 2022 (“Bank of America”)

ArcelorMittal v. Clearer Technology, CAC-UDRP-104815 (<arcelormittalemployees.com>) dated October 22, 2022 (“ArcelorMittal 1”)

The Chemours Company LLC v. Whols Agent, Domain Protection Services, Inc. / Gabriel Joseph, Clearer Technology, WIPO Case No. [D2022-3013](#) (<chemoursemployees.com>) dated October 31, 2022 (“Chemours”)

ArcelorMittal (SA) v. Gabriel Joseph (Clearer Technology), CAC-UDRP-104943 (<arcelormittalshareholders.com>) dated December 8, 2022 (“ArcelorMittal 2”)

The respondent in those cases is not the Respondent in the present case. The Respondent here is at pains to distinguish itself from what it describes as its “predecessor”. However, it has chosen not to provide the Panel with any details of the circumstances by which the Respondent became the registrant of the disputed

domain names or the date of transfer. In the absence of any further information, it appears to the Panel that the Respondent shares a common interest and approach with that of its “predecessor”, for example in the purpose for which the disputed domain names were registered/acquired and in the manner in which the disputed domain names are being used. For example, the website to which the disputed domain names point seems to be identical in appearance and very similar in wording to the website described and depicted in a screenshot in *Chemours*. Likewise, there are similarities in the Clearer Technology “under construction” pages in both cases. In those particular circumstances there seems no reason to the Panel why the fact that the disputed domain names in the present case may have changed hands recently is of any particular relevance. As with the position of the respondent in the previous cases, the Panel notes that the Respondent has acquired two disputed domain names containing the name and trademark of a prominent company (in the sense that it is a large employer) coupled with the words “employees” or “shareholders” respectively, and that its intention is to obtain the personal data of the employees, customers or shareholders of the Complainant with a view to mounting some form of activity regarding the Complainant’s company policies (and/or unionizing those of the Complainant’s employees based in the United States).

The Respondent’s case on this topic is addressed to paragraph 4(c)(iii) of the Policy. The question for the Panel is whether the Respondent can be said to be making a legitimate non-commercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

It is well understood in cases under the Policy that, in principle, a domain name used for free speech purposes can support a legitimate interest under the Policy (see the discussion in sections 2.5 and 2.6 of the [WIPO Overview 3.0](#)). Panels tend to find that where the composition of the domain name concerned includes a clear signal that an associated website is likely to contain material that is critical of the trademark owner, a respondent may have a legitimate interest in using the trademark as part of the domain name of a criticism site if such use is *prima facie* noncommercial, genuinely fair, and not misleading or false (section 2.6.3 of the [WIPO Overview 3.0](#)).

On the other hand, as section 2.5.1 of the [WIPO Overview 3.0](#) notes, where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner.

Section 2.5.1 of the [WIPO Overview 3.0](#) goes on to add that where an additional term is not obviously critical, it may or may not by itself trigger an inference of affiliation, and would normally require a further examination by the panel of the broader facts and circumstances of the case – particularly including the associated website content. The key word for the Panel here is “normally”. In the Panel’s view, there are likely to be some limited examples where the trademark coupled with an additional term may effectively impersonate the Complainant or trigger an inference of affiliation that is so strong that it may be of relatively limited import to address the broader facts and circumstances to reach a conclusion as to legitimate use.

In *Leidos*, the panel did not discuss the composition of the disputed domain name consisting of “trademark + employees” and instead moved directly to an assessment of the website content. In *Corning*, the panel also moved in the first instance to an assessment of the content of the associated website, but added a comment regarding the composition of <corningemployees.com> and <corningshareholders.com> in its conclusions on the second element, noting that these “do not strongly suggest affiliation with the Complainant but do not on their face indicate opposition to the Complainant”.

The present Panel considers that, in a case where a respondent asserts that it is making legitimate noncommercial or fair use for the purpose of criticism, it is essential to examine the composition of the disputed domain name(s) in the first instance (compare sections 2.5.1 and 2.5.2 of the [WIPO Overview 3.0](#)). The reason is that if the disputed domain names effectively impersonate or suggest sponsorship or endorsement by the trademark owner, this cannot constitute legitimate use. A domain name so composed that it impersonates or indicates sponsorship or endorsement by the trademark owner deceives those Internet users who see the domain name as aligned to the trademark owner. In the opinion of this Panel, the Policy strikes at such deception, which occurs before any visit to the website concerned by the deceived

person. Such deception cannot be cured by website content or other factors. Accordingly, in the opinion of this Panel, any assessment of matters beyond the disputed domain name, such as website content or other broader facts and circumstances of the case, must be secondary to this consideration.

Here, the Panel agrees with the Respondent that the words “employees” and “shareholders” do not necessarily signal criticism. But do they impersonate, or indicate sponsorship or endorsement? While the panel in *Corning* considered that they did not, albeit in a case it described as “a close call”, the panel in *ArcelorMittal 2* (which was only dealing with the “trademark + shareholders” composition) considered that “shareholders” carried a risk of implied affiliation with the complainant. The reason given was that it created an impression that the related website would provide information about the complainant’s shareholders or that it was run by the complainant or the complainant’s shareholders. Likewise, the panels in *Bank of America* and *Chemours* (which were only dealing with the “trademark + employees” composition) considered that the addition of “employees” strongly suggested that the respondent’s intended use was to impersonate the complainant (*Bank of America*) or suggested an affiliation with the complainant (*Chemours*) because the placement of the trademark in the first position, followed by the word “employees” raised the implication that the connected website was a site for the complainant’s employees provided, authorized or sponsored by the complainant.

The Panel in the present case agrees with the views expressed in *ArcelorMittal 2*, *Bank of America*, and *Chemours* on the topic of the composition of the disputed domain names. Employers with a sizeable employee base may address this by way of a dedicated domain name, for example to deal with administrative matters such as employee benefits or recruitment. Likewise, many quoted companies in particular provide information to or for their shareholders in a similar way. While these companies might not necessarily use exactly the same composition as in the disputed domain names for these purposes, the coupling of a trademark with the words “employees” or “shareholders” in this case looks far more like an impersonation of the Complainant to this Panel than something neutral or that functions as a distinguisher from the Complainant’s trademark. The disputed domain names are more likely to suggest an official site of the trademark owner in the mind of the Internet user than they are the site of a party that is intent on noncommercial criticism. In short, even if the Respondent were engaging in noncommercial activity generally, it is the use of the disputed domain names, and in particular their composition, which impersonates the Complainant, and which is thereby not legitimate.

On the basis of that assessment, the Panel need go no further to address the wider issues. However, mindful of the fact that other panels have not reached the same conclusion on cases with similar facts, or have reached the same conclusion by a somewhat different route, the Panel notes that there are some aspects of the wider issues that also trouble it irrespective of the composition of the disputed domain names. These are shared by the panels in the preceding cases in which the respondent (who appears to be the Respondent’s “predecessor”) was unsuccessful.

For example, there is the issue of the original use of pay-per-click advertising on the website associated with the first registered disputed domain name. The Panel notes that the disputed domain names appear to have been transferred from the Respondent’s “predecessor” at some unknown point and must ask itself whether this was an attempt to avoid the consequences of the previous use of the disputed domain name <airliquideemployees.com> in connection with pay-per-click advertising targeting the Complainant (see section 2.9 of the [WIPO Overview 3.0](#)). The Panel is particularly troubled by the Respondent’s failure to provide more details about the alleged transfer while effectively taking the position that it is in no way affiliated with the previous registrant. While the Respondent goes on to suggest that the pay-per-click use was imposed by the Registrar pending creation of a website (the Panel notes that the referred to Registrar terms say it “may” do so), it is widely accepted by panels under the Policy that the registrant of a domain name cannot disclaim responsibility for such content purely because it was generated by a third party (see section 3.5 of the [WIPO Overview 3.0](#)); moreover knowing this, it would be incumbent on the Respondent to point the disputed domain names to a website to avoid such Registrar landing page.

The Panel shares the concerns expressed by certain panels in the preceding related cases concerning the content on the associated websites, which as far as the Panel can tell, is identical or substantially similar to the content in the present case. Concerns have been expressed (*Chemours, ArcelorMittal 2*) as to whether the alleged “criticism” may actually be regarded as criticism at all, regardless of the respondent’s assertion to that effect. In the present case, at no point does the Respondent clearly identify itself and its intentions on the related website, rather posing a series of questions to the Internet user. Furthermore, this is not a case where the composition of the disputed domain name includes alongside the trademark some form of unequivocal call to action, for example, words indicating a potential class action, lawsuit, investigation, or similar. At best, the Respondent appears to be engaged in a “fishing expedition”, benefitting from and enhanced by confusion arising from the composition of the disputed domain name, that is designed to find employees, customers or shareholders who may not necessarily have expressed criticism of the Complainant’s policies before but who may be ultimately receptive to the Respondent’s message.

The Panel shares the concern expressed by a previous panel (*ArcelorMittal 2*) that the website content demonstrates that the Respondent solicits personal data, for unspecified purposes, from those responding to it, something that would go further than mere criticism of the Complainant and its policies. The Panel also adopts the concerns expressed by the panel in *ArcelorMittal 2* regarding the fact that the Respondent’s terms of use seem to reference the potential commercial use of advertisements including banner advertisements and sponsored links. This suggests that the Respondent has or intends a commercial use which may be more aligned with the original pay-per-click usage than with the current website content.

Taking all of these matters together, the Panel finds that the Respondent has failed to rebut the Complainant’s *prima facie* case that it has no rights and legitimate interests in the disputed domain names and accordingly finds that the Complainant has carried its burden with regard to the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides four, non-exclusive, circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

“(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 online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

In the present case, the Panel considers that the issue of registration and use in bad faith is aligned with the second element assessment. If there is no issue to be raised regarding the composition of the disputed domain names, and/or associated website content, and if the Respondent is found to have registered or acquired the disputed domain names for the purposes of non-pretexual, genuine, noncommercial criticism, then such registration or acquisition is likely to be considered to be in good faith. However, a failure to pass the “impersonation test” (see *Dover Downs Gaming & Entertainment, Inc. v. Domains By Proxy, LLC / Harold*

Carter Jr, Purlin Pal LLC, WIPO Case No. [D2019-0633](#)) can lead to a finding of registration and use in bad faith because the registration or acquisition and use of the disputed domain names has at its root the intention to deceive Internet users and unfairly capitalize on the concerned mark. Here, aligned with the finding of previous panels outlined in the preceding section, the Panel has found that the disputed domain names effectively impersonate the Complainant, and that there are likewise concerns over the genuineness of the purported criticism and of the specter of commercial use.

The Panel is satisfied that the domain names were acquired by the Respondent with the intent of gathering Internet users to its website by creating confusion as to whether the disputed domain names were operated by or on behalf of the Complainant. As the panel in *Bank of America* noted, using a domain name to bait Internet users intending to visit the trademark owner's site into visiting the registrant's site can be bad faith under the Policy, and the Panel so finds in the present case. Accordingly, the Complainant has carried its burden with regard to the requirements 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 names <airliquideemployees.com> and <airliquideshareholders.com> be transferred to the Complainant.

/Andrew D. S. Lothian/

Andrew D. S. Lothian

Sole Panelist

Date: May 5, 2023