

## **ADMINISTRATIVE PANEL DECISION**

De Buyer Industries v. Domain Sales - (Expired domain caught by auction winner) c/o Dynadot

Case No. D2023-1563

### **1. The Parties**

The Complainant is De Buyer Industries, France, represented by Plasseraud IP, France.

The Respondent is Domain Sales - (Expired domain caught by auction winner) c/o Dynadot, United States of America ("United States").

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

The disputed domain name <labrigadedebuyer.com> is registered with Dynadot, LLC (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 11, 2023. On April 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 12, 2023, the Registrar transmitted by email to the Center its verification response, confirming that the Respondent is listed as the registrant and providing additional contact details. The Center sent an email communication to the Complainant on April 14, 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 April 18, 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 April 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 11, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 23, 2023.

The Center appointed Assen Alexiev as the sole panelist in this matter on June 12, 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 was established in 1830. It is a French manufacturer of kitchen and pastry equipment and utensils for professionals and consumers, and is active in more than 90 countries. In 2022, the Complainant had a turnover of EUR 60,5 million.

The Complainant is the owner of the following trademark registrations for the sign DE BUYER (the “DE BUYER Trademark”):

- the French trademark DE BUYER with registration No. 98761498, registered on November 27, 1998 for goods in International Classes 6,16 and 21; and
- the International trademark DE BUYER with registration No. 966252, registered on April 22, 2008 for goods in International Classes 6, 16 and 21.

The Complainant claims that it is the owner of the domain name <debuyer.com> registered on March 13, 1998, which resolves to the Complainant’s official website available in a number of languages, including French, English and German.

The disputed domain name was registered on November 16, 2022. It redirects to a webpage at <dan.com> that offers it for sale for USD 4,995.

#### 5. Parties’ Contentions

##### A. Complainant

The Complainant notes that the disputed domain name was registered on the day when the Complainant’s parent company LA BRIGADE DE BUYER filed two European Union trademark applications for LA BRIGADE DE BUYER with application Nos. 018796459 and 018796473.

The Complainant submits that the disputed domain name is confusingly similar to its DE BUYER Trademark, because it reproduces the trademark with the addition of the element “la brigade”, which is a term used to refer to a kitchen team, and does not prevent a finding of confusing similarity. Rather, its addition is an aggravating factor for the likelihood of confusion, because it makes the disputed domain name identical to the LA BRIGADE DE BUYER trademark applications that have been filed by the Complainant’s parent company.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it is not known under the disputed domain name, and the Complainant has not permitted it to use the DE BUYER Trademark or to apply for a domain name incorporating it. The Complainant adds that the Respondent is not making any fair, non-commercial or *bona fide* use of the disputed domain name in connection with goods and services. The Complainant notes that the disputed domain name redirects to a webpage that offers it for sale for USD 4,995. According to the Complainant, the Respondent attempts to sell the disputed domain name to the Complainant who is the owner of the DE BUYER Trademark or to a competitor, for valuable consideration in excess of its out-of-pocket costs directly related to the disputed domain name.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. It points out that it has been running its business under the DE BUYER brand for nearly 200 years, and that the registration of the DE BUYER Trademark, which is intrinsically distinctive and is now registered all over the world, predates the registration of the disputed domain name by more than 20 years.

According to the Complainant, at the time of the registration of the disputed domain name, the Respondent was not acting with a *bona fide* intent but with the Complainant’s rights in mind, and the only *raison d’être* of

the disputed domain name is its confusing similarity with the Complainant's DE BUYER Trademark. The Complainant points out that the registration of the disputed domain name was made the same day as the Complainant's parent company filed its applications for the European Union trademark LA BRIGADE DE BUYER. The Complainant considers that this cannot be an accident and that the choice of the disputed domain name cannot be reasonably explained other than as a reference to the Complainant and its trademark. According to the Complainant, the "la brigade" element identifies, in the field of cooking, the team who assists a chef, which directly refers to the activities of the Complainant, and its adjunction to the DE BUYER Trademark carries a high risk of implied affiliation with the Complainant and shows that the Respondent had the Complainant in mind when registering the disputed domain name.

## **B. Respondent**

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

## **6. Discussion and Findings**

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

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of the DE BUYER Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1

The Panel finds that the DE BUYER Trademark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to this trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms (here, "la brigade") may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the DE BUYER Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

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

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not

rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

The Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.
- the Respondent (as an individual, business, or other organization) has not been commonly known by the disputed domain name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.
- the Respondent is not making 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. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

As noted by the Complainant, the disputed domain name was registered on the same day as the Complainant's parent company filed its European Union trademark applications for LA BRIGADE DE BUYER. According to the Complainant, this was not accidental, and the composition of the disputed domain name carries a risk of implied affiliation with the Complainant and shows that the Respondent had the Complainant in mind when registering the disputed domain name. In this regard, the Panel notes that, as noted by the Complainant, the term "la brigade" is a French term used to refer to a kitchen team, and the combination of this term with the DE BUYER Trademark appears as the name of a kitchen team affiliated to the Complainant, and is identical to the name of the Complainant's parent company and its trademark applications. The evidence shows that after registering it, the Respondent started offering the disputed domain name for sale for USD 4,995.

The Respondent has not disputed the Complainant's arguments, has not submitted any plausible explanation why the disputed domain name should be regarded as having any different meaning unrelated to the Complainant, and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

Taking the above into account, the Panel accepts as more likely than not that the Respondent has registered the disputed domain name targeting the Complainant and its DE BUYER Trademark primarily for the purpose of selling it for valuable consideration in excess of the documented out-of-pocket costs directly related to the disputed domain name. Such activity cannot give rise to rights or legitimate interests of the Respondent in the disputed domain name.

Therefore, the Panel finds the second element of the Policy has been established.

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

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Panel considers that the record of this case reflects that:

The Respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant or to a competitor of the

Complainant, for valuable consideration in excess of the documented out-of-pocket costs directly related to the disputed domain name. Paragraph 4(b)(i) of the Policy, and [WIPO Overview 3.0](#), section 3.1.1.

The Respondent is using the disputed domain name as a redirect to a domain name market place where the disputed domain name is offered for sale for the amount of USD 4,995. This amount appears to be well in excess of the expected out-of-pocket costs directly related to a fresh registration of a domain name in the “.com” generic Top-Level Domain. As discussed in the previous subsection, the Respondent has not provided any plausible explanation for its choice of a domain name, and the Panel is not aware of any independent meaning that the disputed domain name may have that is unrelated to the Complainant, its parent company, the DE BUYER Trademark and LA BRIGADE DE BUYER trademark applications. In these circumstances, it appears to the Panel as more likely than not that the Respondent has registered or acquired the disputed domain name primarily for the purpose of selling its registration to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the documented out-of-pocket costs directly related to the disputed domain name.

The Panel also notes the timing of the registration of the disputed domain name, which coincides with the date of filing of the trademark applications for LA BRIGADE DE BUYER by the Complainant’s parent company which bears the same name.

The above combination of circumstances suggests that the Respondent has targeted the Complainant with the registration of the disputed domain name and supports a finding that the Respondent is using the disputed domain name in bad faith pursuant to paragraph 4(b)(i) of the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

## **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, <labrigadedebuyer.com>, be transferred to the Complainant.

*/Assen Alexiev/*

**Assen Alexiev**

Sole Panelist

Date: June 15, 2023