

## **ADMINISTRATIVE PANEL DECISION**

Moma Group v. John Nove  
Case No. D2023-1822

### **1. The Parties**

The Complainant is Moma Group, France, represented by Selarl Oriamedia, France.

The Respondent is John Nove, India.

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

The disputed domain name <larcdubai.com> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 24, 2023. On April 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 26, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 27, 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 April 28, 2023.

The Center verified that the Complaint together with the amendment to 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 May 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 22, 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 May 26, 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 founded in 1997. It is active in the restaurant, entertainment and hospitality sectors, and has more than thirty restaurants and event venues in France and other countries. One of the subsidiaries of the Complainant is the company LES MARECHAUX, which operates the restaurant and night club L'ARC PARIS since 2009. The official website of this restaurant and night club is located at the domain name <larc-paris.com>.

The Complainant's subsidiary LES MARECHAUX is the owner of the French trademark L'ARC PARIS with registration No.3972341, registered on April 26, 2013 for services in International Classes 35, 41, and 43 (the "L'ARC PARIS trademark"). The same company is also the owner of the European Union trademark L'ARC CLUB with registration No. 018772636, registered on March 29, 2023 for services in International Classes 41 and 43 (the "L'ARC CLUB trademark").

The Complainant is the owner of the domain names <arcclub-dubai.com>, <arc-club-dubai.com>, <arcclub.com> and <arc-dubai.com>, registered on September 20, 2022.

The disputed domain name was registered on March 6, 2023. It resolves to a parked webpage.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

The Complainant maintains that it and its subsidiary LES MARECHAUX have been using the term "L'ARC", which constitutes the main and distinctive element of the L'ARC PARIS and L'ARC CLUB trademarks, as a company name and trademark for more than 10 years. The Complainant adds that for more than one year, it and its subsidiary have been pursuing a project for the opening of a club in Dubai under the name "L'ARC CLUB", and have contacted various potential local partners.

The Complainant states that the disputed domain name is confusingly similar to the L'ARC PARIS and L'ARC CLUB trademarks, because it is composed of the element "L'ARC" and the geographic term "Dubai", which makes it likely to be considered by the public as belonging to the Complainant. The Complainant adds that the disputed domain name is confusingly similar also to the domain names <arcclub-dubai.com>, <arc-club-dubai.com>, <arcclub.com>, and <arc-dubai.com>, already registered by the Complainant.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant submits that the Respondent chose to use the term "L'ARC CLUB DUBAI" and the disputed domain name motivated by a desire to pass itself off as an affiliate of the Complainant and its subsidiary LES MARECHAUX and to exploit the name "L'ARC CLUB DUBAI" in the same categories of goods and services as the Complainant.

The Complainant notes that it discovered an Instagram account where the disputed domain name was mentioned. The Complainant explains that when one of its employees contacted the person operating this Instagram account, this person presented himself as a recruitment manager for a future club to be opened in Dubai, and pretended that such future club was an affiliate with the one in Paris exploited by the Complainant. The same person published a story on Instagram in which he invited candidates to apply for jobs by sending emails to an email address at the disputed domain name, and published an advertisement on a recruitment website describing L'ARC CLUB DUBAI as "a finest brand from Paris that will be having its franchise in Dubai".

The Complainant contends that the disputed domain name was registered and is being used in bad faith.

According to the Complainant, the Respondent registered and is using the disputed domain name to pretend being a partner of the Complainant in order to deceive the public in an attempt to attract, for profit, Internet users to its website by creating a likelihood of confusion with the Complainant's trademarks, activities and domain names in bad faith. The Complainant adds that on April 14, 2023 it sent a cease-and-desist letter to the Respondent, but the Respondent did not reply.

## **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 L'ARC PARIS and L'ARC CLUB trademarks for the purposes of the Policy. As discussed in section 1.4.1 of the [WIPO Overview 3.0](#), a trademark owner's affiliate such as a subsidiary of a parent or of a holding company, or an exclusive trademark licensee, is considered to have rights in a trademark under the UDRP for purposes of standing to file a complaint. The Panel accepts that the same approach should also be applied in the present case, where the Complainant is the parent company of the trademark owner.

The Panel finds that the L'ARC PARIS and L'ARC CLUB trademarks are recognizable within the disputed domain name, because it contains their distinctive element "L'ARC". Accordingly, the disputed domain name is confusingly similar to these trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms (here, "Dubai"), may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the L'ARC PARIS and L'ARC CLUB trademarks 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.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Complainant has provided evidence that the disputed domain name was indicated on an Instagram account and that the person operating this Instagram account has presented himself as a recruitment manager for a future club, and falsely pretended to be a franchise to the Complainant's club in Paris, that was to be opened in Dubai. The same person published online advertisements inviting candidates to apply for jobs by communicating with an email address at the disputed domain name. This shows that the Respondent, being in control of the disputed domain name, has used it in an attempt to pass itself off as the Complainant. Such use of the disputed domain name cannot give rise to rights or legitimate interests of the Respondent in the disputed domain name.

Based on the available record, 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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. [WIPO Overview 3.0](#), section 3.3.

Having reviewed the record, the Panel notes the distinctiveness of the Complainant's trademark, the composition of the disputed domain name, which appears as denoting a L'ARC-branded club in Dubai, and the attempts for impersonation of the Complainant carried out through advertisements for the recruitment of personnel for a club falsely described as being a franchise of the Complainant and through the use of email address at the disputed domain name, finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The disputed domain name is confusingly similar to the L'ARC PARIS and L'ARC CLUB trademarks and includes the geographic term "Dubai", which makes it appear as connected to the Complainant's L'ARC Club located in Dubai. It has not been associated with a website, but has been used for the setting up of at least one email account, which was then indicated as part of the contact details of a future club in Dubai falsely presented as being a franchise of the Complainant's L'ARC PARIS club. The Panel regards these actions of the Respondent as being elements of an attempt to pass itself off as the Complainant and its business. The Respondent has not submitted a Response and has not provided any plausible explanation why it has registered the disputed domain name and how it intends to use it. It has not responded to the Complainant's cease-and-desist letter either. Therefore, in view of the totality of circumstances in the present case, the Panel accepts that the Respondent has targeted the Complainant and its L'ARC PARIS and L'ARC CLUB trademarks when registering and using the disputed domain name.

Based on the available record, the Panel therefore 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 <larcdubai.com> be transferred to the Complainant.

*/Assen Alexiev/*

**Assen Alexiev**

Sole Panelist

Date: May 31, 2023