

## **ADMINISTRATIVE PANEL DECISION**

Northquip Inc. operating as Arrowquip v. LL Mollhagen  
Case No. D2023-2202

### **1. The Parties**

The Complainant is Northquip Inc. operating as Arrowquip, Canada, represented by Thompson Dorfman Sweatman LLP, Canada.

The Respondent is LL Mollhagen, United States of America (“United States”), represented by Polsinelli, United States.

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

The disputed domain name <arrowequip.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 May 19, 2023. On May 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 23, 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 (Moly Manufacturing, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on the same day, 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 May 24, 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 25, 2023. In accordance with the Rules, paragraph 5, the initial due date for Response was June 14, 2023. The Respondent requested an extension for the Response due date on this day. The Center granted a 4-day extension and therefore, the new due date for Response was June 18, 2023. The Respondent did not submit any response. Accordingly, the Center notified the commencement of panel appointment process to the Parties on June 23, 2023.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on July 4, 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 an agricultural equipment company that designs and manufactures cattle handling equipment, livestock handling equipment, and farm equipment. It carries on business worldwide and has offices in the United States, Canada, Australia and the United Kingdom. The Complainant notes that it is referred to internally and operates as “Arrowquip”, conforming to its business name registration with the Companies Office, Province of Manitoba, Canada, dating from May 31, 2017. The Complainant’s website is located at “www.arrowquip.com”.

The Complainant is the owner of various registered trademarks in a range of territories, including the ARROWQUIP trademark. For example, the Complainant is the owner of Canadian Registered Trademark Number TMA1010438 for the word mark ARROWQUIP, registered on December 5, 2018, in respect of various types of livestock handling equipment, and the retail sale, design, and manufacture thereof, being Classes 6, 19, 20, 35, 40, and 42. The Complainant is also the owner of United States Trademark Number 6016031, registered on March 24, 2020, in respect of similar goods and services in Classes 6, 19, 35, 40, and 42.

According to the Whois record, the disputed domain name was registered on October 6, 1998. The Respondent is a private individual with an address in Lorraine, Kansas, United States. According to the Complainant’s screenshot dated May 19, 2023, the disputed domain name redirected at that date to “www.molymsg.com”, being the website of Moly Manufacturing, one of the Complainant’s competitors.

#### **5. Parties’ Contentions**

##### **A. Complainant**

In summary, the Complainant contends as follows:

##### **Identical or confusingly similar**

The disputed domain name is virtually identical or at least confusingly similar to the trademark in which the Complainant has rights. It incorporates said trademark, differing only by the addition of the letter “e”, which misspelling does not eliminate confusing similarity, but on the contrary, is an act of typosquatting. It is visually and phonetically similar to said trademark. Domain names that constitute typosquatting are confusingly similar by definition because their sole attraction is confusing similarity to known trademarks.

##### **Rights or legitimate interests**

There is no evidence of the Respondent being commonly known by the disputed domain name or the Complainant’s trademark. There is no evidence that the Respondent owns any trademark registrations for and/or has any common law rights in “arrowquip”. The Respondent only has one registered trademark in the United States, for the trademark SILENCER. The Complainant has not authorized or licensed use of its trademark to the Respondent. There is no evidence that the Respondent is using the disputed domain name for a legitimate noncommercial purpose without intent for commercial gain. The Respondent is a manufacturing company that designs and manufactures livestock handling equipment and is a direct competitor of the Complainant. The Respondent has engaged in typosquatting, as the disputed domain name misspells the Complainant’s second level domain name for its principal website. The evidence of typosquatting is suggestive of the Respondent’s lack of rights or legitimate interests in the disputed domain name. There is no evidence of the Respondent’s use of the disputed domain name in connection with a

*bona fide* offering of goods or services. The fact that the disputed domain name redirects to the Respondent's website at "www.molymfg.com" is evidence that the Respondent is not making *bona fide* commercial use thereof.

Diverting consumers who are looking for the Complainant's products on the Internet to a competing livestock handling equipment manufacturer's website for commercial gain is not a legitimate, *bona fide* use. A person who searches for the disputed domain name looking for the Complainant, based on its trademarks, would be wrongly directed to the Respondent's website.

Once the Complainant makes out a *prima facie* case that the Respondent lacks rights or a legitimate interest in the disputed domain name at issue, the burden of production of evidence shifts to the Respondent to demonstrate any rights or legitimate interests it may have in the disputed domain name.

### **Registered and used in bad faith**

The Respondent is a direct competitor of the Complainant. There is no evidence that the disputed domain name is used in connection with a *bona fide* offering of services or goods. There is no evidence that the Respondent has been commonly known by the disputed domain name, or of a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain. The disputed domain name was created on October 10, 1998, and according to Wayback Machine searches was used as a website for a company based in Louisiana, United States, named Arrow Equipment and Repair, Inc. until at least December 12, 2007. From at least February 28, 2021 until at least March 21, 2023, the disputed domain name then pointed to an "under construction" page. It now resolves to the Respondent's competing website. The Complainant believes that the disputed domain name was acquired by the Respondent between March 21, 2023 and May 2023.

The Respondent, by using the disputed domain name, is intentionally attempting to attract for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion. The disputed domain name is a form of typosquatting which is virtually *per se* registration and use in bad faith, it being difficult to conceive of circumstances that would overcome the inference that the typosquatter 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 of the website.

### **B. Respondent**

Despite requesting and being granted additional time to submit a Response, the Respondent did not submit a reply to the Complainant's contentions.

## **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; 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.

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

The first element of the Policy is usually addressed in two parts. First, the Complainant must show that it has UDRP-relevant rights in a trademark, whether registered or unregistered. Secondly, the Panel compares any such trademark to the disputed domain name (typically excluding the TLD on the basis that this is

required for technical reasons only). The comparison usually takes place on a straightforward side-by-side basis. If the trademark is recognizable in the disputed domain name, confusing similarity will generally be found. If the trademark is alphanumerically identical to the disputed domain name, identity will usually be found.

The first element operates as a threshold issue to determine whether a complainant has standing and a *bona fide* basis for its complaint. Issues such as a respondent's own rights in the domain name concerned, if any, are considered under the second and third elements.

In the present case, the Panel is satisfied that the Complainant has rights in its ARROWQUIP trademark as fully described above. Turning to the comparison exercise, it may be seen that the disputed domain name is alphanumerically identical to the mark with the exception of the fact that the disputed domain name adds an extra letter "e" between the letters "w" and "q". The Panel agrees with the Complainant that this constitutes typosquatting as the disputed domain name represents a common, obvious, or intentional misspelling of a trademark involving the addition of one letter (see section 1.9 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 finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights and thus that the Complainant has carried its burden with regard to 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 name:

"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."

The consensus of previous decisions under the Policy is that a complainant may establish this element by making out a *prima facie* case, not rebutted by the respondent, that the respondent has no rights or legitimate interests in a domain name. In the present case, the Panel finds that the Complainant has established the requisite *prima facie* case based on its submissions that there is no evidence that the Respondent is commonly known by the disputed domain name, or possesses any corresponding registered or unregistered trademark rights, and that the Complainant has not authorized or licensed the use of its mark to the Respondent.

The Complainant goes on to suggest that the Respondent is one of its competitors because the website to which the disputed domain name points is the official website of such a competitor. And while the name on the Whois record for the disputed domain name is that of a private individual and not that of the corporate name of the competitor entity identified by the Complainant, the "Our Company/About" tab on this website describes a story about the founder who bears the same (somewhat distinctive) family name as the named Respondent. The Panel is moreover satisfied that this person is likely to be the founder or at least have a close connection with that entity, given that the Respondent's address on the Whois record is almost identical to the address of the said competitor as listed on its official website, and the phone number of the

Respondent (as disclosed by the Registrar) is identical to this competitor's. Furthermore, the disputed domain name is being used as a typographical variant of the Complainant's mark to draw traffic to the competitor's official website. The Panel accepts the Complainant's contention that such use is not use of the disputed domain name in connection with a *bona fide* offering of goods or services.

Accordingly, the burden of production shifts to the Respondent to bring forward evidence of any rights or legitimate interests which it might claim in the disputed domain name. The Respondent has not, despite seeking and being granted additional time to file a Response, engaged with the administrative proceeding, and the Panel has been unable to identify any legitimate reason why the Respondent might be using the disputed domain name to point to the website of a competitor as is demonstrated by the evidence. Indeed, the facts and circumstances of the case suggest that the Respondent is engaged in typosquatting, and the intentional selection of a misspelling of the Complainant's mark in the disputed domain name cannot confer rights and legitimate interests upon the Respondent in the circumstances of this case.

The Panel therefore finds that the Respondent has failed to rebut the Complainant's *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and accordingly that the Complainant has carried its burden in terms 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 website 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.”

On this topic, the Complainant directs its principal submission to paragraph 4(b)(iv) of the Policy.

It is generally the case that for registration in bad faith to be made out, there must be evidence that the domain name concerned was registered in the knowledge of, and with the intent to target, the complainant's rights.

The disputed domain name is of a longstanding nature, having been registered in October 1998. This predates the coming into existence of the Complainant's rights. Nevertheless, if the disputed domain name has been acquired subsequently by the Respondent, the date of that acquisition becomes the operative date for the assessment of registration in bad faith and not the original registration date (see section 3.9 of the [WIPO Overview 3.0](#)).

The Complainant's evidence indicates that the disputed domain name was apparently owned by a third party until at least 2007, meaning that the Respondent is not the original registrant and that its acquisition of the disputed domain name must at least post-date this.

There follows a gap in the content history, which may suggest that the disputed domain name was dormant potentially after its expiry in the hands of the original registrant (or acquired and used by a third party), at which point it may have been offered for resale by the Registrar, thus preserving its original registration date. The content following the 2007 entry suggests that the disputed domain name is likely to have been acquired by the Respondent at some point between February 2021 and May 2023. The Complainant proposes the period between March and May 2023 although the Panel cannot identify any particular reason why the presence of the “under construction” page from February 2021 might not indicate the point of acquisition. In any event, it seems to the Panel from the available evidence that the acquisition postdates the coming into existence (between 2017 and 2020) of the Complainant’s trademark rights in Canada, and in the United States, where the Respondent is based. The actual date of acquisition of the disputed domain name is a matter exclusively within the Respondent’s knowledge. Had it been in a position to assert that it acquired the disputed domain name at a point predating the Complainant’s rights, it is reasonable to infer that it would have done so and would have supplied appropriate evidence, such as a purchase receipt for the disputed domain name. Instead, it has chosen to remain silent in the face of the Complainant’s submissions.

On the basis of the factual matrix before it, the Panel determines on the balance of probabilities that the disputed domain name was acquired by the Respondent after the Complainant’s rights came into being, at some point after the “under construction” message appears on the corresponding website in 2021. It was then used by the Respondent to point to its website being that of one of the Complainant’s competitors. This suggests that the disputed domain name was acquired with knowledge of the Complainant’s rights and with intent to unfairly target these. The Complainant’s business operates in a relatively niche area, and it is well beyond the possibility of an inadvertent coincidence that the disputed domain name – a typo of the Complainant’s trademark – might be pointed to the website of another entity in that exact same industry upon its acquisition by the Respondent. The fact that the disputed domain name constitutes a typographical variant of the Complainant’s mark and has been used to redirect Internet traffic to the website of a competitor constitutes an intentional attempt to attract, for commercial gain, Internet users to such website by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of such website within the meaning of paragraph 4(b)(iv) of the Policy.

As noted in the preceding section, the Respondent has not engaged with the administrative proceeding other than to request the automatic extension of time to prepare a response, which extension was granted. The Respondent did not file a response before the deadline, and has chosen neither to reply to any of the Complainant’s allegations nor to address the evidence that it has put forward. The use to which the disputed domain name has been put appears to the Panel to be an example of typosquatting with intent to redirect traffic from confused Internet users (including those who mistype the Complainant’s mark) to the Complainant’s competitor. In light of such use, the Panel cannot conceive of any possible good faith motivation which the Respondent might have suggested had it participated in the administrative proceeding.

In all of these circumstances, the Panel finds that the disputed domain name has been registered and is being used in bad faith, and accordingly that the Complainant has carried its burden in respect 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, <arowequip.com>, be transferred to the Complainant.

*/Andrew D. S. Lothian/*

**Andrew D. S. Lothian**

Sole Panelist

Date: July 18, 2023