

## **ADMINISTRATIVE PANEL DECISION**

**GEA Group Aktiengesellschaft v. ALFONSO MERCURIO**

**Case No. D2023-2245**

### **1. The Parties**

The Complainant is GEA Group Aktiengesellschaft, Germany, represented by Bardehle Pagenberg Partnerschaft mbB, Germany.

The Respondent is ALFONSO MERCURIO, Italy.

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

The disputed domain name <geagroup.cloud> is registered with Tucows Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 24, 2023. On May 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 24, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Redacted For Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 25, 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 May 26, 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 June 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 22, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 23, 2023.

The Center appointed Knud Wallberg as the sole panelist in this matter on June 29, 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 (“GEA”) is one of world’s largest suppliers for the food processing industry and a wide range of other process industries. As an international technology group, the Company focuses on world-leading process technology and components for sophisticated production processes. GEA is one of the largest suppliers of technology for the food processing industry and for a wide range of other process industries.

The Complainant is the owner of several trademark registrations of the trademark GEA including but not limited to

- European Union trademark No. 013911433 GEA registered on February 7, 2018, and covering goods and services in classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 17, 18, 19, 20, 21, 25, 27, 35, 36, 37, 39, 40, 41, 42, 44, 45, and
- International trademark registration No. 251180, GEA registered on January 4, 1962, designating 16 jurisdictions and covering goods services in classes 6, 7,9, 11, 12, 17 and 20.

The designation GEA Group is also the company name of the Complainant, *i.e.* its business identifier. The Complainant has been incorporated under this trade name already as early as in 1906.

The Complainant is also the registrant of a very large number of domain names incorporating the trademark GEA, such as the domain names <gea.com>, <geagroup.ca>, <geagroup.ar>, <geagroup.uk> and <geagroup.us>.

The disputed domain name <geagroup.cloud> was registered on March 10, 2023.

The disputed domain name initially resolved to a website, which purported to be a website for the Gea Group in Latin America, *inter alia* by reproducing and imitation of the Complainant’s above cited international trademark registration. At the time of this Decision, the disputed domain resolves to a website without any real content except the words Gea Group.

#### 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.

Notably, the Complainant contends that the disputed domain name <geagroup.cloud> is identical or clearly confusingly similar to the Complainant’s marks as it fully incorporates the Complainant’s marks and trade name “GEA” and even the name of the company “GEA Group”. The relevant public will therefore get the impression that the disputed domain name is intended to identify the Complainant’s business and “the GEA Group” of companies.

The Complainant further submits that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has no registered trademarks or trade names or personal names corresponding to the designation GEA, nor has any license or authorization of any other kind has been given by the Complainant to the Respondent to use the designation GEA, GEA Group or <geagroup.cloud>.

The Complainant finally submits that the disputed domain name was registered and is being used in bad faith. The Complainant thus submits that it is implausible that the Respondent was unaware of the Complainant’s mark when it registered the disputed domain name. In addition, the Respondent has used the

disputed domain name for a website of a company that called itself “Gea Group” and on which the Respondent presented itself as a local division or affiliate of the Complainant for Latin America.

## **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 trademark and service mark GEA for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1

The Panel finds the mark is recognizable within the disputed domain name, and that the disputed domain name is therefore confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of another term here, “group” may bear on assessment of the second and third elements, the Panel finds the addition of such terms do not prevent a finding of confusing similarity between the disputed domain name and the mark 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 paragraph 4(a) 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 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 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.

Based on the available record, the Panel finds the second element of the paragraph 4(a) of the Policy has also 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 used the disputed domain name in an attempt to attract, for commercial gain, Internet users to its web sites or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location or of a product or service on the Respondent's web site or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

The fact that use of the disputed domain name has changed to resolve to a website without any real content at the time of this Decision, does not prevent a finding of bad faith in the circumstances of this proceeding. [WIPO Overview 3.0](#), section 3.3.

Noting that the disputed domain name incorporates the Complainant's trademark GEA in its entirety, the disputed domain name is almost identical to the Complainant's domain names, that no Response has been filed and that there appears to be no conceivable good faith use that could be made by the Respondent of the disputed domain name, the Panel finds the third element of the paragraph 4(a) of the Policy has also 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, <geagroup.cloud>, be transferred to the Complainant.

*/Knud Wallberg/*

**Knud Wallberg**

Sole Panelist

Date: July 21, 2023