

## **ADMINISTRATIVE PANEL DECISION**

Group Fourteen IP Pty Ltd v. JACK KELLY and KELLY JOHN TIMOTHY  
Case No. D2023-4608

### **1. The Parties**

The Complainant is Group Fourteen IP Pty Ltd, Australia, represented by IP Twins, France.

The Respondents are JACK KELLY, United States of America (“United States”) and KELLY JOHN TIMOTHY, China.

### **2. The Domain Names and Registrars**

The disputed domain names <growналchemist.asia>, <growналchemist.biz> and <growналchemist.info> are registered with GoDaddy.com, LLC (the “First Registrar”). The disputed domain name <growналchemist.org> is registered with 1API GmbH (the “Second Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 7, 2023. On November 8, 2023, the Center transmitted by email to the Registrars requests for registrar verification in connection with the disputed domain names. On November 8 and November 9, 2023, the Registrars transmitted by email to the Center their verification response, disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (DomainsByProxy.com) and contact information in the Complaint.

The Center sent an email communication to the Complainant on November 14, 2023 with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrars, requesting the Complainant to either file separate complaints for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity. The Complainant filed an amended Complaint on November 16, 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 Respondents of the Complaint, and the proceedings commenced on November 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response

was December 12, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on December 15, 2023.

The Center appointed Marilena Comanescu as the sole panelist in this matter on January 5, 2024. 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 2008 and it is an important actor in the international cosmetic field. It has 9,000 employees and produces scientifically innovative formulas that aim to improve skin cell health and are sold worldwide.

The Complainant owns worldwide trademark registrations for the GROWN ALCHEMIST, such as the following:

- the International trademark registration number 1130921 for GROWN ALCHEMIST (word), registered on July 16, 2012, for goods and services in International classes 3, 35, and designating numerous jurisdictions worldwide, including China and the United States; and
- the Australian trademark registration number 1497869 for GROWN ALCHEMIST (word), registered on June 22, 2012, covering goods and services in International classes 3 and 35.

The Complainant submits that it is the owner of domain names incorporating the mark GROWN ALCHEMIST, such as <grownalchemist.com>.

The Complainant's Instagram page is followed by more than 167,000 Internet users.

All the disputed domain names were registered on February 10, 2023.

At the time of filing the Complaint, the disputed domain names <grownalchemist.asia>, <grownalchemist.biz> and <grownalchemist.info> redirected to pages of a domain name seller, Sedo, and were offered for public sale for EUR 999 (with a minimum price of EUR 99).

The disputed domain name <grownalchemist.org> resolved to a landing webpage displaying a security warning message (and subsequently redirected to the website of the same domain name seller, Sedo) and was offered for public sale on the Sedo website for the same amount (EUR 999).

#### **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 names.

Notably, the Complainant contends that the disputed domain names are identical or confusingly similar to its worldwide well-known trademark GROWN ALCHEMIST; that the Respondent has no rights or legitimate interests in the disputed domain names; and that the Respondent registered and is using the disputed domain names in bad faith primarily for the purpose of selling them to the Complainant or a competitor, for a valuable consideration in excess of its documents out-of-pocket costs directly related to the disputed domain names; considering the number of domain names subject to the present dispute, the Complainant further claims that the Respondent has engaged in a pattern of bad faith behavior; the Respondent employed a proxy service to avoid being notified of the procedure; the disputed domain names are not actively used and

by maintaining such registrations, the Respondent is preventing the Complainant from reflecting its trademark in the corresponding domain names.

## **B. Respondent**

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

## **6. Discussion and Findings**

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) the respondents have no rights or legitimate interests in the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

### **A. Consolidation: Multiple Respondents**

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The disputed domain names registrants did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2.

As regards common control, the Panel notes that the disputed domain names: (i) were all registered on the same day, few seconds apart from each other; (ii) have the same composition reproducing exactly the Complainant's trademark GROWN ALCHEMIST (without the space between words, as per the specific technical requirements in the domain name field), followed by a popular generic Top-Level Domain; (iii) are linked to the same name servers; and (iv) are offered for sale on the pages of the same domain name seller and for the same amounts.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as "the Respondent") in a single proceeding.

### **B. 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 names. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain names. Accordingly, the disputed domain names are identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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

### **C. 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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names. 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 names such as those enumerated in the Policy or otherwise.

The composition of the disputed domain names carries a high risk of implied affiliation, being identical to the Complainant’s mark. 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. [WIPO Overview 3.0](#), section 2.5.1.

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

### **D. 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.

In the present case, the Panel notes that the disputed domain names were registered in bad faith, with knowledge of the Complainant and its trademark particularly because they reproduce exactly the Complainant’s mark, which predates the creation of the disputed domain names with more than 10 years and has acquired substantial international reputation the field of cosmetics.

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.

Paragraph 4(b)(i) of the Policy provides the circumstance when the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name 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 the respondent's documented out-of-pocket costs directly related to the domain name. The Panel finds that, registering four domain names reproducing identically the Complainant's highly distinctive trademark, and offering them for sale on a professional domain name seller website, or via the corresponding websites under the disputed domain names, for about EUR 999 (but no less than EUR 99) likely exceeds the documented out-of-pocket costs directly related to the disputed domain names and is evidence of bad faith behavior. [WIPO Overview 3.0](#), section 3.1.1.

Paragraph 4(b)(ii) of the Policy provides another circumstance of bad faith registration and use when the respondent registered the disputed domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct. The Panel finds that registering at least four disputed domain names incorporating the Complainant's trademark, on the same day, can be considered a pattern of abusive conduct and registration of the disputed domain names in bad faith. [WIPO Overview 3.0](#), section 3.1.2.

The Respondent has not participated in the present proceeding and has provided inaccurate or incomplete contact information in the Whois (noted to be in breach of its registration agreement). Such facts, together with all the other elements in this case, support, in the eyes of this Panel, a finding of bad faith behavior.

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 names <grownalchemist.asia>, <grownalchemist.biz>, <grownalchemist.info> and <grownalchemist.org> be transferred to the Complainant.

*/Marilena Comanescu/*

**Marilena Comanescu**

Sole Panelist

Date: January 19, 2024