

## **ADMINISTRATIVE PANEL DECISION**

SOMANOR v. Bernard Legrand

Case No. D2023-4888

### **1. The Parties**

The Complainant is SOMANOR, France, represented by SELARL AVOXA RENNES, France.

The Respondent is Bernard Legrand, France.

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

The disputed domain name <somanor.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in French with the WIPO Arbitration and Mediation Center (the “Center”) on November 23, 2023. On November 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 25, 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 (Privacy Protect LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 28, 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 November 30, 2023.

On November 28, 2023, the Center informed the parties in English and French, that the language of the registration agreement for the disputed domain name is English. On November 30, 2023, the Complainant submitted the Complaint translated into English.

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 December 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 24, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 26, 2023.

The Center appointed Vincent Denoyelle as the sole panelist in this matter on January 11, 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 is a French company specializing in the financing and management of maritime assets.

The Complainant is the owner of the following trade mark registration in the term SOMANOR:

- French Trade Mark SOMANOR No. 3553596, registered on July 11, 2008.

The disputed domain name was registered on March 29, 2023, and points to a website consisting of a login page, with a black and gold logo including the term "somanor" and, at the top of the page, stock market live data. The disputed domain name was used to create email addresses in order to impersonate the Complainant and attempt to defraud unsuspecting recipients.

There is no information known on the Respondent apart from the details as they appear on the respective Whois record.

#### **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 is identical to the SOMANOR trade mark.

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant asserts that the use by the Respondent of the disputed domain name in an effort to pass itself off as the Complainant and to facilitate fraudulent activities, cannot be considered *bona fide*, legitimate or fair.

The Complainant contends that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trade mark. The Complainant also alleges that the Respondent is using the disputed domain name in bad faith as the Complainant provided evidence showing that the disputed domain name was used to send fraudulent emails impersonating the Complainant. The Complainant thus considers that the disputed domain name has been registered and is being used in bad faith.

##### **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 trade mark 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 a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the SOMANOR trade mark is reproduced within the disputed domain name, to the exclusion of any other character. The disputed domain name is thus identical to the SOMANOR trade 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.

### 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 such as those enumerated in the Policy or otherwise.

Here there is no indication that the Respondent is known by the disputed domain name.

Further, the use of the disputed domain name to fraudulently impersonate the Complainant cannot qualify as either use of the disputed domain name (or demonstrable plans for such use) with a *bona fide* offering or a legitimate noncommercial fair use. 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.

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.

The disputed domain name reproduces the exact SOMANOR trade mark of the Complainant and this is unlikely to be a coincidence given the overall circumstances of the present case including (i) the fact that the disputed domain name was registered relatively recently and many years after the registration of the trade mark SOMANOR, (ii) the fact that the disputed domain name is identical to the SOMANOR trade mark and (iii) the fact that the Respondent is located in France where the Complainant has its headquarters.

As for the use of the disputed domain name to send phishing emails impersonating the Complainant, this is very persuasive and clear evidence of the Respondent's bad faith use of the disputed domain name and typically the type of use the Policy is designed to tackle.

On this basis, the Panel finds that, as per paragraph 4(b)(iv) of the Policy, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's 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 the Respondent's website or location or of a product or service on the Respondent's website or location.

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 to be in bad faith.

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 <somanor.com> be transferred to the Complainant.

*/Vincent Denoyelle/*

**Vincent Denoyelle**

Sole Panelist

Date: January 25, 2024