

## **ADMINISTRATIVE PANEL DECISION**

### **AXA SA v. MAHMOUD BOUTHOUR, AXA NEGOCE**

#### **Case No. D2024-0309**

#### **1. The Parties**

The Complainant is AXA SA, France, represented by Selarl Candé - Blanchard - Ducamp, France.

The Respondent is MAHMOUD BOUTHOUR, AXA NEGOCE, Tunisia.

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

The disputed domain name <axanegoce.com> (the “Disputed Domain Name”) is registered with PSI-USA, Inc. dba Domain Robot (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 24, 2024. On January 24, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On January 29, 2024, 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 (PrivateName Services Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 29, 2024, 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 January 30, 2024.

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 February 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 22, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 23, 2024.

The Center appointed Nicholas Weston as the sole panelist in this matter on February 29, 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.

The language of the proceeding is the language of the registration agreement, English.

#### **4. Factual Background**

The Complainant is a Euronext Paris and New York Stock Exchange listed company founded in 1921 that operates an insurance business in 51 countries with turnover of EUR 102 billion in 2022. The Complainant holds registrations for the trademark AXA and variations of it in numerous jurisdictions, including, for example, International registration No. 490030, registered on December 5, 1984.

The Complainant owns numerous domain names that comprise of, or contain, the trademark AXA, including the domain name <axa.com>, which was registered on October 24, 1995.

The Respondent registered the Disputed Domain Name <axanegoce.com> on December 12, 2022, and it resolves to an inactive 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.

Notably, the Complainant cites its trademark registrations in numerous countries for the mark AXA and variations of it, as prima facie evidence of ownership.

The Complainant submits that the mark AXA is well-known and that its rights in that mark predate the Respondent's registration of the Disputed Domain Name. It submits that the Disputed Domain Name is confusingly similar to its trademark, because the Disputed Domain Name is comprised of the AXA trademark and that "the adjunction of the generic French term "negoce", which means "trade, business", to the trademark AXA in the Domain Name does not diminish the confusing similarity between the [Disputed] Domain Name and the Complainant's trademark."

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because "the Complainant has never licensed or otherwise permitted the Respondent to use its trademarks or to register any domain name including the above-mentioned trademarks" and none of the circumstances set out in paragraph 4(c) of the Policy apply. It contends that the Disputed Domain Name "is not use[d] in connection with a bona fide offering of goods or services...[and]... is passively held and lead[s] to a page which is not accessible". The Complainant submits that "passive holding of a domain name does not constitute "legitimate non-commercial use" of it."

Finally, the Complainant alleges that the registration and use of the Disputed Domain Name was, and currently is, in bad faith, contrary to the Policy and the Rules having regard to the prior use and well-known nature of the Complainant's trademark. It submits that the Complainant "chose and registered ... [the Disputed Domain name] ... in bad faith in order to take predatory advantage of the Complainant's reputation" and, on the issue of use, advances the argument that the passive holding of the Disputed Domain Name would not prevent a finding of bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, the Complainant has the burden of proving the following:

- (i) that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (iii) that the Disputed Domain Name has been registered and is being used in bad faith.

### **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 a trademark or service mark for the purposes of the Policy. The requirements of the first element for purposes of the Policy may be satisfied by a trademark registered in any country. [WIPO Overview 3.0](#), section 1.2.1. The Complainant has produced sufficient evidence to demonstrate that it has registered trademark rights in the mark AXA in numerous countries.

Turning to whether the Disputed Domain Name is identical or confusingly similar to the AXA trademark, the Panel observes that the Disputed Domain Name is comprised of: (a) an exact reproduction of the Complainant's trademark AXA; (b) followed by the French language word "negoce"; (c) followed by the generic Top-Level Domain ("gTLD") ".com".

It is well established that the gTLD used as part of a domain name is generally disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11. The relevant comparison to be made is with the second-level portion of the Disputed Domain Name, specifically: "axanegoce".

The Panel finds the entirety of the mark is reproduced within the Disputed Domain Name and is recognizable in the Disputed Domain Name. Accordingly, the Disputed Domain Name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of the term "negoce", which the Panel accepts means "trade" in French language, may bear on assessment of the second and third elements, the Panel finds the addition of such a term does 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.

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.

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 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. In view of the Respondent party named in the Complaint as amended, the Panel notes that the Respondent has not come forward to evidence that it is commonly known by a name corresponding to the Disputed Domain Name. [WIPO Overview 3.0](#), section 2.3.

The Panel notes the evidence that the Disputed Domain Name <axanegoce.com> resolves to an inactive webpage, which supports the Complainant’s submission on that point and finds that this does not represent a bona fide offering of goods or services, or a legitimate noncommercial or fair use, given the substantial reputation and goodwill of the Complainant’s mark or capacity to otherwise mislead Internet users.

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.

In the present case, the Panel finds that the evidence in the case shows the Respondent registered and has used the Disputed Domain Name in bad faith.

On the issue of registration, taking into account the composition of the Disputed Domain Name and the well-known nature of the Complainant’s trademark, the Panel is satisfied that the Respondent knew of and targeted the Complainant’s trademark AXA when it registered the Disputed Domain Name (see *AXA SA v. Whois Privacy Protection Service, Inc., Demand Domains, Inc.*, WIPO Case No. [D2007-1382](#) (“The Complainant is well-known”); *AXA S.A. v. P.A. van der Wees*, WIPO Case No. [D2009-0206](#) (“the Complainant’s widely known AXA trademark”); *AXA, S.A. v. PrivacyProtect.org / Koddos, Ronald Linco*, WIPO Case No. [D2010-0270](#) (“the Complainant’s well-known and famous AXA mark”)).

This Panel finds that there is no reason for the Respondent to have registered the Disputed Domain Name other than to trade off the reputation and goodwill of the Complainant’s well-known trademark. [WIPO Overview 3.0](#), section 3.1.4.

Further, a gap of several years between registration of a complainant’s trademark and respondent’s registration of a disputed domain name (containing the trademark) can indicate bad faith registration. In this case, the Respondent registered the Disputed Domain Name at least 38 years after the Complainant established registered trademark rights in the AXA mark.

On the issue of use, the Complainant's evidence is that the Disputed Domain Name does not currently resolve to an active website. Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available 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. Although 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, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement).

[WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the Complainant's well-known trademark, and the composition of the Disputed Domain Name, and 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.

The Panel finds that the Complainant has established the third element 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 <axanegoce.com> be transferred to the Complainant.

*/Nicholas Weston/*

**Nicholas Weston**

Sole Panelist

Date: March 7, 2024