

ADMINISTRATIVE PANEL DECISION

Peter Millar, LLC v. NEUMANN Tobias, Christine Achen and Maximilian Strauss
Case No. D2024-0653

1. The Parties

The Complainant is Peter Millar, LLC, United States of America, (“United States”) represented by Corsearch, United States.

The Respondents are NEUMANN Tobias, Christine Achen and Maximilian Strauss, Germany.

2. The Domain Names and Registrars

The disputed domain names <gforeitaliaoutlet.com>, and <gforemexicoonline.com> are registered with Hello Internet Corp (the “first Registrar”). The disputed domain name <gforeoutletphilippines.com> is registered with NETIM SARL (the “second Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 12, 2024. On February 13, 2024, the Center transmitted by email to the first and second Registrars a request for registrar verification in connection with the disputed domain names. On February 14, 2024, the first and second Registrars transmitted by email to the Center their verification responses, disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (N/A) and contact information in the Complaint.

The Center sent an email communication to the Complainant on February 15, 2024, 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 and/or that all the disputed domain names are under common control. The Complainant filed an amended Complaint on February 20, 2024.

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 February 21, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 12, 2024. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on March 18, 2024.

The Center appointed Antony Gold as the sole panelist in this matter on March 22, 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. Procedural issue –Complaint filed against multiple Respondents

The Complainant requests the consolidation of the Complaint against the three disputed domain name registrants pursuant to paragraph 10(e) of the Rules. In support of its application, it says that each disputed domain name incorporates the term “gfore” as the dominant portion of the disputed domain name and adds the geographical terms “Italia”, “Mexico”, “Philippines” and the term “outlet” or “online”. Additionally, all three disputed domain names have the same registration date of September 18, 2023, and the websites to which each disputed domain name resolves are identical. For these reasons, the Complainant alleges that all the disputed domain name registrants are either the same entity or are under common control.

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. Whilst neither the Policy nor the Rules expressly provides for the consolidation of claims against multiple respondents into a single administrative proceeding, the principles applied by panels considering requests for consolidation are set out at section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) which explains that: “Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario.” See also *Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons*, WIPO Case No. [D2010-0281](#).

The Panel accepts that, for the reasons given by the Complainant, the evidence, in combination, points to all the disputed domain names being under common control. The Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party. The Panel notes also that none of the Respondents has challenged the Complainant’s assertions in this respect.

In these circumstances, it is procedurally efficient, as well as fair and equitable to all Parties, for the Complainant’s case in respect of all the disputed domain names to be dealt by means of a single Complaint. The Panel accordingly grants the Complainant’s request for consolidation and the Respondents are referred to in the remainder of this decision as “the Respondent”.

5. Factual Background

The Complainant is a lifestyle brand with its head office in North Carolina, United States. It was established in 2001 and in 2018 it acquired the brand, G/FORE (also presented as G FORE), a golf-inspired sportswear and accessories brand for men and women, founded in 2011. Its products include golf, shoes, apparel and accessories. The Complainant owns and operates the domain names <gfore.com> and <gfore.co.uk>, which resolve to websites from which its products may be purchased, and they are additionally available at speciality retailers and golf pro shops in 35 countries.

The Complainant owns many trade marks to protect its G FORE and G/FORE brand. These include, by way of example only, United States Trade Mark, registration number 4035425, for G FORE, registered on October 4, 2011, in class 28 and United States Trade Mark, registration number 4808894, for G/FORE, registered on September 8, 2015, in class 25. The Complainant has also registered, and uses, a distinctive logo device comprising 4 letter G's (three of which are reversed and/or inverted) within a circle.

The disputed domain names were registered on September 19, 2023. Following registration, each of them resolved to websites which were substantially the same as that of the Complainant (that is, prominently branded as "G/FORE" and featuring the Complainant's distinctive logo device positioned adjacent to the brand name) and which purported to sell the Complainant's apparel and other products. The disputed domain names <gforemexicoonline.com> and <gforeoutlephilippines.com> no longer resolve to an active website.

6. 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 name is identical or confusingly similar to a trade mark in which it has rights. The Complainant refers to its registered trade marks for G FORE and says that each disputed domain name incorporates its mark in its entirety and adds the geographical terms and the terms "outlet" or "online". The additional components do not prevent the disputed domain names from being found confusingly similar to its mark;
- the Respondent has no rights or legitimate interests in respect of the disputed domain names. The Respondent is not commonly known by any of the disputed domain names, nor does it have any trade mark or other intellectual property rights in them. The Complainant is not affiliated with the Respondent, nor has the Complainant licensed its G FORE mark to it, nor has it granted the Respondent any authorization to use its marks. The Respondent is offering for sale golf apparel and accessories at the websites of the disputed domain names and thereby defrauding Internet users into believing that the goods offered for sale are authentic by creating a strong impression of affiliation with the Complainant. Such use comprises neither a bona fide offering of goods and services, nor a legitimate noncommercial or fair use of the disputed domain names;
- the disputed domain names have been registered and are being used in bad faith. Given the worldwide fame of the Complainant and its marks and the fact that the disputed domain names incorporate the Complainant's G FORE mark and its websites display this mark and the Complainant's G/FORE mark, as well as the Complainant's copyright images, it is obvious that the Respondent had actual knowledge of the Complainant and its marks as at the time of registration of the disputed domain names. The Respondent is diverting Internet users to its websites from the Complainant's website through the confusion caused by the confusing similarity between the Complainant's mark and the disputed domain names. Such disruption to the Complainant's business should lead the Panel to find that the disputed domain names have been registered and are being used in bad faith. Because the Respondent has no license or other right to sell products bearing the Complainant's G FORE or G/FORE marks, the Respondent's commercial gain should similarly lead to such a finding.

B. Respondent

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

7. Discussion and Findings

Dealing, first, with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under these Rules, the Panel shall be entitled to draw such inferences from this omission as it considers appropriate.

Paragraph 4(a) of the Policy provides that a complainant proves each of the following three elements in relation to each domain name in order to succeed in its complaint in respect of it:

- (i) the 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 with respect to the domain name; and
- (iii) the 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 trade mark and the disputed domain name; see the [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of its G FORE and G/FORE marks for the purposes of the Policy; see the [WIPO Overview 3.0](#), section 1.2.1. As a technical requirement of registration, the generic Top-Level Domain ("gTLD"), that is ".com" in respect of each of the disputed domain names, is usually disregarded when assessing confusing similarity. The Complainant's G FORE mark is reproduced in its entirety within each of the disputed domain names and is clearly recognizable within them. The addition of geographical terms "Italia", "Mexico", "Philippines" to each of the disputed domain names, as well as one of the terms "outlet" or "online", does not prevent a finding of confusing similarity between each of them and the Complainant's marks for the purposes of the Policy; see the [WIPO Overview 3.0](#), section 1.8.

For the above reasons, based on the available record, the Panel finds that 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 by which a respondent may demonstrate rights or legitimate interests in a domain name. Whilst 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 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; see the [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 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. In particular, the Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, any of the disputed domain names, or a name corresponding to any of the disputed domain names, in connection with a bona fide offering of goods or services, rather the disputed domain names were used to host impersonating websites of the Complainant and reproducing the Complainant's trademarks; see paragraph 4(c)(i) of the Policy, and the [WIPO Overview 3.0](#), section 2.2; Previous UDRP panels have held that the use of a domain name for illegal activity, including phishing, distributing malware, impersonation/passing off, or other types of fraud, can never confer rights or legitimate interests on a respondent; see the [WIPO Overview 3.0](#), section 2.13.1 and, by way of example, *Zions Bancorporation, N.A. v. George Gillespie*, WIPO Case No. [D2022-3197](#). The Panel also takes into account the fact that the Respondent has chosen not to challenge the Complainant's assertions of fraudulent intent. Having regard to the fact that two of the disputed domain names presently resolve to an active website, non-use of the disputed domain names, self-evidently, does not comprise use in connection with a bona fide offering of goods and services;
- there is no evidence in the record that the Respondent has been commonly known by any of the disputed domain names. In this respect, see paragraph 4(c)(ii) of the Policy and the [WIPO Overview 3.0](#), section 2.3;
- the Respondent is not making a legitimate noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue; see paragraph 4(c)(iii) of the Policy and the [WIPO Overview 3.0](#), section 2.4;
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain names.

For the above reasons, 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 record shows that, within a few months after the Respondent's registration of the disputed domain names in September 2023, they resolved to websites which masqueraded as those of the Complainant. This suggests both an awareness by the Respondent of the Complainant's G FORE and G/FORE marks as at the date of registration of the disputed domain names and an intention on its part to take unfair advantage of them. It is well-established under the Policy that registration of a domain name by an unconnected party with knowledge of a complainant's trade mark registration and where the domain name is put to a misleading use can, by itself, establish a presumption of bad faith; see, for example, *The Frankie Shop LLC v. xi bing*, WIPO Case No. [D2023-3311](#). The Respondent's registration of the disputed domain name is accordingly in bad faith.

Paragraph 4(b) of the Policy sets out, without limitation, circumstances which, if found by a panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The circumstance set out in paragraph 4(b)(iv) of the Policy is if a respondent has 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, sponsorship, affiliation, or endorsement of its website. The use to which the Respondent has put the disputed domain names falls within this circumstance in that the content of its websites will have misled Internet users into believing that they were operated, or authorized, by the Complainant. Such a belief will have been reinforced because of the confusing similarity between the disputed domain names and the Complainant's G FORE and G/FORE trade marks; see *Delsey v. Lenna Wehner*, WIPO Case No. [D2023-4648](#).

Whilst two of the disputed domain names no longer resolve to active websites, from the inception of the UDRP, panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding; see the [WIPO Overview 3.0](#), section 3.3 and by way of example, *Johnson & Johnson v. Daniel Wistbacka*, WIPO Case No. [D2017-0709](#).

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, (iii) the respondent's concealing its identity or use of false contact details and (iv) the implausibility of any good faith use to which the domain name may be put.

Applying these factors to the circumstances of these proceedings: (i) the Complainant has provided evidence which establishes, for the purpose of the Policy, that its G FORE and G/FORE trade marks are distinctive in the context of the goods for which they are registered; (ii) the Respondent has not provided a response to the Complaint nor is there any evidence of actual or contemplated good faith use of the disputed domain names; (iii) the Respondent has sought to conceal its identity; and (iv) there is no plausible good faith use to which the disputed domain names can be put by the Respondent. In the circumstances of this case, the passive holding of the disputed domain names does not prevent a finding of bad faith under the Policy. See also, for example, *Alstom v. Contact Privacy Inc. Customer 1244065242 / Michelle Chung, Chung Limited Co*, WIPO Case No. [D2019-2718](#).

Having reviewed the record, and for the reasons set out above, the Panel finds the Respondent's registration and use of the disputed domain names has been in bad faith.

8. 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 <gforeitaliaoutlet.com>, <gforemexicoonline.com> and <gforeoutletphilippines.com> be transferred to the Complainant.

/Antony Gold/

Antony Gold

Sole Panelist

Date: April 5, 2024