

ADMINISTRATIVE PANEL DECISION

AGCO Corporation v. Aaron L Rea
Case No. D2024-0942

1. The Parties

The Complainant is AGCO Corporation, United States of America, represented by AGCO Ltd., United Kingdom.

The Respondent is Aaron L Rea, New Zealand.

2. The Domain Name and Registrar

The disputed domain name <agcofinanceltd.com> is registered with Hostinger Operations, UAB (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 4, 2024. On March 4, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 5, 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 (Domain Admin, Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 11, 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 amended Complaint on March 12, 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 Respondent of the Complaint, and the proceedings commenced on March 14, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 3, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 5, 2024.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on April 12, 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 company based in the United States of America and manufactures tractors and other agricultural equipment. Through a licensed Swiss company, AGCO Finance AG, financial services for enabling the Complainant's customers to purchase such agricultural equipment from the Complainant, are arranged.

The Complaint is based on the following word trademarks for AGCO FINANCE, registered for financial services in class 35:

- Swiss Trademark No 644755 registered on June 4, 2013
- European Union Trademark No 008847444, registered on May 27, 2010

It results from the undisputed evidence provided by the Complainant that the Respondent registered the disputed domain name on October 17, 2023. The language of the registration agreement at the time of registration was English.

Finally, the Complainant provided evidence that the disputed domain name resolves to a website purporting to advertise financial services (e.g., investment packages with minimum deposit of USD 50,000, withdrawals and instant payment) by prominently using the Complainant's registered AGCO FINANCE trademark and falsely claiming to be part of AGCO FINANCE LIMITED Investors. In addition, on the CONTACT subpage, the Respondent uses the existing address data of the actually existing company AGCO FINANCE AG in Switzerland and through a hyperlink "LEGAL" the Respondent redirects users to the company extract of AGCO FINANCE AG registered on the official website of the Swiss Federal Statistical Office.

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:

- (1) the disputed domain name incorporates the mark AGCO FINANCE in its entirety while the other element contained in the disputed domain name, "ltd", is non-distinctive and readily understood as a descriptive reference to a limited company;
- (2) no license has been provided for the use of the trademark AGCO FINANCE for the operation of such a website and the Respondent has no obvious rights to the name that the Complainant is aware of. Finally, the Complainant's records confirm that no license for the use of the mark AGCO FINANCE exists with Aaron Rea.; and
- (3) the Respondent knew or should have known of the Complainant. In fact, the Complainant's licensee's details are linked to AGCO Finance AG and the latter's business address is used so that the Respondent knew or ought to have known of the Complainant when registering and using the disputed domain name.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements in order to obtain an order that the disputed domain name should be transferred:

(i) the disputed 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 in respect of the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

The Panel is satisfied that the registrant of record for the disputed domain name is the Respondent and will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

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.

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.

While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing. In the case at hand, the entirety of the mark AGCO FINANCE is reproduced within 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 another term, here “ltd” may bear on assessment of the second and third elements, the Panel finds the addition of such 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.

The Panel notes that there is no evidence in the record or Whois information showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

In addition, it results from the Complainant's undisputed allegations that the disputed domain name resolved to a website purporting to advertise financial services (e.g., investment packages with minimum deposit of USD 50,000, withdrawals and instant payment) by prominently using the Complainant's registered AGCO FINANCE trademark and falsely claiming to be part of AGCO FINANCE LIMITED Investors. In addition, on the CONTACT subpage, the Respondent uses the existing address data of the actual licensee company AGCO FINANCE AG in Switzerland and through a hyperlink "LEGAL" the Respondent redirects users to the company extract of AGCO FINANCE AG registered on the official website of the Swiss Federal Statistical Office. The Panel assesses this use as being clearly commercial, so that it cannot be considered 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 pursuant to paragraph 4(c)(iii) of the Policy.

Finally, such use cannot be qualified a bona fide offering of goods or services in accordance with paragraph 4(c)(i) of the Policy. In fact, this Panel considers that a registrant has no legitimate interest in a domain name that is similar to a third party's mark, where the composition of the domain name is associated to the business of the trademark holder, and that is being used to address consumers in the same business as the trademark holder operates ([WIPO Overview 3.0](#) at section 2.5).

Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

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 holds that the Respondent, by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its 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 its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

It results from the documented and undisputed evidence provided by the Complainant that the disputed domain name resolved to a website purporting to advertise financial services (e.g., investment packages with minimum deposit of USD 50,000, withdrawals and instant payment) by prominently using the Complainant's

registered AGCO FINANCE trademark and falsely claiming to be part of AGCO FINANCE LIMITED Investors. In addition, on the CONTACT subpage, the Respondent uses the existing address data of the actual licensee company AGCO FINANCE AG in Switzerland and through a hyperlink "LEGAL" the Respondent redirects users to the company extract of that AGCO FINANCE AG registered on the official website of the Swiss Federal Statistical Office. For the Panel, it is therefore evident that the Respondent positively knew the Complainant's marks and its licensee AGCO FINANCE. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain name included the Complainant's trademark when it registered the disputed domain name. Registration of the disputed domain name which contains a third party's mark, in awareness of said mark, to take advantage of its similarities with the mentioned mark, and in the absence of rights or legitimate interests amounts to registration in bad faith (see e.g., *Bluestep Bank AB/Bluestep Holding AB v. Kim Jong*, WIPO Case No. [D2023-2544](#)).

In addition, the finding of bad faith registration and use is supported by the following further circumstances resulting from the case at hand:

- (i) the trademark AGCO FINANCE is fully incorporated in the disputed domain name. At the date the Respondent registered the disputed domain name, said mark existed and had been used for many years;
- (ii) the Respondent's failure to provide any evidence of actual or contemplated good-faith use;
- (iii) the impersonating nature of the website by using the address data (and linking to the official company registry) of the Complainant's licensee company AGCO FINANCE AG; and
- (iv) the fact that the details disclosed for the Respondent by the Registrar are incomplete and inaccurate, noting the courier service's inability to deliver the Center's Written Notice.

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 <agcofinanceltd.com> be transferred to the Complainant.

/Tobias Malte Müller/

Tobias Malte Müller

Sole Panelist

Date: April 26, 2024