

## **ADMINISTRATIVE PANEL DECISION**

Gate Gourmet Switzerland GmbH v. Zlatan Omerovic  
Case No. D2024-1741

### **1. The Parties**

The Complainant is Gate Gourmet Switzerland GmbH, Switzerland, represented by TIMES Attorneys, Switzerland.

The Respondent is Zlatan Omerovic, United Kingdom.

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

The disputed domain name <gate-gourmet.com> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 19, 2024. On April 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 26, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 April 29, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 17, 2024. The Respondent sent email communications to the Center on April 30, 2024, and May 1, 2024. The Complainant requested a suspension of the proceeding on May 7, 2024. The proceeding was suspended on May 7, 2024. The Complainant requested a reinstatement of the proceeding on July 2, 2024. The proceeding was reinstated on July 5, 2024.

The Center appointed Reyes Campello Estebaranz as the sole panelist in this matter on July 31, 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 belongs to the Gate Group, a group of companies that operates an extensive catering network in the aviation industry providing airline catering, retail-on-board and hospitality products and services. The Gate Group includes various affiliated companies, many of which have company names including the terms “gategroup” or “gategourmet” (such as Gategroup Holding AG, Gategroup Financial Services S.à.r.l., Gate Gourmet GmbH, and Gate Gourmet Switzerland Holding GmbH). Per the Complaint, the Complainant’s group serves more than 700 million passengers annually from over 200 operating units in over 60 countries or territories across all continents, employs over 38,000 people, and operates in 200 locations across all continents.

The Complainant and its group operate globally under various brands, including GATE, GATEGROUP, and GATE GOURMET, as well as various brands that include the term “gate”, such as GATERETAIL, GATE RETAIL ON BOARD, GATE AVIATION, and FROM THE GATE TO THE DEVICE, for which the Complainant and its group own various trademark registrations, including:

- European Union Trade Mark No. 018504327, GATEGOURMET, figurative, registered on January 6, 2022, in Classes 39, 42, and 43;
- Swiss Trademark Registration No. 771725, GATEGOURMET, figurative, registered on November 4, 2021, in Classes 39, 42, and 43; and
- International Trademark Registration No. 801548, GATEGOURMET, figurative, registered on March 13, 2003, in Classes 39, and 43.

(Hereinafter globally referred as the “GATEGOURMET mark”).

The Complainant and its group further own various domain names for their brands, including the domain name <gategourmet.com> (registered on January 2, 1997), which resolves to their corporate website at the domain name <gategroup.com> (registered on December 30, 2002).

The disputed domain name was registered on June 6, 2022, and it resolves to a Registrar’s landing page that indicates the disputed domain name is not available, but an agent may be able to assist in its acquisition.

On April 5, 17, and 19, 2024, the Complainant sent a cease and desist letter and various communications to the Registrar and the Respondent trying to reach an amicable solution. The Respondent did not respond to these communications.

#### **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 almost identical to its company name and its trademark GATEGOURMET. It only differs in the use of a hyphen to separate the terms “gate” and “gourmet”, and the addition of the generic Top-Level Domain (“gTLD”) “.com” does not prevent a finding of confusing similarity or identity under the Policy.

The Complainant further contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant did not grant the Respondent any license to use its trademarks, and the Respondent's behavior not responding to the cease and desist communications shows that he has no rights or legitimate interests. The disputed domain name does not resolve to any website, but it has an active MX record, which means it can be used to send phishing emails.

Lastly, the Complainant contends that the disputed domain name was registered and is being used in bad faith. The Complainant and its trademarks are widely known, the disputed domain name incorporates the GATEGOURMET mark and the Complainant's company name, and there is no legitimate explanation for the registration of the disputed domain name. The Respondent concealed its identity and did not react to the cease and desist communications. The non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding, and the disputed domain name has an active MX record. The Respondent's intention is to benefit from the Complainant's reputation and to cause confusion, or to sell the disputed domain name to a person with such intentions, as well as to use the disputed domain name in any type of phishing scam.

## **B. Respondent**

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

In various communications addressed to the Center, the Respondent indicated it had ordered the cancellation of the disputed domain name on April 3, 2024. The Respondent attached to his communications two screen shots from the Registrar's website indicating, the first one, "your request to delete the selected domains is in progress" and, the second one, "this domain has been placed on status hold [...]".

## **6. Discussion and Findings**

The Complainant has made the relevant assertions as required by the Policy and the dispute is properly within the scope of the Policy. The Panel has authority to decide the dispute examining the three elements in paragraph 4(a) of the Policy, taking into consideration all of the relevant evidence, annexed material and allegations, and performing some limited independent research under the general powers of the Panel articulated, inter alia, in paragraph 10 of the Rules.

The Respondent accepted in various communications the cancellation of the disputed domain name and indicated he had already requested the cancellation to the Registrar providing evidence of such request. However, the Respondent has not mentioned in any of his communications his consent to the remedy sought by the Complainant, which is the transfer of the disputed domain name.

In cases where the parties to a UDRP proceeding have not been able to settle their dispute, but where the respondent has nevertheless given its consent on the record to the remedy sought by the complainant, many panels will order the requested remedy solely on the basis of such consent. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 4.10.

However, as in the present case the Complainant requested the transfer (and not the cancellation) of the disputed domain name, the Panel finds appropriate to proceed to a substantive decision on the merits.

### **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 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy, namely the GATEGOURMET mark. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name with the only addition of a hyphen used to separate its terms “gate” and “gourmet”. The trademark is recognizable within the disputed domain name, and the gTLD “.com” does not prevent a finding of confusing similarity under the Policy. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7, and 1.11.

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 finds no evidence in the record that may suggest the Respondent has rights or legitimate interests in respect of the disputed domain name.

The Panel notes the disputed domain name does not resolve to an active website (offering any goods or services), but to a Registrar’s landing page, and the Respondent’s reaction to the Complaint has been a request to cancel the disputed domain name, which shows, in the Panel’s view, a lack of rights or legitimate interests in the disputed domain name.

The Panel further considers the composition of the disputed domain name indicates targeting of the Complainant, its trademark GATEGOURMET, and its domain name (<gategourmet.com>), to which the disputed domain name is almost identical (differing only in the additional hyphen), and, therefore, generates confusion with the Complainant, its trademark, and its business. The disputed domain name gives the impression of being owned by or referring to the Complainant or one of its subsidiaries or affiliated companies. [WIPO Overview 3.0](#), section 2.5.1.

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.

In the present case, the Panel notes that the GATEGOURMET mark is internationally used, sufficiently distinctive for the products and services in the field of airline catering, retail-on-board, and hospitality products and services, as well as notorious in its field. The Panel notes that any search over the Internet reveals the Complainant and its trademark. The Panel, under its general powers, has conducted searches over the Internet for the terms “gategourmet” and “gate gourmet”, which have revealed a Wikipedia page and various websites related to the Complainant and its business.

The Panel further notes nothing in the record indicates the Respondent has rights or legitimate interests in respect of the disputed domain name, and the Respondent’s reaction to this proceedings (requesting the cancellation of the disputed domain name) shows as well a lack of rights or legitimate interests in the disputed domain name.

The Panel thus finds that the Respondent likely knew of the Complainant and its trademark and deliberately registered the disputed domain name in bad faith.

As regards the current use of the disputed domain name, the Panel considers that bad faith may exist even in cases of “passive holding”, as found in *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). See [WIPO Overview 3.0](#), section 3.3. The Panel notes the previously-discussed reputation of the Complainant’s mark, and especially the failure of the Respondent, in his communications to the Complainant and the Center, to provide evidence of actual or contemplated good-faith use, and finds that the passive holding of the domain name in this case does not prevent a finding of bad faith.

Additionally, according to the Complainant’s allegations (not contradicted by the Respondent), the disputed domain name has an active mail exchange (“MX”) record. The Panel finds this means the disputed domain name can be used to send emails that would generate confusion with the Complainant and its business, and may potentially be used for a fraudulent impersonation or phishing scam.

Furthermore, the Panel considers the nature of the disputed domain name, which is confusingly similar and almost identical to the GATEGOURMET mark, the Complainant’s company name, and its domain name <gategourmet.com>, reflects the purposeful composition of the disputed domain name targeting the Complainant and its trademarks to generate confusion and create a misleading domain name. See [WIPO Overview 3.0](#), sections 3.1.4 and 3.2.1.

Accordingly, based on the evidence presented, the Panel finds the Respondent registered and is using the disputed domain name in bad faith.

Therefore, 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 <gate-gourmet.com> be transferred to the Complainant.

*/Reyes Campello Estebarez/*

**Reyes Campello Estebarez**

Sole Panelist

Date: August 14, 2024