

ADMINISTRATIVE PANEL DECISION

AGFA-Gevaert N.V. v. Noufal Shihab

Case No. D2024-1884

1. The Parties

The Complainant is AGFA-Gevaert N.V., Belgium, represented by Novagraaf Belgium NV/SA, Belgium.

The Respondent is Noufal Shihab, Kuwait.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 3, 2024. On May 6, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 7, 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 May 13, 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 May 23, 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 May 24, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 13, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 18, 2024.

The Center appointed Zoltán Takács as the sole panelist in this matter on June 28, 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 Belgian-German multinational corporation whose predecessor company was established more than 150 years ago.

The Complainant, with the headquarters at Mortsel, Belgium develops, manufactures and distributes analogue and digital imaging products, software and systems with manufacturing plants around the world, sales organizations in 40 countries as well as an extensive network of agents and representatives.

The Complainant owns a number of trademark registrations for the AGFA mark, including the European Union Trademark Registration No. 003353463 registered since January 24, 2005.

The Complainant is also owner of numerous domain name registrations that include its AGFA trademark. For example, the domain name <agfa.com> which resolves to its corporate website has been registered since November 14, 1989.

The disputed domain name was registered on January 1, 2022, and resolves to an English language webpage which takes the form of an incomplete WordPress template and refers to an IT solutions provider called AGFA Technologies.

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 which fully incorporates its AGFA trademark is confusingly similar to it since the addition of the term "tec" to the mark in the disputed domain name does not prevent a finding of confusing similarity;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name since it is unable to rely on any of the circumstances set out in paragraphs 4(c)(i), (ii), or (iii) of the Policy;
- the Respondent has registered and is using the disputed domain name that includes its reputed trademark to falsely suggest that the Respondent is affiliated with or endorsed by the Complainant which is evidence of bad faith registration and use of the disputed domain name.

The Complainant requests that the disputed domain name be transferred from the Respondent to the Complainant.

B. Respondent

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

6. Discussion and Findings

A complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely that:

- (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;

- (ii) the respondent has no rights or legitimate interests in respect of 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 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. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the AGFA trademark is reproduced and is recognizable 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 other terms, here the term "tec" (according to the Merriam-Webster Dictionary the abbreviation for "technical", "technician" or "technology") 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 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 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 Respondent is not affiliated with the Complainant in any way and has never been authorized by the Complainant to register and use a domain name incorporating its AGFA trademark.

The display of an incomplete WordPress template at the disputed domain name does not, under the circumstances of the case, amount to a bona fide offering of goods or services, or legitimate noncommercial fair use.

In addition, the composition of the disputed domain name, namely the addition of the term "tec" to the mark, which may well relate to the Complainant's digital imaging technology business in view of Panel supports the finding of the risk of implied affiliation of the disputed domain name with the Complainant and thus cannot confer any rights or legitimate interests on the Respondent. [WIPO Overview 3.0](#), section 2.5.1.

The Panel finds that 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 Complainant's AGFA trademark is inherently distinctive and unique to the Complainant. The Complainant's marks significantly predate the registration of the disputed domain name.

Due to the Respondent's default and absent any explanation by the Respondent to the contrary the Panel is of the view in the circumstances of this case that the Respondent must have had the Complainant's business and trademark in mind at the time of registration of the disputed domain name and obtained it to target the Complainant and its reputed trademark through false association, which is evidence of bad faith. Paragraph 4(b)(iv) of the Policy.

The Panel cannot foresee any legitimate reason for registration and use of the disputed domain name that includes the Complainant's reputed AGFA trademark other than the Respondent attempting to benefit from a false association or confusion between the Complainant and the Respondent. The addition of the term "tec" (which as mentioned above may well relate to the Complainant's field of activities) to the mark in the disputed domain name in view of the Panel further supports the Respondent's targeting of the Complainant and its mark in the circumstances of this case. [WIPO Overview 3.0](#), section 3.2.1.

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 <agfatec.com> be transferred to the Complainant.

/Zoltán Takács/

Zoltán Takács

Sole Panelist

Date: July 12, 2024