

## **ADMINISTRATIVE PANEL DECISION**

Exel Industries v. Domain Administrator

Case No. D2024-2204

### **1. The Parties**

The Complainant is Exel Industries, France, represented by Domgate, France.

The Respondent is Domain Administrator, United States of America (“U.S.”).

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

The disputed domain name <holmers-france.com> (the “Disputed Domain Name”) is registered with NameSilo, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 29, 2024. On June 4, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. Also on June 4, 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 Administrator, PrivacyGuardian.org llc) and contact information in the Complaint.

The Center sent an email communication to the Complainant on June 5, 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 June 14, 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 June 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 9, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 10, 2024.

The Center appointed Enrique Bardales Mendoza as the sole panelist in this matter on July 16, 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 an international family group created in France in 1952 and listed on the Paris stock exchange since 1997. The Complainant acquired the German group HOLMER in 2013. The Complainant employs over 3,546 permanent employees in 27 countries and 23 production sites.

The Complainant has provided evidence on ownership of the following trademarks:

- French trademark HOLMER registered under registration no. 4044751 on July 11, 2014 for goods in International Classes 7, 8 and 12.
- International trademark HOLMER registered under registration no. 1215278 on April 24, 2014 for goods in International Classes 7, 8 and 12.
- United Kingdom trademark HOLMER registered under trademark no. 00801215278 on July 7, 2015 for goods in International Classes 7, 8, and 12.
- U.S. trademark HOLMER registered under registration no. 5530343 on July 31, 2018 for goods in International Classes 7 and 12.

The Complainant contends that it owns a substantial domain name portfolio containing the trademark HOLMER alone or associated to the geographic term "france", such as <holmer.fr> or <holmer-france.com>. The Complainant's official website in French concerning the HOLMER trademark is associated to <holmer-france.com> domain name that connects to its own website.

The Disputed Domain Name was registered on February 11, 2024. The record shows it previously resolved to a site with pay-per-click links, and was used to send emails purporting to be sent from the Complainant.

According to the Complainant, on March 22, 2024, sent a case-and-desist letter to the owner, the Registrar and to the Host. On the same date, SEDO blocked the domain name on its website and services. At the time of issuance of this decision, no website is associated with the Disputed Domain Name.

#### **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 identical or confusingly similar to the HOLMER registered trademark, and the addition of a geographic term and letter "s" to the Complainant's trademark does not prevent a finding of confusing similarity. Also, the Complainant states that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, and the Disputed Domain Name has been registered and is being used in bad faith by the Respondent.

##### **B. Respondent**

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

## 6. Discussion and Findings

### 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.

The Panel finds the mark 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.

The Disputed Domain Name employs the addition of the letter "s" to the Complainant's trademark. Also, it adds a geographic term and a hyphen.

Although the addition of other terms (here, "s-france") 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 Respondent has not submitted any response and has not claimed any rights or legitimate interests with respect to the Disputed Domain Name. As per the Complaint, the Respondent was not authorized to register the Disputed Domain Name.

The Complainant contends that the Respondent used the Disputed Domain Name for creating an email address in order to impersonate an employee of the Complainant in an attempt to defraud the customers of the Complainant or other people. Even the signature of the email contains the Complainant's logo and uses the name of the employee.

Panels have held that the use of a domain name for illegal activity (here, claimed impersonation/passing off) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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 Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark, because the Disputed Domain Name was first redirected to a pay-per-click website.

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.

Panels have held that the use of a domain name for illegal activity (here, claimed impersonation/passing off) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes 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 <holmers-france.com> be transferred to the Complainant.

*/Enrique Bardales Mendoza/*

**Enrique Bardales Mendoza**

Sole Panelist

Date: July 30, 2024