

ADMINISTRATIVE PANEL DECISION

2E v. Michael Findley
Case No. D2024-2419

1. The Parties

The Complainant is 2E, France, represented by Selarl Hubert Bensoussan & Associates, France.

The Respondent is Michael Findley, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <espace-emmaudes.com> (the “Domain Name”) is registered with Dynadot Inc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 13, 2024. On June 14, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On June 15, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Redacted for Privacy, Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 20, 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 amendment to the Complaint on July 12, 2024.

The Center verified that the Complaint together with the amendment to 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 July 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 5, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 14, 2024.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on August 19, 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 to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a consortium of agricultural entrepreneurs distributing agricultural, gardening and DIY equipment. The Complainant counts nearly 1,500 collaborators, 92 points of sale in France for cumulative sales of nearly EUR 300 million.

The Complainant owns several trademark registrations for ESPACE EMERAUDE, such as French trademark No. 1314024 (filed on April 2, 1985, and registered on November 29, 1985). The Complainant runs its main website from the domain name <espace-emmaude.com>, and it owns numerous other domain names reflecting its trademark. The Complainant's trademarks and domain names are registered prior to the Respondent's registration of the Domain Name.

The Domain Name was registered on June 28, 2023. The Complainant documents that the Domain Name has resolved to a webpage that is an unauthorized copy of the Complainant's website. At the time of drafting the Decision, the Domain Name resolved to an error webpage.

5. Parties' Contentions

A. Complainant

The Complainant provides evidence of trademark registrations before the Domain Name was registered and argues that its trademark is highly distinctive. The Domain Name is a reproduction of the Complainant's trademark. The sole addition is the letter "s" at the end of the Domain Name. As the Respondent incorporates the Complainant's distinctive trademark in the Domain Name, the Domain Name is confusingly similar to the Complainant's trademark.

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the Domain Name. There is no relationship between the parties and the Respondent has used the Complainant's trademarks without the Complainant's authorization. The Respondent is not using the Domain Name in connection with a bona fide offering of goods or services. The Domain Name has been used as a "bait and switch".

The Complainant argues that the Respondent must have been aware of the Complainant and its prior trademark. The Respondent has used the Domain Name to create a likelihood of confusion with the Complainant's trademarks and domain names as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. It is further evidence of its bad faith that the Respondent has offered for sale non-existent or counterfeit products of the products on the Complainant's official website.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the Domain Name. Where a domain name incorporates the entirety of a

trademark, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has established that it has rights in the trademark ESPACE EMERAUDE. The trademark is recognizable within the Domain Name. The Domain Name adds the letter "s". The addition does not prevent a finding of confusing similarity. For the purpose of assessing the confusing similarity under paragraph 4(a)(i) of the Policy, the Panel may ignore the generic Top-Level Domain ("gTLD") ".com"; see [WIPO Overview 3.0](#), section 1.11.1.

Based on the available record, 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. While 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 often-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 evidence, the complainant is deemed to have satisfied the second element. See [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 Domain Name. The Respondent has not rebutted the Complainant's showing with any relevant evidence demonstrating rights or legitimate interests in the Domain Name. Based on the record, the Respondent is not affiliated or related to the Complainant. There is no evidence that the Respondent has registered the Domain Name as a trademark or acquired trademark rights. There is no evidence of the Respondent's use of, or demonstrable preparations to use, the Domain Name in connection with a bona fide offering of goods or services. Rather, the Respondent's use of the Domain Name is evidence of bad faith and as such cannot confer rights or legitimate interests upon the Respondent.

In addition, the composition of the Domain Name is inherently misleading as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See [WIPO Overview 3.0](#), section 2.5.1.

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 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.

The Respondent most likely knew of the Complainant when the Respondent registered the Domain Name. It follows from the composition and use of the Domain Name. The Respondent's use of the Domain Name to impersonate the Complainant and attract Internet users, for commercial gain, to the Respondent's website, is clear evidence of bad faith. The current non-use of the Domain Name does not prevent a finding of bad faith.

For the reasons set out above, the Panel concludes that the Domain Name was registered and is being used in bad faith, within the meaning of paragraph 4(a)(iii) of the Policy.

The third element of the Policy has been established.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders the Domain Name <espace-meraudes.com> to be cancelled.

/Mathias Lilleengen/

Mathias Lilleengen

Sole Panelist

Date: August 26, 2024