

## **ADMINISTRATIVE PANEL DECISION**

Société Anonyme des Eaux Minérales d'Evian (SAEME) v. Krebs and John Donetsky

Case No. D2024-2568

### **1. The Parties**

The Complainant is Société Anonyme des Eaux Minérales d'Evian (SAEME), France, represented by Eversheds Sutherland (France) LLP, France.

The Respondents are Krebs and John Donetsky, United States of America ("United States").

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

The disputed domain names <contact-evian.com> and <drinkwater-evian.com> are 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 June 24, 2024. On June 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On June 26, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondents are listed as the registrants 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 Respondents of the Complaint, and the proceedings commenced on July 8, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 28, 2024. The Respondents did not submit any response. Accordingly, the Center notified the Respondent's default on August 10, 2024.

The Center appointed Luca Barbero as the sole panelist in this matter on August 20, 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 subsidiary of the global food and beverage group Danone S.A. and distributes water from the source of Evian in the town of Evian-les-Bains, France.

The Evian natural spring water was originally discovered in 1789 by the Marquis of Lessert who set up the first bottling facility 1826. In 1970, the Complainant became part of the Danone group and in 1978 the first Evian water bottles were imported into the United States and Canada.

The Complainant has provided evidence of ownership of several trademark registrations for EVIAN, including the following, as per trademark registration details in Annexes 10 to the Complaint:

- Unites States Trademark registration No. 1155024 (word mark), registered on May 19, 1981, in international class 32;
- French trademark registration No. 1327462 (word mark), registered on May 20, 1985, in classes 05, 29, 30 and 32;
- European Union trademark registration No. 001422716 (word mark), registered on September 18, 2006, in classes 03, 18 and 32;
- International trademark registration No. 235956 (word mark), registered on September 24, 1960, in classes 32 and 33.

The Complainant is also the owner of numerous domain names incorporating trademark EVIAN, including <evian.com>, which was registered on May 14, 1997 and is used by the Complainant in connection with its official website “www.evian.com”, where it promotes its products under the trademark EVIAN.

The disputed domain names <contact-evian.com> and <drinkwater-evian.com> were registered on April 23, 2024, and April 09, 2024, respectively. At the time of the drafting of this Decision, the disputed domain name <contact-evian.com> is redirected to the Complainant’s official website whilst the disputed domain name <drinkwater-evian.com> does not resolve to any active website. According to the screenshots submitted as Annex 4 to the Complaint, on May 7, 2024, the disputed domain names were both redirected to the Complainant’s official website.

#### **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 names.

Notably, the Complainant contends that the disputed domain names are confusingly similar to the trademark EVIAN in which the Complainant has rights as they both reproduce the trademark in its entirety, with the mere addition of the terms “drinkwater” and “contact” separated in both cases by a hyphen before the term “evian” and the generic Top-Level Domain (gTLD) “.com”.

The Complainant submits that the addition of the terms “drinkwater” or “contact” is likely to heighten confusion because they would refer to advertisement and marketing that may be carried out by the Complainant in respect of the goods with which the trademark is used and, more specifically, the term “water” is an explicit and direct designation of the goods with which the trademark EVIAN is used.

With reference to rights or legitimate interests in respect of the disputed domain names, the Complainant states that the Respondents are in no way authorized by, affiliated to or licensed by the Complainant to use its trademarks in any way and are not commonly known by the disputed domain names.

The Complainant further contends that the Respondents are not using the disputed domain names in connection with a bona fide offering of goods or services, since the disputed domain names have been redirected to the Complainant's official website.

The Complainant submits that the Respondents' sole purpose is to try and take advantage of the Complainant's well-known trademarks in order to attract Internet users and trick them into believing the disputed domain names may be in some way connected or affiliated to the Complainant, its products, business and trademarks whilst seeking undue commercial gain to the detriment of the Complainant.

The Complainant submits that the Respondents registered the disputed domain names in bad faith since, given the fact that the EVIAN trademark is highly distinctive and well-known globally, as recognized by several UDRP panels, it is inconceivable that the Respondents could have been unaware of the Complainant's trademark at the time of registration of the disputed domain names in 2024. The Complainant also states that the Respondents' use of the terms "drinkwater" and "contact" in the disputed domain names, demonstrates the intention of the Respondents to precisely and openly target the Complainant by causing confusion as to the affiliation of the disputed domain names with the Complainant's goods, its business and its trademarks as they strongly suggest an association with the EVIAN water distributed by the Complainant.

The Complainant further contends that, by redirecting the disputed domain names to the Complainant's official website, the Respondents have intended to free ride on the reputation of the EVIAN trademark in order to attract Internet users to the disputed domain names, with consumers or professionals being misled as to the source of the disputed domain names and potentially tricked into believing that the disputed domain names are affiliated to the Complainant, its products, business and trademark. The Complainant also submits that given the fame of the Complainant's EVIAN trademark, there simply cannot be any actual or contemplated good faith use of the disputed domain names, and that the fact that the Respondents provided incorrect registration data in the Whois records is an additional strong indication of the Respondents' bad faith and their intent to use the disputed domain names in a way which may be abusive or otherwise detrimental to the Complainant and its rights.

## **B. Respondents**

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

## **6. Discussion and Findings**

### **6.1. Consolidation of multiple Respondents.**

The Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the disputed domain names are under common control and requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The disputed domain name registrants did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.11.2.

As regards common control, the Panel notes that:

- i) the disputed domain names both reproduce the trademark EVIAN, preceded by descriptive terms (“drinkwater” and “contact”) and a hyphen, showing similar naming patterns;
- ii) the disputed domain names were registered within a few weeks of each other and through the same Registrar;
- iii) the registrant’s addresses for both disputed domain names refer to a lake (“Lake Jimmy” and “Lake Darrellburgh”) instead of a city and, in both cases, the names of the lakes have been apparently fabricated, as they do not seem to exist in the locations indicated in the remainder of the addresses (Wyoming and California respectively);
- iv) the postal codes indicated in the registrant information for the disputed domain names do not match the official postal code systems in place in the United States for Wyoming and California, respectively;
- v) the disputed domain names have been used in the exact same way as they both redirected to the official website of the Complainant in the exact same way, first to the Complainant’s official global webpage “www.evian.com” and then to the Complainant’s official United States webpage “www.evian.com/en\_us”.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants in a single proceeding.

## **6.2 Substantive Issues**

According to paragraph 15(a) of the Rules: “A Panel shall 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 directs that the Complainant must prove each of the following:

- (i) that the disputed domain names registered by the Respondents are identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the Respondents have no rights or legitimate interests in respect of the disputed domain names;  
and
- (iii) that the disputed domain names have been registered and are 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 names. [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. Indeed, the Complainant has provided evidence of ownership of trademark registrations for EVIAN in several countries.

The entirety of the mark is reproduced within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms “drinkwater” or “contact” may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

In addition, the gTLD “.com” can be disregarded under the first element confusing similarity test, being a standard registration requirement. [WIPO Overview 3.0](#), section 1.11.1.

Therefore, 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 the disputed domain names.

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 Respondents lack rights or legitimate interests in the disputed domain names. The Respondents have not rebutted the Complainant’s prima facie showing and have not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

According to the evidence on record, there is no relationship between the Complainant and the Respondents, and the Complainant has not authorized the Respondents to register or use its trademark or the disputed domain names.

Moreover, there is no element from which the Panel could infer the Respondents’ rights over the disputed domain names, or that the Respondents might be commonly known by the disputed domain names.

The Panel notes that, according to the records, prior to the present proceeding both disputed domain names were redirected to the Complainant’s official website and currently <contact-evian.com> still redirects to the Complainant’s website. In the Panel’s view, such redirection of the disputed domain names is likely to confuse and mislead Internet users into believing that the disputed domain names are owned and controlled by the Complainant, which is not the case.

Therefore, the Panel finds that the Respondents have not used the disputed domain names in connection with a bona fide offering of goods or services or a legitimate non-commercial or fair use without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant’s trademark.

The Panel notes that the disputed domain name <drinkwater-evian.com> is currently not resolving to an active website, i.e. it is passively held. The Panel shares the view held in *Teachers Insurance and Annuity Association of America v. Wreaks Communications Group*, WIPO Case No. [D2006-0483](#), where it was found that “Absent some contrary evidence from Respondent, passive holding of a Domain Name does not constitute “legitimate non-commercial or fair use”.

In addition, the disputed domain names, incorporating the well-known trademark EVIAN in combination with the terms “drinkwater” and “contact”, suggest sponsorship or endorsement by the Complainant. Even where a domain name consists of a trademark plus additional terms, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

Therefore, the Panel finds the second element of the Policy has also 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, in light of the prior registration and use of the Complainant’s trademark EVIAN in connection with the Complainant’s products and considering the well-known character of the trademark, the Respondents were or could have been aware of the Complainant’s trademark at the time of registration of the disputed domain names.

Moreover, the composition of the disputed domain names, incorporating the trademark EVIAN in its entirety in combination with terms referable to the Complainant (particularly the term “drinkwater” in the disputed domain name <drinkwater-evian.com>), and the circumstance that the disputed domain names have been redirected to the Complainant’s official website, suggest that the Respondents were indeed well aware of the Complainant and registered the disputed domain names to target the Complainant and its trademark.

As stated in section 3.2.2 of the [WIPO Overview 3.0](#), “Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant’s mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant’s mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent’s claim not to have been aware of the complainant’s mark.

The Panel also finds that the use of the disputed domain names by the Respondents, which have no connection with the Complainant according to the records, to redirect users to the Complainant’s official website “www.evian.com”, supports a finding of bad faith under paragraph 4(b)(iv) of the Policy.

Indeed, Panels have consistently found that the mere registration of a domain name that is identical to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith. Panels have moreover found that the lack of a respondent’s own rights to or legitimate interests in a domain name, redirecting the domain name to the complainant’s website, and absence of any conceivable good faith use are all circumstance supporting a finding that a respondent registered a domain name to attract, for commercial gain, Internet users to the respondent’s website or other online location by creating a likelihood of confusion with the complainant’s mark. Moreover, the Respondents retain control over the redirection of the disputed domain names and are thus creating an implied ongoing threat to the Complainant. [WIPO Overview 3.0](#), section 3.1.4 of the Policy.

With regards to the currently inactive use of the disputed domain name <drinkwater-evian.com>, previous UDRP panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness and reputation of the Complainant’s trademark EVIAN, the composition of the disputed domain name and the implausibility of any good faith use to which the disputed domain name may be put and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Lastly, the Panel finds that the Respondents' provision of inaccurate contact details in the Whois records of the disputed domain names and their failure to file a Response further supports the conclusion that the Respondents registered and used the disputed domain names in bad faith.

Therefore, the Panel finds that the Complainant has also 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 names <contact-evian.com> and <drinkwater-evian.com> be transferred to the Complainant.

*/Luca Barbero/*

**Luca Barbero**

Sole Panelist

Date: September 3, 2024