

## **ADMINISTRATIVE PANEL DECISION**

AGCO Corporation v. Greg Stewart  
Case No. D2024-2617

### **1. The Parties**

The Complainant is AGCO Corporation, United States of America, internally represented.

The Respondent is Greg Stewart, United States of America.

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

The disputed domain name <agcofinance.com> (the “Disputed Domain Name”) is registered with INWX GmbH & Co. KG (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 26, 2024. On June 27, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On June 28, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 2, 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 July 2, 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 July 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 1, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 9, 2024.

The Center appointed Douglas M. Isenberg as the sole panelist in this matter on August 12, 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 states that it is “one of the world’s largest manufacturers of tractors and other agricultural equipment” and that “[f]inancial services for enabling purchasing of such agricultural equipment by customers of AGCO Corporation may be arranged through AGCO Finance AG.” The Complainant also states, and provides evidence to support, that it is “the proprietor of a number of trade mark registrations worldwide for the mark AGCO FINANCE or marks incorporating the element AGCO FINANCE,” including Swiss Trade Mark Reg. No. 644755 for AGCO FINANCE (registered on June 4, 2013) for use in connection with financial services; and European Union Trade Mark Reg. No. 008847444 for AGCO FINANCE (registered on May 27, 2010) for use in connection with financial services (the “AGCO FINANCE Trademark”). In addition, the Complainant states that <agcofinance.com> is “the website address of the legitimate website of AGCO Finance AG.”

The Disputed Domain Name was created on May 13, 2024. According to the Complaint, and as supported by an annex provided by the Complainant, “email addresses associated with this the domain agcofinance.com are being used to send emails intended to divert payments from AGCO FINANCE’s customers intended for AGCO Finance AG to a bank account not operated by AGCO Finance AG.”

#### **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 confusingly similar to the AGCO FINANCE Trademark because the Disputed Domain Name “incorporates the mark AGCO FINANCE in its entirety save that the letter ‘i’ in finance has been replaced by the letter ‘l’,” which “is visually similar to the letter ‘i’”; and “since the domain name contains sufficiently recognizable aspects of the relevant mark, and the substitution of similar-appearing characters, does not prevent a finding of confusing similarity under the first element of the Policy.”
- The Respondent has no rights or legitimate interests in the Disputed Domain Name because “[n]o license has been provided for the use of the trade mark AGCO FINANCE for the operation of the domain as described below and respondent has no obvious rights to the name that the Complainant is aware of.”
- The Disputed Domain Name was registered and is being used in bad faith because: “By using the domain name(s), the Respondent intentionally attempted to seek commercial gain, by creating a likelihood of confusion with the Complainant’s mark and the Complainant’s associated business as to the source, sponsorship, affiliation, or endorsement of the Respondent’s product or service. In particular, email addresses associated with this the domain agcofinance.com are being used to send emails intended to divert payments from AGCO FINANCE’s customers intended for AGCO Finance AG to a bank account not operated by AGCO Finance AG.... These emails also use other trade marks registered to AGCO Corporation, including AGCO and the AGCO triangle device. These emails also use the physical address of the Respondent in the email footer.”

## **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.

As set forth in section 1.9 of [WIPO Overview 3.0](#): "A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.... Examples of such typos include... substitution of similar-appearing characters." Here, use of the letter "L" in lieu of the letter "I" in the Disputed Domain Name is a similar-appearing character.

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.

Further, as set forth in section 2.13 of [WIPO Overview 3.0](#): "Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent." The Complainant has alleged (and provided an email in support thereof) that the Respondent has sent emails purporting to be the Complainant and requesting payment via "updated wire instructions" – a flagrant attempt at phishing.

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. Notably, paragraph 4(b)(iv) states that the following is evidence of bad faith: “by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

In the present case, the Panel notes that the Respondent has used the Disputed Domain Name to engage in phishing activity, as described above. As set forth in section 3.1.4 of [WIPO Overview 3.0](#), “given that the use of a domain name for per se illegitimate activity such as... phishing can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith.”

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 <agcofnance.com> be transferred to the Complainant.

*/Douglas M. Isenberg/*

**Douglas M. Isenberg**

Sole Panelist

Date: August 19, 2024