

## **ADMINISTRATIVE PANEL DECISION**

Ark Technologies Pty Ltd v. Cettire Cettire  
Case No. D2024-2715

### **1. The Parties**

Complainant is Ark Technologies Pty Ltd, Australia, represented by King & Wood Mallesons, Australia.

Respondent is Cettire Cettire, United States of America (“United States”).

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

The disputed domain names <cettire-global.com> (“disputed domain name No. 1”), <cettireglobal.com> (“disputed domain name No. 2”), <cettire-inc.com> (“disputed domain name No. 3”), <global-cettire.com> (“disputed domain name No. 4”), and <online-cettire.com> (“disputed domain name No. 5”) are registered with Web Commerce Communications Limited dba WebNic.cc (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 3, 2024. On July 3, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On July 3, 2024, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant 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 Respondent of the Complaint, and the proceedings commenced on July 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 25, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on July 26, 2024.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on July 30, 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**

Complainant is a company organized under the laws of Australia that operates a luxury retail platform under its website available at “www.cettire.com”.

Complainant has provided evidence that it is the registered owner of various trademarks relating to its brand CETTIRE, including, but not limited, to the following:

- word mark CETTIRE, United States Patent and Trademark Office (“USPTO”), registration number: 6708945, registration date: April 26, 2022, status: active.

Respondent, according to the Whois database and Registrar provided information for the disputed domain names, is located in the United States. The disputed domain names Nos. 1, 2, and 4 were registered on May 7, 2024, while the disputed domain names Nos. 3 and 5 were registered on June 10, 2024. By the time of the rendering of this decision, the disputed domain names Nos. 1, 3, 4, and 5 do not resolve to any content on the Internet, while the website, to which the disputed domain name No. 2 resolves, is blocked by the relevant server because of dangerous content. Complainant, however, has demonstrated that, at some point before the filing of the Complaint (i.e. on May 30, 2024, as well as on June 4 and 28, 2024), the disputed domain names numbers Nos. 1, 3, 4, and 5 resolved to identical websites consisting of a login page, and prominently displaying its CETTIRE trademark without any authorization to do so. The disputed domain name No. 2, in turn, apparently has been held passively by Respondent ever since its registration. Moreover, Complainant has provided evidence that on May 21 and 25, 2024, Complainant’s customers were contacted by phone messengers and invited to Respondent’s website under the disputed domain name No. 1, also forwarding a flyer apparently related to employment opportunities with Complainant that did not exist, thereby pretending that such website belonged to Complainant.

Complainant requests that the disputed domain names be transferred to Complainant.

#### **5. Parties’ Contentions**

##### **A. Complainant**

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names. Notably, Complainant contends to be a global leader in the online luxury retail space, and that its CETTIRE trademark (with “cettire” being an invented word) is a well-known and reputable brand in Australia and around the world, with the domain name <cettire.com> used since 2017 to operate Complainant’s website at “www.cettire.com”.

Complainant submits that the disputed domain names are confusingly similar to its well-known CETTIRE trademark, because all of them incorporate as their dominant feature the entirety of such trademark together with secondary and descriptive words which no more than directly describe the scope of Complainant’s goods and services. Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain names since (1) Complainant has not authorized Respondent to use its CETTIRE trademark in the disputed domain names or on Respondent’s websites, Respondent is not a licensee of, or reseller for, Complainant or its goods and services, and Respondent is not otherwise connected to, affiliated with or endorsed by Complainant in any way, (2) the distinctiveness of Complainant’s CETTIRE trademark as an invented word makes it is highly improbable that Respondent coincidentally stumbled upon the same combination of letters and sounds in adopting the disputed domain names, and instead has chosen to do so in the knowledge and in the face of Complainant’s trademark rights, and (3) Respondent is using the disputed domain names to impersonate Complainant or to mislead the visitors to Respondent’s websites to believe that they belong to Complainant, as part of a phishing scam or other fraudulent scheme, and such illegal activities under the disputed domain names can never confer rights or legitimate interests therein. Finally, Complainant argues that Respondent has registered and is using the disputed domain names in bad faith because (1) all disputed domain names were registered seven years

after Complainant's well-known CETTIRE brand was first launched in 2017, (2) based on the use of Complainant's CETTIRE trademark in all disputed domain names and on all websites at them, it can be inferred that Respondent was aware of such trademark at the time it registered the disputed domain names, and (3) use of domain names for per se illegitimate activities such as impersonation of phishing is manifestly considered evidence of bad faith.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

- (i) that the disputed domain names are identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) that Respondent has 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.

Respondent's default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a Response as it considers appropriate.

### **A. Identical or Confusingly Similar**

First, 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 Complainant's CETTIRE trademark and the disputed domain names. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Complainant has shown rights in respect of the CETTIRE trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Also, the entirety of such trademark is reproduced within all five disputed domain names, simply added by other terms such as "global", "inc", or "online", and in some cases by a hyphen. Accordingly, the disputed domain names are confusingly similar to Complainant's CETTIRE trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. Although the addition of other terms (here, the terms "global", "inc", or "online") may bear on assessment of the second and third elements, it does not prevent a finding of confusing similarity between the disputed domain names and Complainant's CETTIRE trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel, therefore, finds the first element of the Policy has been established.

### **B. Rights or Legitimate Interests**

Second, paragraph 4(c) of the Policy provides a list of circumstances in which 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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain names. Respondent has not rebutted Complainant's prima facie showing and has 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.

In particular, Respondent has neither been granted a license nor has it been otherwise authorized by Complainant to use its CETTIRE trademark, either as domain names or in any other way. Also, there is no reason to believe that Respondent's name somehow corresponds with the disputed domain names, and Respondent does not appear to have any trademark rights associated with the (invented) term "cettire" on its own. Finally, at some point in the past, the disputed domain names numbers Nos. 1, 3, 4, and 5 resolved to identical websites displaying a login page and also pretending to promote employment opportunities with Complainant that did not exist and/or to improperly and unlawfully acquire Internet user data by impersonating Complainant and prominently displaying its well-known CETTIRE trademark without any authorization to do so. Such use of the disputed domain names, therefore, neither qualifies as bona fide nor as legitimate noncommercial or fair within the meaning of paragraph 4(c) of the Policy. In this context, panels have long held that the use of a domain name for illegal activity (here: impersonation/passing-off) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. Moreover, and in relation to the disputed domain name No. 2 in particular, the Panel has well noted that the latter apparently has been held passively by Respondent ever since its registration. UDRP panels, however, have found that the mere registration of a domain name does not by itself automatically confer rights or legitimate interests therein (see [WIPO Overview 3.0](#), section 2.10.1), especially considering the registration of five confusingly similar disputed domain names and impersonating use discussed above. Further, the Panel notes that the composition of the disputed domain names carries a risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

The Panel, therefore, finds the second element of the Policy has been established.

### **C. Registered and Used in Bad Faith**

Finally, 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 circumstances to this case leave no doubt that Respondent was fully aware of Complainant's CETTIRE trademark and related online luxury retail business when registering the disputed domain names and that the latter clearly are directed thereto. Moreover, using the disputed domain names numbers Nos. 1, 3, 4, and 5 to run identical login websites pretending to promote employment opportunities with Complainant that did not exist and/or to improperly and unlawfully acquire Internet user data by impersonating Complainant and prominently displaying its well-known CETTIRE trademark without any authorization to do so, is a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to its own websites by creating a likelihood of confusion with Complainant's CETTIRE trademark as to the source, sponsorship, affiliation or endorsement of Respondent's website. Such circumstances are evidence of registration and use of the disputed domain names in bad faith within the meaning of paragraph 4(b)(iv) of the Policy. In this context, panels have also long held that the use of a domain name for illegal activity (here: impersonation/passing-off) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. In addition, and with regard to the disputed domain name No. 2 in particular, panels have found that the non-use of a domain name (including a blank or "coming soon" page) 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,

inter alia, both the undisputed reputation of Complainant's CETTIRE trademark and the composition of all five disputed domain names and finds that in the circumstances of this case the passive holding of the disputed domain name No. 2 does not prevent a finding of bad faith under the Policy, either.

In this context, it also carries weight in the eyes of the Panel that Respondent provided false or incomplete contact information in the Whois register for the disputed domain names (which is in violation of Respondent's obligations under the respective registration agreements). This fact at least throws a light on Respondent's behavior which supports the Panel's bad faith finding.

The Panel, therefore, holds that Complainant has established the third element of the Policy, too.

## **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 <cettire-global.com>, <cettireglobal.com>, <cettire-inc.com>, <global-cettire.com>, and <online-cettire.com> be transferred to Complainant.

*/Stephanie G. Hartung/*

**Stephanie G. Hartung**

Sole Panelist

Date: August 6, 2024