

## **ADMINISTRATIVE PANEL DECISION**

**RAILTEAM B.V. v. Liron Bercovich, Marlink EOOD**  
Case No. D2024-3078

### **1. The Parties**

The Complainant is RAILTEAM B.V., Netherlands (Kingdom of the), represented by Scan Avocats AARPI, France.

The Respondent is Liron Bercovich, Marlink EOOD, Bulgaria.

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

The disputed domain name <datarailteam.com> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 26, 2024. On July 29, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 29, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 30, 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 August 1, 2024. The Respondent sent an informal email on July 30, 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 August 7, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 27, 2024. The Respondent did not submit any formal response. However, on August 26, 2024, the Respondent sent another informal email. The Complainant replied on August 28 and September 2, 2024. No reply from the Respondent was received. Accordingly, the Center notified the Parties that it would proceed with the Panel Appointment on September 2, 2024.

The Center appointed Miguel B. O'Farrell as the sole panelist in this matter on September 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 is the Dutch company RAILTEAM B.V., composed of seven European railway operators (Deutsche Bahn, SNCF, ÖBB, Eurostar, SBB, SNCB and NS International) whose goal is to promote seamless travel by high-speed rail throughout Europe, in developing a joint network that connects the European metropolises to one another.

Founded in July 2007, the Railteam Alliance enables passengers to travel by train throughout the continent, going to the main hubs of Europe's high-speed network (Bruxelles-Midi, Lille-Europe, Stuttgart, Cologne and Frankfurt) and other major stations (Roissy CDG, Paris, London, Berlin, Amsterdam etc).

The Complainant is the owner of several registered trademarks that have been continuously used in commerce since their registration, including the following:

French trademark registration No. 3374388 RAILTEAM, registered on August 5, 2005, covering goods and services in classes 16, 35, and 39;

European Union trademark registration No. 009621707 RAILTEAM (Design), registered on June 3, 2011, covering goods and services in classes 16, 35, 38, and 39;

International trademark registration No. 887130 RAILTEAM registered on January 6, 2006, covering goods and services in classes 12, 16, 35, 39, and 43.

These trademarks which are all used in connection with railway transport of passengers are composed totally or partially of the word "RAILTEAM" which is also the Complainant's company name.

The Complainant operates under numerous domain names, composed totally or partially of the word "RAILTEAM", that it owns, among which: <railteam.com> since February 26, 2004; <railteam.fr> since December 28, 2005 and <railteam.eu> since July 10, 2006.

The disputed domain name was registered on June 5, 2024, and currently resolves to a webpage of GoDaddy with the indication, in Spanish, "Obten este dominio" (Obtain this domain).

#### **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 Respondent has no relationship with the Complainant and that the disputed domain name could let Internet users think that the disputed domain name is linked to the Complainant and is displaying data about the Complainant.

The Complainant grants that it did not know the Respondent before the disputed domain name was registered. The Complainant ascertains that the Respondent is not in any way related to its business and does not carry out any activity for or has any business with it.

In particular, the Respondent has not been licensed, contracted or otherwise permitted by the Complainant in any way to use the prior RAILTEAM trademark or to register for any domain name incorporating these prior trademarks, nor has the Complainant acquiesced in any way to such use or registration of the RAILTEAM trademark by the Respondent.

The Respondent is not currently and has never been known under the name RAILTEAM.

The Complainant's company name dated from 2007 and the RAILTEAM trademarks are used in commerce since 2005, many years before the disputed domain name was registered.

The Respondent has registered the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the Complainant or to a competitor, for valuable consideration in excess of the Complainant's costs, which is a proof of bad faith. The disputed domain name is resolving to a parking page displaying several links, some of which directly related to the Complainant's activities.

Finally, the Complainant requests the Panel to issue a decision ordering that the disputed domain name be transferred to the Complainant.

## **B. Respondent**

As indicated above, the Respondent did not submit any formal response. However, on August 26, 2024, the Respondent sent an informal email consenting to cancel the disputed domain name. The Respondent stated that the disputed domain name "is vital to our business" and its cancellation would result in a loss of "revenue" for the Respondent. The Complainant replied on August 28 and September 2, 2024, noting that it had requested the transfer of the disputed domain name as the selected remedy in the Complaint and asking if the Respondent would agree with a transfer of the disputed domain name to the Complainant. No reply from the Respondent was received. Thus, the Panel proceeds to issue this Decision.

## **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove each of the following, namely that:

- (i) the disputed domain name is identical or confusingly similar with a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is 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 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 entirety of the mark is reproduced 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 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.

Although the addition of other terms here, “data”, 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 “.com” generic Top-Level Domain (“gTLD”) is viewed as a standard registration requirement and is generally disregarded under the first element confusing similarity test, as set forth in section 1.11 of [WIPO Overview 3.0](#).

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.

In its informal communications, the Respondent has only contended that the disputed domain name is vital to its business, but has provided no evidence of its business or what use the disputed domain name was being put (or intended to be put) in connection with its alleged business. Rather, the evidence demonstrates that the confusingly similar disputed domain name was resolving to parked page with sponsored links through which the Respondent was presumably earning click-through revenue, a finding that appears confirmed given the Respondent’s statement regarding the loss of “revenue” that would be incurred upon surrendering the disputed domain name. Further, as indicated above, the disputed domain name also features a link to “obtain this domain”, which would seem to the Panel to indicate a willingness to sell. Coupled together with the Respondent’s consent to cancellation, this would seem to the Panel to run counter to the notion that the disputed domain name is vital to the Respondent’s alleged business. Ultimately, it appears more likely than not that the Respondent sought to use the confusingly similar disputed domain name to mislead Internet users for its commercial gain, which cannot confer upon the Respondent rights or legitimate interests.

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 Panel is satisfied that the Respondent must have been aware of the Complainant's business and trademark RAILTEAM mentioned in section 4 above (Factual Background) and also the Complainant's websites to which its official domain names resolve when the Respondent registered the disputed domain name on June 5, 2024. By that time the Complainant had registered and used the trademark RAILTEAM for many years.

By registering the disputed domain name, the Respondent was targeting the Complainant and its business by incorporating the Complainant's trademark RAILTEAM in the disputed domain name in its entirety.

The Complainant's trademark in the disputed domain name leads Internet users to mistakenly think that the website is an official website of the Complainant and thereby the Respondent may capitalize on the prestige of the trademark RAILTEAM for its own monetary benefit.

The clear absence of rights or legitimate interests coupled with no explanation for the Respondent's choice of the disputed domain name and the nature of the disputed domain name, are indicative of bad faith (as stated in section 3.2.1 of the [WIPO Overview 3.0](#)).

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 <datarailteam.com> be transferred to the Complainant.

*/Miguel B. O'Farrell/*

**Miguel B. O'Farrell**

Sole Panelist

Date: September 18, 2024