

## **ADMINISTRATIVE PANEL DECISION**

VDA Verband der Automobilindustrie e.V. v. Eric Cavanaugh, Avijets LLC  
Case No. D2024-4025

### **1. The Parties**

The Complainant is VDA Verband der Automobilindustrie e.V., Germany, represented by Kroher Strobel Rechts- und Patentanwälte PartmbB, Germany.

The Respondent is Eric Cavanaugh, Avijets LLC, United States of America (“United States”).

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

The disputed domain name <adblueplus.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 October 1, 2024. On October 1, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 1, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 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 October 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 October 7, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 27, 2024. The Respondent sent email communications to the Center on October 2, 2024, and October 14, 2024.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on October 31, 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 an interest group of the German automotive industry, including both automobile manufacturers and automobile component suppliers, pursuing the interests of the said industry in sectors such as the aftermarket, electric mobility, logistics and customs and excise.

The Complainant is the owner of a variety of registered trademarks in the ADBLUE mark, including, for example, International Registered Trademark Number 811899 for the word mark ADBLUE, registered on August 8, 2003, in Class 1, and International Registered Trademark Number 1042880 for the word mark ADBLUE, registered on May 18, 2010, in Classes 7, 9, 12, and 39.

The Complainant's ADBLUE mark is used for urea that reduces the NOX emissions of diesel engines, particularly in the field of commercial and heavy goods vehicles. The Complainant is entrusted with protecting and enforcing this trademark on a worldwide scale and has established a licensing system therefor for companies in the chemical industry who supply and manufacture urea.

The disputed domain name was registered on November 30, 2018. The website associated with the disputed domain name offers a diesel exhaust fluid and containers for sale. Said products are marked "Löwen AdBlue". The said website also provides a link entitled "Buy Löwen" to a website with a domain name using the Moroccan country code Top-Level Domain ("ccTLD"). The Complainant asserts (and the Respondent does not deny) that the Respondent is not part of the Complainant's licensing scheme in respect of the ADBLUE mark and is not authorized by it to use said mark in a domain name.

#### **5. Parties' Contentions**

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

The Complainant contends that it has satisfied each of the elements required under the Policy for a cancellation of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is composed of a sign identical to its ADBLUE trademark and the term "plus", adding that the mere addition of non-distinctive text to a complainant's trademark constitutes confusing similarity.

The Complainant contends that the Respondent has not acquired relevant trademark or service mark rights, that the Respondent's use and registration of the disputed domain name was not authorized by the Complainant, and that there exists no connection between the Complainant and the Respondent, adding that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, which is used to host a website offering identical goods to those of the Complainant, and noting that the Respondent has not been authorized by the Complainant to use its ADBLUE trademark for commercial purposes. The Complainant asserts that the Respondent's goods can be readily identified without the use of said mark.

The Complainant contends that the Respondent had knowledge of the Complainant's rights in the ADBLUE trademark at the moment it registered the disputed domain name, due to the inclusion of the entire trademark in the disputed domain name, and the similarity of the products offered on the website associated with the disputed domain name, adding that the Respondent's awareness of said rights at the time of registration suggests bad faith. The Complainant asserts that by using the Complainant's trademark in the disputed domain name and on the linked website, the Respondent intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website.

## **B. Respondent**

The Respondent did not file a formal Response. However, the Respondent did set out its position in two informal emails to the Center, summarized as follows:

The Respondent apologizes for issues caused by the use of the ADBLUE mark on its website, noting that it will remove said word and refer to its product using descriptive terms, including “urea solution”. The Respondent requests that the website associated with the disputed domain name be allowed to remain live for six months to allow its new website to achieve search engine visibility. The Respondent acknowledges the Complainant’s rights in its trademark but suggests that the sudden halt in availability of its products could lead to harmful practices, which would be contrary to the Complainant’s mission, and that negative environmental outcomes should be avoided.

The Respondent notes that the descriptive terms for its product are not widely known in Morocco, and that customers overwhelmingly search for “AdBlue”, such that redirecting consumer behavior to a descriptive term will take time and effort. The Respondent expresses its strong interest in becoming one of the Complainant’s approved and certified licensees in Morocco, whereby it promises to provide the Complainant’s worldwide quality assurance, asserting that there are no such officially licensed products in the Moroccan market at present.

The Respondent contends that the word “AdBlue” has become a generic term in Morocco, adding that the Complainant’s enforcement of its trademark in a country where no officially licensed products are sold raises concerns about fair competition.

## **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.

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.

Although the addition of other terms, here, “plus” 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 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.

Notably, the record shows that the Respondent is using the disputed domain name in connection with a website featuring its own fuel additive product to which it has applied the Complainant's mark without any right to do so, misleadingly suggesting endorsement by or affiliation with the Complainant where none exists. To the extent that the Respondent is making an offering of goods, such offer could not be considered to be bona fide within the meaning of paragraph 4(c)(i) of the Policy. The Respondent's informal response acknowledges its prior awareness of the Complainant's mark, and evinces an understanding of the fact that it is not licensed to use it. The assertions in the Respondent's emails, namely that the marketplace must be prepared for a rebranding of its product, and that there is no officially licensed product currently on the market in Morocco, do not confer rights or legitimate interests upon it within the meaning of the Policy. To the extent that the Respondent considers that the Complainant may be acting anti-competitively in the Respondent's local marketplace, this issue would need to be raised with the competent authority in the territory concerned, but it is not a matter which gives rise to a defense in terms of the Policy. Finally, while the Respondent asserted that the Complainant's mark has become generic in Morocco, it provided no evidence supporting such assertion, which consequently can be accorded no weight by the Panel.

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.

In the present case, the Panel notes that the Respondent has used the disputed domain name, which incorporates the Complainant's trademark, to sell a similar fuel additive product to that covered by said mark, without the Complainant's authorization or license. The use of the Complainant's mark in the disputed domain name in association with a website selling a product similar to that in respect of which the mark is registered, together with the wording of the Respondent's informal email response, demonstrates the Respondent's prior knowledge of the Complainant's rights and an intent to target these for its own commercial gain.

The Panel finds that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website, conform to paragraph 4(b)(iv) of the Policy. While this is sufficient on its own for a finding of registration and use in bad faith in terms of the Policy, the Panel adds that the fact that the Respondent used the disputed domain name in communications following the filing of the Complaint as leverage towards obtaining an official license from the Complainant is a further indication of bad faith in terms of the Policy, as it demonstrates an intention to obtain an unfair commercial advantage arising from the Respondent's use of the Complainant's mark in the disputed domain name, and amounts to an attempt to force the Complainant into an unwanted business arrangement. See item (ix) in the list of example circumstances indicating that a respondent's intent in registering a domain name was in fact to profit in some fashion from or otherwise exploit the complainant's trademark, [WIPO Overview 3.0](#), section 3.1.1.

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 <adblueplus.com> be cancelled.

*/Andrew D. S. Lothian/*

**Andrew D. S. Lothian**

Sole Panelist

Date: November 14, 2024