

## **ADMINISTRATIVE PANEL DECISION**

AGFA-GEVAERT N.V. v. Martin Mayer, AGFA SOLUTIONS

Case No. D2024-4196

### **1. The Parties**

Complainant is AGFA-GEVAERT N.V., Belgium, represented by Novagraaf Belgium NV/SA, Belgium.

Respondent is Martin Mayer, AGFA SOLUTIONS, France.

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

The disputed domain name <agfa-solutions.com> is registered with Hostinger Operations, UAB (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 11, 2024. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 14, 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 (Domain Admin) and contact information in the Complaint. The Center sent an email communication to Complainant on October 14, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on October 18, 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 Respondent of the Complaint, and the proceedings commenced on October 22, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 11, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on November 13, 2024.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on November 19, 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 Belgium that is active in the photographic, medical imaging, and medical software sector.

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

- word mark AGFA, European Union Intellectual Property Office (“EUIPO”), registration number: 003353463, registration date: January 24, 2005, status: active; and
- word mark AGFA, EUIPO, registration number: 009440801, registration date: March 20, 2011, status: active.

Moreover, Complainant has demonstrated to own numerous domain names relating to its AGFA company name and trademark, including since 2013 the domain name <agfasolutions.com> which resolves to Complainant’s main website at “www.agfa.com”, promoting Complainant’s products and related services in the photographic sector internationally.

Respondent, according to the Registrar verification, is located in France. The disputed domain name was registered on July 26, 2024. By the time of rendering this Decision, the disputed domain name does not resolve to any valid content on the Internet. Complainant, however, has demonstrated that at some point before the filing of the Complaint (e.g., on September 9, 2024), the disputed domain name resolved to a website at “www.agfa-solutions.com”, which offered a variety of financial services, thereby prominently displaying Complainant’s AGFA trademark as well as the name of Complainant’s subsidiary AGFA Solutions SAS in France and indicating its own contact address as the official address of said sister company without any authorization to do so.

Complainant requests that the disputed domain name be transferred to it.

#### **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 name. Notably, Complainant contends that it has been active in the photographic, medical imaging, and medical software sector since many years enjoying worldwide reputation and that its AGFA trademark has meanwhile become famous.

Complainant submits that the disputed domain name is confusingly similar to Complainant’s AGFA trademark, as it completely includes the latter combined with the generic word “solutions”. Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Respondent is not known to Complainant, not as an employee, representative, contractor, or otherwise, (2) Complainant has not licensed or otherwise authorized Respondent to use its AGFA trademark or any domain name including it, and (3) to the best of Complainant’s knowledge, Respondent does not own any trademark rights corresponding to the disputed domain name. Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since (1) Complainant’s AGFA trademark is famous and by far predates the registration of the disputed domain name, so that Respondent could not ignore the preexistence of Complainant’s AGFA trademark rights and Respondent

must have been fully aware thereof when selecting the disputed domain name, (2) Respondent intentionally uses Complainant's subsidiary's name and official address to take advantage of Complainant's good reputation, and (3) the term "agfa" consists of random letters strung together with no apparent meaning, and any use of the disputed domain name will therefore likely result in misleading Internet users into believing that the disputed domain name is associated with Complainant.

## **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 name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) that Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is 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 AGFA 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.

Complainant has shown rights in respect of its AGFA trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Also, the entirety of such trademark is reproduced within the disputed domain name, simply added by the term "solutions". Accordingly, the disputed domain name is confusingly similar to Complainant's AGFA trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. Although the addition of other terms (here, the term "solutions") 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 Complainant's AGFA 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 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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. 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 name 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 AGFA trademark, either as a domain name or in any other way. Also, there is no reason to believe that Respondent's name somehow corresponds with the disputed domain name, and Respondent does not appear to have any trademark rights associated with the (invented) term "agfa" on its own. Finally, the disputed domain name at some point in the past (e.g., on September 9, 2024) was engaged in some commercial activity under a website at "www.agfa-solutions.com", which offered a variety of financial services, thereby prominently displaying Complainant's AGFA trademark as well as the name of Complainant's subsidiary AGFA Solutions SAS in France and indicating as own contact address as the official address of said sister company without any authorization to do so. Such use of the disputed domain name constitutes an impersonation of Complainant and its French subsidiary, presumably for some unlawful purpose, and, thus, neither qualifies as bona fide nor as legitimate noncommercial or fair within the meaning of paragraph 4(c) of the Policy. The Panel also notes that Respondent used "AGFA Solutions" as its organization name when registering the disputed domain name which further supports Panel's finding on Respondent's intent to impersonate Complainant. In this context, panels have also long held that the use of a domain name for illegitimate activity (here: impersonating/passing off Complainant) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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

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

Third, 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 of this case leave no doubts that Respondent was fully aware of Complainant's business and its rights in the AGFA trademark when registering the disputed domain name and that the latter clearly is directed thereto. Moreover, using the disputed domain name in some commercial context, thereby prominently displaying Complainant's AGFA trademark as well as the name of Complainant's subsidiary AGFA Solutions SAS in France and indicating as own contact address as the official address of said sister company without any authorization to do so and, consequently, impersonating Complainant and its French subsidiary, is a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to its own Internet presence by creating a likelihood of confusion with Complainant's AGFA trademark as to the source, sponsorship, affiliation, or endorsement of Respondent's Internet presence. Such circumstances are evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy. Also, panels have long held that the use of a domain name for illegitimate activity (here: impersonating/passing off Complainant) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

The Panel, therefore, finds 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 name, <agfa-solutions.com>, be transferred to Complainant.

*/Stephanie G. Hartung/*

**Stephanie G. Hartung**

Sole Panelist

Date: November 28, 2024