

## **ADMINISTRATIVE PANEL DECISION**

Programmads SRL and Mr. Gaëtan Godart v. Michelle Andrew  
Case No. DCO2024-0069

### **1. The Parties**

The Complainants are Programmads SRL, Belgium, internally represented, and Mr. Gaëtan Godart, Belgium, self-represented.

The Respondent is Michelle Andrew, United States of America (“United States”).

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

The disputed domain name <programmads.co> is registered with NameSilo, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 23, 2024. On September 23, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 23, 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, PrivacyGuardian.org LLC) and contact information in the Complaint. The Center sent an email communication to the Complainants on September 27, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint on September 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 October 8, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 28, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 29, 2024.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on November 5, 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 Complaint was filed by both Programmads SRL, a company incorporated under Belgian law and Mr. Gaëtan Godart, its director. It results from the Complainants' undisputed allegations that they are specialized in digital marketing services, data analytics and data management.

In addition, Programmads SRL is the owner of registered trademarks for PROGRAMMADS in different jurisdictions, e.g. European Union Trade Mark ("EUTM") registration no. 018354554, PROGRAMMADS (figurative), registered on May 12, 2021 for goods and services in classes 9, 35, 38 and 41.

Mr. Gaëtan Godart is the registered owner of the domain name <programmads.com> with resolves to the official website of the company Programmads SRL.

The disputed domain name was registered on April 11, 2024, and resolves to an inactive webpage.

Furthermore, the undisputed evidence provided by the Complainants proves that email addresses associated to the disputed domain name were used to contact the Complainants' clients, while pretending to be the Complainants' employees, seemingly in order to obtain improper payment and information.

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

##### **A. Complainants**

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainants contend that:

- (i) the disputed domain name is identical or confusingly similar to the Complainants' PROGRAMMADS trademark since it consists exclusively of the verbal element of the Complainants' registered trademark;
- (ii) the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is using the disputed domain name so as to make believe the customers that it is acting on behalf of Programmads SRL. The Respondent is not hosting a website under the disputed domain name, nor is he performing any legitimate activity under the disputed domain name. The Respondent is using the disputed domain name misleadingly to divert consumers, since the Respondent is notably sending fraudulent emails trying to impersonate the first Complainant;
- (iii) the disputed domain name was registered and is being used in bad faith. The Respondent is using this domain name only to mislead clients and partners of Programmads SRL's and to create confusion with Programmads SRL. By using the disputed domain name, the Respondent intentionally attempted to attract Internet users for commercial gain by creating a likelihood of confusion with the Complainants' mark. By using the disputed domain name, the Respondent is pretending to act on behalf of Programmads SRL and is inviting the clients of Programmads SRL to pay the invoices due to Programmads SRL on the Respondent's bank account.

## **B. Respondent**

The Respondent did not reply to the Complainants' contentions.

## **6. Discussion and Findings**

### **6.1 Procedural issues – Consolidation of the Complainants**

The Complaint was filed by both Programmads SRL, a company incorporated under Belgian law and Mr. Gaëtan Godart, its director.

As set forth in section 4.11.1 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"): "In assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation".

In the light of the above, the Panel finds that the Complainants have a specific common grievance against the Respondent because they share a common legal interest in the trademark rights on which this Complaint is based since the Complainants allege a corporate connection. Against this background, the Panel does not see reasons why a consolidated Complaint brought by the Complainants against the Respondent would not be fair and equitable. Moreover, the Respondent failed to come forward with any allegations or evidence to object the consolidation. For reasons of procedural efficiency, fairness and equity, the Panel therefore accepts the joint Complaint. Therefore, throughout the remainder of the current Decision, the Panel will refer to both Complainants as "the Complainant".

### **6.2 Substantive Issues**

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable". Paragraph 4(a) of the Policy requires a complainant to prove each of the following three elements in order to obtain an order that the disputed domain name be transferred or cancelled:

- (i) the disputed domain name is identical or confusingly similar to 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 has been registered and is being used in bad faith.

The Panel will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

#### **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 verbal element contained in the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy, [WIPO Overview 3.0](#), section 1.7.

The Panel notes that EUTM 018354554 **Programmads** is a figurative trademark. However, the Panel assessment of identity or confusing similarity involves comparing the (alpha-numeric) domain name and the textual components of the relevant mark. To the extent that figurative/stylized elements like the blue quadrilateral on which the element “ads” is placed, are incapable of representation in domain names, the Panel disregards said element for purposes of assessing identity or confusing similarity under the first element (see [WIPO Overview 3.0](#), section 1.10).

Finally, the country-code Top-Level Domain (“ccTLD”) “.co” of the disputed domain name may be disregarded under the first element test. [WIPO Overview 3.0](#) at section 1.11.1.

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.

Moreover, the evidence indicates that the disputed domain name identical to the Complainant’s trademark is being used for a fraudulent email scheme aimed to impersonate the Complainant. Panels have held that the use of a domain name for illegal activity (here, impersonation/passing off, phishing or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

As explained above, it results from the undisputed evidence submitted by the Complainant that the disputed domain name has been used for sending fraudulent emails in the name of alleged employees of the Complainant, seemingly in order to obtain improper payment and information. Such use of the disputed domain name additionally demonstrates that the Respondent not only knew of the Complainant, its business, and marks, but also attempted to pass itself off as the Complainant.

Panels have held that the use of a domain name for illegal activity (here, phishing or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. 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 <programmads.co> be transferred to the Complainant

*/Tobias Malte Müller/*

**Tobias Malte Müller**

Sole Panelist

Date: November 19, 2024