

ADMINISTRATIVE PANEL DECISION

GM Holding S.A. v. LAMA GALBENA SRL

Case No. DRO2023-0010

1. The Parties

The Complainant is GM Holding S.A., Luxembourg, represented by Watt Law Sàrl, Switzerland.

The Respondent is LAMA GALBENA SRL, Romania, represented internally.

2. The Domain Name and Registry

The disputed domain name <go-mio.ro> (“Disputed Domain Name”) is registered with ROTLD (the “Registry”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on August 23, 2023. On August 24, 2023, the Center transmitted by email to the Registry a request for Registry verification in connection with the Disputed Domain Name. On August 25, 2023, the Registry transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On August 28, 2023, the Center informed the Parties in Romanian and English, that the language of the registration agreement for the Disputed Domain Name (the “Registration Agreement”) is Romanian. On September 1, 2023, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission before the Center notified the Respondent of the Complaint, on September 4, 2023, however, on September 23, 2023, the Respondent agreed to the Complainant’s request.

The Center verified that the Complaint together with the amendment to 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 the Respondent of the Complaint, and the proceedings commenced on September 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 24, 2023. On September 23 and 25, 2023, the Center received emails from the Respondent requesting the automatic four calendar day extension for response under paragraph 5(b) of the Rules, which was granted. The due date for Response was extended to September 28, 2023. The Response was filed with the Center on September 28, 2023.

The Center appointed Gabriela Kennedy as the sole panelist in this matter on October 6, 2023. 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.

On October 17, 2023, the Complainant submitted an unsolicited supplemental filing (“Complainant’s Supplemental Filing”).

On October 18, 2023, the Respondent’s submitted an unsolicited supplemental filing (“Respondent’s Supplemental Filing”).

4. Factual Background

The Complainant is a Société de Participations Financières incorporated under Luxembourg law. The Complainant and its affiliated companies carry out activities connected to the culinary and hospitality industry, including but not limited to the international publication and marketing of the Gault Millau French restaurant guide. The Complainant owns various trademarks for or containing GAULT MILLAU (the “Complainant’s Trademark”) around the globe.

The relevant trademark registrations include, *inter alia*, International Trademark Registration No. 1037324 for the mark GAULT MILLAU registered in Classes 7, 8, 11, 16, 20, 21, and 24 on March 24, 2010, designating Switzerland and Liechtenstein; International Trademark Registration No. 978623 for the mark GAULT MILLAU registered in Classes 16, 29, 30, 31, 32, 33, 35, 38, 39, 41, 42, and 43 on April 3, 2008, designating the United States of America, Switzerland, China, Croatia, Russian Federation, and Ukraine; European Union (“EU”) Trademark Registration No. 8947806 in Classes 7, 8, 11, 16, 20, 21, and 24 on September 2, 2010; and EU Trademark Registration No. 6347389 in Classes 9, 16, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 41, 42, and 43 on November 27, 2008.

The Complainant’s Trademark is fully incorporated in the domain names owned by the Complainant’s licensees, where each resolves to the respective websites of the licensees. These include, *inter alia*, <gaultmillau.com>, <gaultmillau.ch>, <gaultmillau.be>, and <gaultmillau.lu>.

The Respondent owns a trademark registration for GO MIO (the “Respondent’s Trademark”) in the EU. The relevant trademark is EU Registration No. 18311983 for GO MIO registered in Classes 35, 41, 42, and 43 on January 22, 2021. The Respondent’s Trademark is fully incorporated in the Disputed Domain Name.

The Disputed Domain Name was registered by the Respondent on February 20, 2020. While drafting the decision and at filing of the Complaint, the Panel notes that the Disputed Domain Name resolves to a website in Romanian, offering products and services under the Complainant’s Trademark and having content similar to the websites of the Complainant’s licensees (the “Respondent’s Website”). On the privacy policy page, the Respondent presents itself as a “Utilizator al licenței Gault&Millau pentru România”, which translates to “Gault&Millau License User for Romania”.

5. Parties' Contentions

A. Complainant

- (a) Under a holistic aural or phonetic comparison of the Complainant's Trademark and the Disputed Domain Name, the Complainant submits that the Disputed Domain Name is confusingly similar to the Complainant's Trademark, on the basis of "go-mio" being the phonetic translation of GAULT MILLAU in any language, the substantive and visual content of the Respondent's Website, and the Respondent's representation that it is a Gault Millau licensee.
- (b) The Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent is not and has never been a licensee of the Complainant, and has not obtained any authorization from the Complainant to use the Complainant's Trademark as part of a domain name or otherwise. The Disputed Domain Name is being used to fraudulently mislead the general public into believing that the products and services offered on the Respondent's Website are identical to those offered by the Complainant, and to divert the Complainant's customers for the Respondent's own commercial gain, which does not constitute legitimate use of the Disputed Domain Name.
- (c) Both the Respondent's registration and use of the Disputed Domain Name establish the Respondent's bad faith. Given the history of the Gault Millau brand and reputation that the Complainant has acquired in the Complainant's Trademark, as well as the degree of confusing similarity between the Disputed Domain Name and the Complainant's Trademark, the Respondent must have been fully aware of the existence of the Complainant's rights in the Complainant's Trademark when the Respondent registered and used the Disputed Domain Name. The Respondent intentionally attempted to attract the Complainant's existing and potential customers to the Respondent's Website by creating a likelihood of confusion with the Complainant's Trademark to generate financial gain. Therefore, the Respondent has registered and used the Disputed Domain Name in bad faith.

B. Respondent

- (a) The Respondent stated that it does not contest the Complainant's analysis on the Respondent's usage of the Gault Millau material, logo, and name. The Respondent made no submissions on the Complainant's contention that the Disputed Domain Name is confusingly similar to the Complainant's Trademark.
- (b) The Respondent contends that it has full rights and legitimate interests in respect of the Disputed Domain Name by virtue of it being licensed by GAULTMILLAU SA ("Purported Licensor") to operate the Gault Millau brand from 2017 ("Purported License"). The Complainant acknowledges that it belongs to the same company conglomerate as the Purported Licensor. The Respondent has exhibited part of the agreement granting the Purported License dated June 26, 2017, showing that the Purported License was for a period of 5 years, automatically renewable by tacit agreement. To supplement, the Respondent owns the Respondent's Trademark and the domain name <gault-millau.ro>, the latter of which the Panel notes was registered on September 26, 2017. The Respondent subsequently adopted the Disputed Domain Name as it was easier to pronounce for the Romanian market. The Respondent also exhibited a press release and email correspondences with the Purported Licensor to substantiate the existence of the Purported License and the Gault Millau group's knowledge of its use of the Disputed Domain Name.
- (c) In light of the above, the Respondent denies that it had registered or used the Disputed Domain Name in bad faith.

6. Discussion and Findings

6.1 Language of Proceedings

The Complaint was filed in English. The language of the Registration Agreement is Romanian. On September 1, 2023, the Complainant requested that English be the language of the proceedings. The Complainant submitted that the Respondent and its employees are familiar with English, that the Complainant and its representatives have no proficiency in Romanian, that requiring the Complainant to retain translate the Complaint with its Annexes would cause significant financial and logistical and unavoidable delay to the proceedings, and that English is the most widely used language in the world. On September 23, 2023, the Respondent sent an email agreeing to the Complainant's request.

Pursuant to paragraph 11(a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

Given the Respondent's consent, the Panel determines under paragraph 11(a) of the Rules that English shall be the language of the present proceedings, but on the condition that the Respondent shall be permitted to submit any documents or assertions in Romanian.

6.2 Supplemental Filings

On October 17, 2023, the Complainant sent an unsolicited Complainant's Supplemental Filing to the Center. In short, the Complainant alleges in the Complainant's Supplemental Filing that the Purported License was granted not to the Respondent but to Lama Jaune Sprl, a now-bankrupt company which belonged to the Respondent's owner; and that the Purported Licensor had terminated the Purported License by an affiliated company of the Complainant due to Lama Jaune Sprl's default in payment obligations.

On October 18, 2023, the Respondent sent an unsolicited Respondent's Supplemental Filing to the Center. The Respondent claims that the Purported License was indeed granted to it and that the Purported License had not been terminated.

Neither the Rules nor the Supplemental Rules make express provision for supplemental filings, except at the request of the panel (see paragraph 12 of the Rules). Generally, UDRP panels only accept supplemental filings in exceptional circumstances where such a filing clearly shows its relevance to the case and the filing party shows that it was unable to provide the information contained therein in the original complaint or response (see section 4.6 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Having reviewed the Parties' Supplemental Filings, the Panel is of the opinion that they contain responses to points respectively raised by the other Party. However, the Panel considers that a supplementary filing by a party merely to respond to issues or points raised by the other party which could have otherwise been raised in the original submissions is not reason enough to allow the supplemental filing (see *e.g.*, *Mejeriforeningen Danish Dairy Board v. Cykon Technology*, WIPO Case No. [D2010-0776](#)). Furthermore, the Complainant has not demonstrated or addressed any exceptional circumstances as to why it was unable to provide the information contained in the Complainant's Supplemental Filing in the Complaint. The existence, scope, and alleged termination of the Purported License could have easily been explained in the Complaint.

In light of the above, the Panel does not see any exceptional circumstances in this case that necessitates allowing the Parties' Supplemental Filing to be admissible. Even if they were to be admitted, the Panel considers that they would not affect the Panel's finding that the current dispute is not suitable for resolution under the UDRP (see next section). Accordingly, the Supplemental Filings are not admitted.

6.3 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”.

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements:

- (i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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 by the Respondent in bad faith.

However, the Panel considers the present dispute to extend beyond the scope of the UDRP.

The Complainant contends in the Complaint that the Respondent is not and has never been a licensee of the Complainant, and has not obtained any authorization from the Complainant to use the Complainant’s Trademark as part of a domain name or otherwise. The Complainant points out that the Respondent’s misrepresentation of itself as a Gault Millau licensee is fraudulent and misleading. On the other hand, the Respondent contends that it has full rights and legitimate interests in the Disputed Domain Name based on the Purported License from the Purported Licensor, being the Complainant’s indirect subsidiary.

The dispute therefore involves many factual and legal questions regarding the relationship between the Respondent, the Complainant, and parties to the Purported License, as well as the scope and termination (if any) of the Purported License.

The Panel notes that a complaint may be denied on the basis that it is impossible and inappropriate for the panel to attempt to reach a reasoned conclusion with respect to a broad dispute where examination of evidentiary records and credibility of the parties are essential. Where the depth of investigation and examination required lies beyond the ability of a panel restricted to a written record in a summary process, legal proceedings to be conducted in a court of law are the more appropriate forum to fully explore the complexities of fact and law (see *Dr. Arlen Lyle Salte, Break Forth Ministries Society v. Power to Change*, WIPO Case No. [D2019-1806](#)).

The Panel also notes that past panels have denied cases not on the UDRP merits but on the narrow grounds that the dispute between the parties exceeds the relatively limited “cybersquatting” scope of the UDRP, and would be more appropriately addressed by a court of competent jurisdiction (see section 4.14.6 of the [WIPO Overview 3.0](#)). Past UDRP panels, their governing instruments, and legislative background, are all clear that the Policy was designed to prevent extortionate or abusive behavior also known as “cybersquatting” and cannot be used to litigate all disputes involving domain names (see *Philippe Dagenais designer inc. / Philippe Dagenais v. Groupe Dagenais MDC inc. (formerly Philippe Dagenais Mobilier Décoration Conseils Inc.) / Mobilier Philippe Dagenais*, WIPO Case No. [D2012-0336](#)). A panel may decide that the administrative proceeding is not an appropriate forum to evaluate certain contentions of the parties, while it has not been provided the facts or authority necessary to make that determination (see *Pinnacle Intellectual Property v. World Wide Exports*, WIPO Case No. [D2005-1211](#)).

The Panel is not in a position to make findings on the factual and legal questions discussed above, which is beyond the Panel’s jurisdiction and would require a far more complete evidentiary record than what has been provided. On one hand, the Panel recognizes that there seems to be *prima facie* arguments in support of the Complainant’s position under the UDRP: (i) the Complainant’s Trademark has phonetic similarity with the Disputed Domain Name and the broader case context can contribute to the Panel’s decision under the first element; (ii) the Respondent might not have been permitted under the Purported License or otherwise

to register and use the Respondent's Trademark and the Disputed Domain Name, or the Purported License might have been validly terminated; and (iii) the Respondent's registration and use of the Disputed Domain Name could be *prima facie* in bad faith. On the other hand, the Respondent has submitted evidence (such as the Purported License agreement, press release, emails with the Gault Millau group, and record of the Respondent's Trademark) that goes entirely against the Complaint, which was initially presented by the Complainant as a typical "cybersquatting" case. As mentioned, the Panel does not consider the Parties' Supplemental Filings to be admissible.

Furthermore, the Panel would have to examine the possible legal effects of French law (which governs the Purported License) and possibly Romanian law on the scope and status of the Purported License or other agreement in order to come to a conclusion on this case. This analysis would not fall within the scope of UDRP proceedings nor is the Panel qualified to make such an assessment.

The Panel therefore concludes that the present case falls outside the scope of the Policy in light of the complex factual matrix that underlies the dispute. Therefore, it is for a court of competent jurisdiction with greater inquisitorial powers to determine the nature of the relationship between the Parties, the validity and content of the Purported License, and what impact these factors might have, *inter alia*, on the ownership or disposition of the Disputed Domain Name (cf. *e.g.*, *Private Media Group v. Anton Enterprises Inc., d/b/a Private USA*, WIPO Case No. [D2002-0692](#); *Run-Time Consulting Inc. v. BetterMarketing Inc. o/a Agito Internet Marketing*, WIPO Case No. [D2008-1062](#)).

Therefore, the Panel holds that the current dispute is not suitable for resolution under the UDRP and accordingly there is no need to consider the merits under the UDRP. That said, this Decision does not prevent either Party from pursuing this dispute in a court of competent jurisdiction.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Gabriela Kennedy/

Gabriela Kennedy

Sole Panelist

Date: October 20, 2023