

ADMINISTRATIVE PANEL DECISION

Railteam B.V. v. Alex Nucci, Gramercy
Case No. D2024-3072

1. The Parties

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

The Respondent is Alex Nucci, Gramercy, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <monorailteam.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 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 26, 2024, the Registrar transmitted by email to the Center its verification response:

- (a) confirming the disputed domain name is registered with it;
- (b) confirming the language of the registration agreement is English; and
- (c) confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 July 31, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 20, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 21, 2024.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on August 26, 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 corporate vehicle through which a consortium of seven European railway operators promotes and provides high-speed rail travel throughout a number of European countries. The consortium is comprised of Deutsche Bahn, SNCF, ÖBB, Eurostar, SBB, SNCB, and NS International.

The Complainant itself was incorporated under its name in Netherlands (Kingdom of the) in 2007.

The Complainant's network operates through numerous cities in a number of European countries including the United Kingdom (London), France (from Lille-Europe in the north, to Strasbourg and Lyon in the east, Marseille and Perpignan in the south and Nantes and Rennes in the west amongst many others), Belgium, Netherlands (Kingdom of the), Germany (from Aachen to Freiburg, Munich, Dresden, Berlin and Hamburg and many others), Austria (including Vienna, Innsbruck), Italy (Milan and Turin), Switzerland, Luxembourg and Spain (Barcelona).

The Complainant promotes its services under the name RAILTEAM from a number of websites including "www.railteam.com", the domain name for which was first registered in February 2004, "www.railteam.fr", the domain name for which was first registered in December 2005 and "www.railteam.eu" which was first registered in July 2006.

The Complaint includes evidence that the Complainant owns a number of registered trademarks for, or including, RAILTEAM. For present purposes, it is sufficient to mention:

- (a) French Registered Trademark No. 3374388, RAILTEAM, which was filed on August 5, 2005 in respect of a range of goods and services in International Classes 16, 35 and 39; and
- (b) International Registration No. 887130, RAILTEAM, which was registered on January 6, 2006 in respect of a range of goods and services in International Classes 12, 16, 35, 39 and 43 and which designated 27 countries including Australia, Japan, Republic of Korea and China as well as numerous European countries.

According to the Whois report, the disputed domain name was registered on August 4, 2023.

When the Complaint was filed, the disputed domain name resolved to a parking page in French provided by the Registrar with three links under the label "Associated searches" for various train travel booking services.

5. Discussion and Findings

No response has been filed. The Complaint and Written Notice have been sent, however, to the Respondent at the electronic and physical coordinates confirmed as correct by the Registrar in accordance with paragraph 2(a) of the Rules. Bearing in mind the duty of the holder of a domain name to provide and keep up to date correct Whois details, therefore, the Panel finds that the Respondent has been given a fair opportunity to present his or its case.

When a respondent has defaulted, paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint in the absence of exceptional circumstances. Accordingly, paragraph 15(a) of the Rules requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable.

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (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.

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

As noted in section 4 above, the Complainant has proven ownership of registered trademarks for RAILTEAM simpliciter.

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 second stage of this inquiry therefore simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of "likelihood of confusion" under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties, the date they were acquired and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See e.g., [WIPO Overview 3.0](#), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top-Level Domain ("gTLD") component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.1.

Disregarding the ".com" gTLD, the disputed domain name consists of the Complainant's registered trademark prefixed by the term "mono". As this requirement under the Policy is essentially a standing requirement, the addition of this term does not preclude a finding of confusing similarity as, apart from anything else, the Complainant's trademark remains visually and aurally recognisable within the disputed domain name. See e.g., [WIPO Overview 3.0](#), section 1.8.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is confusingly similar to the Complainant's trademark and the requirement under the first limb of the Policy is satisfied.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a bona fide offering of goods or services; or
- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

While 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 often impossible 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. 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.

The Respondent registered the disputed domain name after the Complainant began using its trademark and also after the Complainant had registered its trademark.

The Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it.

The disputed domain name is not derived from the Respondent's name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived. From the available record, the Respondent does not appear to hold any trademarks for the disputed domain name.

Further, the disputed domain name is used (at least in France, where the Complainant's representative is located) to host a parked page with links directed to train travel and booking services. Thus, it appears that the disputed domain name is being used to capitalise on the goodwill of the Complainant's trademark or otherwise target the Complainant. Given the nature of the Complainant's trademark, the manner of the Respondent's use cannot be said merely to be related to the dictionary meaning of the words or phrase comprising the disputed domain name. Further still, there is no evidence of attempts by the Respondent to suppress advertising which targets the Complainant. This does not qualify as legitimate use under the Policy. [WIPO Overview 3.0](#), section 2.9.

These matters, taken together, are sufficient to establish a prima facie case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain name. The basis on which the Respondent has adopted the disputed domain name, therefore, calls for explanation or justification. The Respondent, however, has not sought to rebut that prima facie case or advance any claimed entitlement. Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

C. Registered and Used in Bad Faith

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name

has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g., *Group One Holdings Pte Ltd v. Steven Hafto* WIPO Case No. [D2017-0183](#).

The Panel recognises that the Respondent appears to be located in the United States where the Complainant does not have a registered trademark (or at least has not provided evidence of such a registration).

However, the website to which the disputed domain name resolved was available in France and in the French language when the Complaint was filed. Thus, it cannot be said that the Respondent is making some purely local use of the disputed domain name quite remote from the Complainant and the Complainant's business.

Given that the disputed domain name is not wholly descriptive and the targeting of a French audience, the Panel infers that the Respondent registered the disputed domain name to take advantage of its resemblance to the Complainant's trademark. The Panel is all the more willing to draw that inference in the absence of any attempted justification or explanation by the Respondent. Accordingly, the Panel finds that the disputed domain name has been registered and is being used in bad faith under the Policy.

Accordingly, the Complainant has established all three requirements under 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 <monorailteam.com> be transferred to the Complainant.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: September 4, 2024