

## **ADMINISTRATIVE PANEL DECISION**

Grohe AG v. Super Privacy Service LTD c/o Dynadot / aleyna cepci  
Case No. D2022-1698

### **1. The Parties**

The Complainant is Grohe AG, Germany, represented by Wolpert Rechtsanwälte, Germany.

The Respondent is Super Privacy Service LTD c/o Dynadot, United States of America / aleyna cepci, Türkiye.

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

The disputed domain name <groheplus.com> is registered with Dynadot, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 11, 2022. On May 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 13, 2022, 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) disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint.

The Center sent an email communication to the Complainant on May 18, 2022, 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 amendment to the Complaint on the same date.

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 June 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 6, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 15, 2022.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on July 28, 2022. 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 one of the world's leading suppliers of bathroom and kitchen fittings.

Since September 5, 2017, it has been the owner of an International Registration for the trademark GROHE, Registration Number 1384073, in respect of a range of relevant goods in International Classes 9, 11, 20 and 21. The numerous countries designated in the International Registration include Türkiye. The Complainant also has a European Union trademark registration for GROHE PLUS, No. 018670555, which was filed on March 10, 2022 and registered on August 10, 2022.

The disputed domain name was registered on March 10, 2022. So far as the record in this proceeding shows, it has not been put to any active use. Instead, the Respondent has advertised it for sale on the website at Dan.com for an asking price of USD 19,550.

#### **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. The courier attempting delivery of the Written Notice was unable to complete delivery. 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.

The Complainant has proven ownership of the registered trademark for GROHE identified in section 4 above. The Complainant's trademark, GROHE PLUS also became registered during the pendency of the Complaint. In view of the prior registration of the GROHE trademark, however, it is not necessary to invoke its status as a registered trademark in the circumstances of this case.

The second stage of this inquiry 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 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.

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

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.

The onus of proving this requirement, like each element, falls on the Complainant. Panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually

sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See e.g., [WIPO Overview 3.0](#), section 2.1.

The Respondent<sup>1</sup> registered the disputed domain name after the Complainant had registered its GROHE trademark, and on the same date of the application for the GROHE PLUS trademark.

The Panel infers from the Complaint that the Complainant has not authorised the Respondent to register or use the disputed domain name. Nor is the Respondent affiliated with the Complainant. The Respondent has not claimed otherwise.

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.

So far as the record in this proceeding shows “grohe” is not a dictionary word and does not otherwise have a meaning apart from its use as the Complainant's name and trademark. In any event, it appears that the Respondent merely uses the disputed domain name by offering it for sale. That would not ordinarily qualify as a good faith offering of goods or services in the absence of some other demonstrated entitlement to the name. See e.g. [WIPO Overview 3.0](#) section 2.10.

Merely using the disputed domain name to offer it for sale, in the circumstances of this case, does not qualify as a legitimate noncommercial or fair use for the purposes of paragraph 4(c)(iii) of the Policy.

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. *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd* WIPO Case No. [D2010-0470](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

As the term “Grohe” appears to be an invented or coined term and not descriptive and the Respondent does not appear to have any connection with the term, it is likely that the Respondent did register the disputed domain name with knowledge of the Complainant and its trademark. Furthermore, the disputed domain name was registered on the date when the Complainant's application for GROHE PLUS was filed. In those circumstances, there is a strong inference that the Respondent has adopted the disputed domain name because of its trademark significance and in anticipation of trademark rights, see section 3.8.2 of [WIPO Overview 3.0](#). In circumstances where the Respondent has not sought to claim, let alone establish, that he or she has rights or legitimate interests in the disputed domain name, therefore, the Panel finds the Respondent has registered the disputed domain name in bad faith.

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<sup>1</sup> As the first-named Respondent is a privacy service, the Panel will refer to the second-named Respondent as the Respondent unless the context requires the contrary.

The price at which the Respondent is offering the disputed domain name for sale, USD 19,550, is well in excess of the ordinary cost of registering a domain name in the “.com” gTLD and likely to be in excess of the Respondent’s out-of-pocket costs. Merely offering it for sale in these circumstances constitutes use in bad faith.

Accordingly, the Complainant has established all three requirements under the Policy.

## **6. 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, <groheplus.com>, be transferred to the Complainant.

*/Warwick A. Rothnie/*

**Warwick A. Rothnie**

Sole Panelist

Date: August 11, 2022