

## **ADMINISTRATIVE PANEL DECISION**

GO IN GmbH v. SpiritOfLogic GmbH

Case No. D2022-2752

### **1. The Parties**

Complainant is GO IN GmbH, Germany, represented by Busse & Partner Law Firm, Germany.

Respondent is SpiritOfLogic GmbH, Germany, represented by GRIP LEGAL, Germany.

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

The disputed domain name <goin.com> is registered with Mesh Digital Limited (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 27, 2022. On July 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 29, 2022, 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 and contact information in the Complaint. The Center sent an email communication to Complainant on August 1, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on August 3, 2022.

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 Respondent of the Complaint, and the proceedings commenced on August 5, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 25, 2022. Upon request of Respondent, the due date for Response was automatically extended to August 29, 2022, pursuant to the Rules, paragraph 5(b). The Response was filed with the Center on August 29, 2022.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on September 6, 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.

Complainant sent a supplemental filing to the Center on September 9, 2022. Respondent, in turn, sent a supplemental filing to the Center on September 14, 2022. On September 20, 2022, the Panel issued a Panel Order seeking further information from Respondent until September 26, 2022, and extending the due date for the Panel to render its decision accordingly. Respondent sent an email communication with related information to the Center on September 25, 2022.

#### 4. Factual Background

Complainant is a company organized under the laws of Germany that is active in the furniture industry. Founded back in 1972 in Munich, Complainant has ever since expanded and is meanwhile delivering customers with furniture all over the world.

Complainant states – and Respondent has not questioned such statement – to be the exclusive licensee of the following registered trademarks in relation to its company name and brand “GO IN”:

- Word mark GO IN, German Patent and Trademark Office (DPMA), registration number: 30086330, registration date: January 11, 2001, with protection for goods in Nice classes 6, 20, and 24, status: active;
- Word Mark GO IN, International Registration (World Intellectual Property Organization), registration number: 813709, registration date: August 5, 2003, with protection for goods in Nice class: 20, status: active.

Moreover, Complainant has demonstrated to be the owner of various domain names relating to its GO IN trademark, *inter alia*, the domain names <goin.de>, <goin.eu>, <goin.ch>, as well as <goin-furniture.com>, each resolving to individual websites promoting Complainant’s furniture products with respect to specific geographical markets (e.g. Germany, European Union, Switzerland, and worldwide).

Respondent is a company as well organized under the laws of Germany whose registered company purpose since 2009 is software trading and development. The disputed domain name was created in 1998 and registered by Respondent from its previous owner in 2014, meanwhile redirecting to a website at “www.goin.com” that displays links to Respondent’s Twitter account “@goin\_com” (established in January 2021) and Respondent’s Reddit account “reddit r/goin” (established in June 2014).

In or around November 2021, Complainant contacted Respondent anonymously via a domain name broker to find out about Respondent’s willingness to sell the disputed domain name. A first offer over an amount of EUR 1,000.00 remained unanswered by Respondent and a second offer over an amount of EUR 1.500,00 was rejected by Respondent on November 19, 2021, indicating Respondent’s doubts that Complainant would be willing to pay the price which Respondent expected, namely an amount in the range of EUR 150,000.00. On December 23, 2022, Complainant sent an email and attached letter to Respondent through its legal representatives, indicating that they did not see any legitimate rights as to why Respondent should hold the disputed domain name and that Complainant as the owner of rights in the GO IN trademark thereby would be blocked from using the disputed domain name itself; therefore, and in order to avoid time and cost consuming legal proceedings before the WIPO Center and the German courts, Respondent was asked if and under what conditions it would sell the disputed domain name to Complainant. As Respondent kept silent on this correspondence, Complainant through its legal representative sent a second email to Respondent on March 16, 2022, requesting a response to the

earlier email and attached letter by March 23, 2022, otherwise Complainant would pursue this matter further by taking the necessary legal actions. On April 13, 2022, Respondent sent an email to Complainant's legal representative, indicating that it got offers to sell the disputed domain name on a regular basis, but that such sale was not intended as the disputed domain name had been acquired by Respondent for a specific project which had nothing to do with Complainant's business; therefore, it was unrealistic in the eyes of Respondent that Complainant was interested to submit an offer as interesting as that Respondent would be willing to give up such project. By email of April 22, 2022, Complainant through its legal representative finally offered an amount of EUR 20,000.00 for the disputed domain name, to which Respondent answered by email of April 28, 2022, that offers in such a range would be a waste of time to both parties.

Complainant requests that the disputed domain name be transferred to Complainant, while Respondent requests that the Complaint should be dismissed.

## **5. Parties' Contentions**

### **A. Complainant**

Complainant contends that it is worldwide active on the Internet under various national domain names but complains that it is not able to present its international website using a short and easy URL such as "www.goin.com". Also, Complainant purports to be regularly informed by customers and business partners that they landed on the website under the disputed domain name and that they were very irritated not to find any information regarding Complainant, and, therefore, needed some time to find Complainant's international website under "www.goin-furniture.com".

Complainant submits that the disputed domain name is identically reflecting both Complainant's company name and trademark GO IN. Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Respondent is showing no relevant content or information on the Internet, neither on the website under the disputed domain name nor under its Twitter and Reddit accounts, thus Respondent is not using the disputed domain name with a *bona fide* offering of goods or services, (2) Respondent is not commonly known by the disputed domain name and has not acquired any trademark rights or name rights or business name rights in relation thereto, and (3) respondent is not making a legitimate noncommercial or fair use of the disputed domain name, either. Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since (1) the disputed domain name was registered in order to prevent Complainant from reflecting its company name in a corresponding domain name, and (2) by asking such an outrageous amount for the transfer of the disputed domain name in a range of EUR 150,000.00, Respondent is demonstrating that it acquired the disputed domain name for the purpose of selling it for valuable consideration in excess of Respondent's out-of-pocket costs directly related to the disputed domain name.

### **B. Respondent**

Respondent stresses that (1) the letter combination "go in" is extremely broad, consists of two very unspecific words and represents everyday language as a term, with no apparent relation to Complainant's business absent any nexus at all to furniture as sold by Complainant, (2) a simple Google search reveals that the letter combination "go in" is used by several other parties and organizations (e.g. "OTTO", one of Germany's largest mail order companies) who also enjoy trademark rights in the term "GO IN", so that Complainant by no means has the exclusive claim thereto, (3) Respondent's intended use of the disputed domain name is in an entirely different field, namely in the event space, which does not have any overlap with the goods protected under Complainant's GO IN trademarks, (4) four-letter domain names are rare and it cannot be expected for a company to possess a generic/unspecific four-letter domain name based

on unspecific trademark claims, and (5) the realistic user experience in the year 2022 is not depending on a Top-Level Domain and any Internet user in the year 2022 is able to use a search engine like Google to find Complainant within seconds, if not already enforced by their browser's address/search bar in this direction. Moreover, Respondent contends to use the disputed domain name for a project called "goin.com" (as short for "goin" or "going") that is in the works since Respondent acquired the disputed domain name in 2014, with the mark up of the "goin.com" landing page existing since then on a hidden subpage and ongoing talks with investors for this project, whose further development has been delayed, but not abandoned. Since January 2021, both Respondent's Twitter and Reddit accounts are linked to the index page of the website under the disputed domain name and a technical prototype of such website is still being worked on, but not yet fully developed, which is why a full launch is not yet possible and which is why the concept has still to be kept confidential. Finally, Respondent argues neither to have registered nor to use the disputed domain name in bad faith since (1) in the year 2014, when the disputed domain name was acquired by Respondent, it had been for sale for quite some time by the previous owner, thus, Complainant would have had plenty of time to acquire the disputed domain name if deemed necessary, (2) Respondent's business is the development of software and it never sold a single domain name nor tried to do so, but only owns domain names associated with existing, planned, or potential future projects, and (3) Respondent constantly receives purchase requests for the disputed domain name which are always categorically declined because of the intended use for the "goin.com" project, and very annoying purchase requests are being answered with a high price to deter future inquiries.

## **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; and
- (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.

### **A. Supplemental Filings**

Complainant sent a supplemental filing to the Center on September 9, 2022, thereby commenting on the Response of August 29, 2022. Respondent, in turn, sent a supplemental filing to the Center on September 14, 2022, thereby commenting on Complainant's supplemental filing of September 9, 2022, and offering e.g. to provide a further formal Response. On September 20, 2022, the Panel issued a Panel Order affording Respondent until September 26, 2022, to specifically provide (1) screenshots of the "mockup" page(s) referenced in the initial Response and (2) evidence and explanation on how the "goin.com" project has developed since the registration of the disputed domain name in 2014. Respondent sent an email communication with related information to the Center on September 25, 2022.

Paragraphs 10 and 12 of the Rules grant the Panel sole discretion to determine the admissibility of unsolicited supplemental filings. While paragraph 10(d) of the Rules states that: "The Panel shall determine the admissibility, relevance, materiality and weight of the evidence", paragraph 12 of the Rules provides that: "In addition to the complaint and the response, the Panel may request, in its sole discretion, further statements or documents from either of the Parties".

The principles which the Panel should apply in deciding whether or not to admit unsolicited supplemental filings have been considered in many cases under the Policy and have meanwhile been widely agreed among UDRP panels, in that such supplemental filings should be generally discouraged and only be excepted in "exceptional" circumstances (see WIPO Overview of WIPO Panel Views on Selected UDRP

Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.6). In the case at hand, the Panel is willing to accept such “exceptional” circumstances and, thus, the supplemental filings provided by both Parties, in order to treat both Parties equally and fair (paragraph 10 of the Rules) and to allow for a just and sound decision still in due time (paragraph 15(b) of the Rules).

### **B. Identical or Confusingly Similar**

The Panel concludes that the disputed domain name is identical to Complainant’s GOIN trademark, and that Complainant, thus, has standing to file this UDRP Complaint.

The disputed domain name exclusively incorporates the entire GOIN trademark. Moreover, it has been held in many UDRP decisions and has become a consensus view among panelists (see [WIPO Overview 3.0](#), section 1.11) that the applicable Top-Level Domain (“TLD”) in a domain name is generally viewed as a standard registration requirement and as such is typically disregarded under the first element test. Accordingly, the existence of the generic TLD “.com” does not prevent the finding of identity arising from the entire incorporation of Complainant’s GOIN trademark in the disputed domain name.

Therefore, Complainant has established the first element under the Policy set forth by paragraph 4(a)(i).

### **C. Rights or Legitimate Interests**

This Complaint brought under the UDRP, moreover, requires Complainant to prove that Respondent has no rights or legitimate interests in respect of the disputed domain name (paragraph 4(b)(ii) of the Policy). In this relation, the UDRP sets forth the following examples as circumstances where a respondent may have rights or legitimate interests in the disputed domain name (paragraph 4(c) of the Policy):

- (i) before any notice to the respondent of the dispute, the use by the respondent of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the 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 it did not acquire trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Notwithstanding that the burden of proof in proceedings substantiated under the Policy is on the side of the complainant, previous UDRP panels have recognized that proving that a respondent lacks rights to 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 of the Policy shifts to the respondent to come forward with relevant evidence demonstrating actual rights to or legitimate interests in the domain name. If the respondent fails to produce such relevant evidence, the complainant is deemed to have satisfied the second element (see [WIPO Overview 3.0](#), section 2.1).

While most of the Parties’ contentions in this UDRP proceeding have been reciprocally disputed, it remains, however, undisputed (1) that Respondent is not commonly known by the disputed domain name, and so far has not yet acquired trademark or service mark rights in the term “GO IN”, and (2) that Respondent is not making any legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain.

It is, in turn, highly disputed between the Parties whether or not Respondent, before any notice of this dispute, made use of, or demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services (paragraph 4(c)(i) of the Policy). In this context, Complainant states that Respondent is showing no relevant content or information on the Internet, neither on the website under the disputed domain name nor under its Twitter and Reddit accounts, thus, is not using the disputed domain name with a *bona fide* offering of goods or services. Respondent, however, claims to use the disputed domain name for a project called “goin.com” (as short for “goin” or “going”) that is in the works since Respondent acquired the disputed domain name in 2014, with the mark up of the “goin.com” landing page existing since then on a hidden subpage and ongoing talks with investors for this project, whose further development has been delayed, but not abandoned. To support such claim, Respondent has provided, *inter alia*, a screenshot of the so-called “FTP (File Transfer Protocol) folder” demonstrating that mockup subpages to a website under the disputed domain name have been set up in June 2014, thus shortly after the acquisition of the disputed domain name. Moreover, Respondent has also provided to the Panel – as a consequence of Panel Order No.1 – evidence of contractual arrangements between Respondent and staff members in relation to the “goin.com” project. Those submissions and accompanying documentary evidence put forward by Respondent are rounded up by the fact that Respondent undisputedly opened up a Reddit account “reddit r/goin” back in June 2014 and also established a Twitter account “@goin\_com” in January 2021, both of which can be reached ever since 2021 through the website under the disputed domain name.

The Panel realizes that it has been quite some time since the year 2014 when Respondent acquired the disputed domain name and started with documented preparations to build up a website project thereunder, and that apparently nothing much has happened ever since, despite the more recent establishment of the Twitter account and the redirection of Internet users since 2021 from the website under the disputed domain name to Respondent’s two social media accounts in total – without yet any relevant activities thereunder. Still, the Panel also recognizes that apart from this timing dimension, there is no reason to devalue the submissions and accompanying documentary evidence put forward by Respondent, allowing the conclusion that Respondent back in 2014 and again in 2021 – which undisputedly is well before any notice of Respondent of this dispute – Respondent had started at least demonstrable preparations to make use of the disputed domain name in connection with an Internet project thereunder, which – absent any such indications in the case file – was neither targeting Complainant nor Complainant’s business, but allegedly was meant to create an event space. In this context – and as it has been put forward by Respondent – it enjoys importance in the eyes of the Panel that the letter combination “goin” has quite a broad meaning (either as “go in” in the sense of “go into” or as “goin” as a short form of “going”), which makes it even more likely that the intended project under the disputed domain name had nothing to do with specifically Complainant’s GOIN trademark, and thus, should be considered *bona fide* within the meaning of paragraph 4(c)(i) of the Policy.

The Panel, therefore, holds that Respondent has succeeded to produce relevant evidence that it enjoys legitimate rights or interests in the disputed domain name by making demonstrable preparations to use it in connection with a *bona fide* offering of goods or services unrelated to Complainant or Complainant’s business or Complainant’s GOIN trademark, which is why Complainant fails to establish the second element under the Policy set forth by paragraph 4(a)(ii).

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

Simply as a matter of completeness and in order to round off the full picture created by the particular circumstances of this case, the Panel finally states that Respondent neither has registered nor is using the disputed domain name in bad faith.

Under the UDRP, the notion of bad faith is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark, with paragraph 4(b) of the policy providing a non-exclusive set of scenarios constituting evidence of a respondent's bad faith (see [WIPO Overview 3.0](#), section 3.1).

The case before this Panel gives no reason at all to believe that Respondent registered the disputed domain name primarily for the purpose of disrupting Complainant's business (paragraph 4(b)(iii) of the Policy). Also, the way in which the disputed domain name so far has been made use of by Respondent gives no rise to the assumption that Respondent intentionally attempted to attract, for commercial gain Internet users to its website under the disputed domain name, by creating a likelihood of confusion with Complainant's GOIN trademark (paragraph 4(b)(iv) of the Policy). Moreover, the case file lacks any indications – and Complainant has nothing brought forward to allow to conclude – that Respondent has engaged in a pattern of conduct to prevent Complainant from reflecting its GOIN trademark in corresponding domain names. Rather, it is undisputed that Complainant owns a variety of domain names in relation to its GOIN trademark, and that Respondent apparently owns no domain names beside the disputed domain name, which include term “go in”. The mere fact that Complainant wishes to also own the disputed domain name which it considers best to present its international website on a “short and easy URL” is no justification whatsoever to find for a bad faith registration of the disputed domain name by Respondent, especially in light of Respondent's credible claims regarding the inherent value of a four-letter domain name comprised of dictionary terms with broad meaning. Finally, it is also undisputed between the Parties that Respondent had made no attempts whatsoever since 2014 to contact Complainant with any offer as to transfer the disputed domain name for valuable consideration in excess of Respondent's documented out-of-pocket costs directly related to the domain name (paragraph 4(b)(i) of the Policy). Rather, it was Complainant who made various attempts to ask Respondent to place an offer for selling the disputed domain name, even though Respondent had shown several times little if no interest in such sale (e.g. by initially neither responding to the offers placed through the domain name broker sedo.com nor to the correspondence by Complainant's legal representatives). It goes without saying that the final offer placed by Respondent in the range of EUR 150,000.00 is obviously well in excess of the costs connected to the acquisition of the disputed domain name by Respondent in 2014. It is, however, as well true, that Respondent ever since 2014 has undertaken demonstrable preparations to use the disputed domain name in connection with a *bona fide* Internet business, namely the creation of some event space, which Respondent apparently was only willing to give up for an extremely interesting, thus high, sales price. Such circumstance alone, however, is insufficient to show Respondent was taking unfair advantage of or abusing Complainant's GOIN trademark within the meaning of paragraph 4(b) of the Policy.

To sum up, Complainant has neither satisfied the second element under the Policy set forth by paragraph 4(a)(ii) nor the third element under the Policy set forth by paragraph 4(a)(iii), which is why this Complaint must fail.

#### **E. Reverse Domain Name Hijacking**

Finally, the Panel has considered whether it would be appropriate to make the finding of Reverse Domain Name Hijacking against Complainant. Under paragraph 15(e) of the Rules, a panel shall state in its decision any conclusion it might reach that complainant has brought the complaint in bad faith (for example in an attempt of Reverse Domain Name Hijacking), or primarily to harass the domain name holder. The Rules define “Reverse Domain Name Hijacking” as “using the Policy in bad faith to attempt to deprive a registered domain name holder of a domain name” (see also [WIPO Overview 3.0](#), section 4.16).

The line of argumentation by Complainant regarding the second and third element was relatively limited, particularly pointing to the four-letter nature of the disputed domain name and prior purchase attempts by Complainant. The Panel notes that a complainant's strong desire to own a domain name alone is insufficient to succeed under the Policy and should not be the driving force behind the filing of a UDRP complaint, which

is intended for cases of cybersquatting only. Here, while the Panel considers prudence should have cautioned against the filing of a UDRP complaint in these circumstances, it also carries weight that (1) the disputed domain name is identical to Complainant's trademark which has been in use by Complainant for quite some time, and (2) at the time of filing the Complaint, it was unclear to Complainant how Respondent intended to use the disputed domain name which had not resolved to any meaningful content on the Internet for many years. Against this background, the Panel determines there is insufficient basis to find that Complainant knew it would not succeed under the Policy or brought the case primarily to harass Respondent, and so the Panel does not make a finding of Reverse Domain Name Hijacking.

## **7. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Complaint is denied.

*/Stephanie G. Hartung/*

**Stephanie G. Hartung**

Sole Panelist

Date: October 5, 2022