

## **ADMINISTRATIVE PANEL DECISION**

Ses-imagotag v. Admin Console

Case No. D2023-0002

### **1. The Parties**

The Complainant is Ses-imagotag, France, represented by Domgate, France (the “Complainant”).

The Respondent is Admin Console, United States of America (the “Respondent”).

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

The disputed domain name <ses-imagotag.com> (the “Disputed Domain Name”) is registered with Google LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 2, 2023. On January 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On January 3, 2023, 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 (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 5, 2023, 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 amended Complaint on January 9, 2023.

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 January 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 30, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 1, 2023.

The Center appointed Ike Ehiribe as the sole panelist in this matter on February 8, 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.

#### 4. Factual Background

The Complainant in this matter is a French company based in Nanterre, France, and is known as the global leader in digital solutions for physical retail, with more than three hundred food and specialty in Europe, Asia, and North America. The Complainant's Group SES (Store Electronic Systems), was founded in 1992 and was listed on the Paris Stock Exchange in 2006. By 2020, it is said the Complainant had five hundred employees in its employ and its turnover was in the region of EUR 423 million as at 2021. As indicated in annex 6 to the Complaint, the Complainant is also the holder of several SES IMAGOTAG trademark registrations duly registered in most parts of the world including France, the European Union Trade Mark no. 017223331 SES IMAGOTAG registered on January 9, 2018, covering classes 6, 9, 20, 35, and 42, and an International trademark no. 1302767 SESIMAGOTAG (figurative) registered on March 11, 2016, covering classes 6, 9, 20, 35, and 42, designating Japan, Mexico, Norway, Singapore, China, Czech Republic, and Russian Federation. The Complainant also owns several domain names containing the SES IMAGOTAG mark (annex 7 to the Complaint).

The Respondent is based in in the United States of America. According to the Whois database the Disputed Domain Name <ses-Imagotag.com> was created on November 7, 2022. The Disputed Domain Name does not resolve to any website.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant contends that the Disputed Domain Name is confusingly similar to the Complainant's well-known SES IMAGOTAG trademark. In support of the assertion the Complainant submits that the only difference between the Disputed Domain Name and the Complainant's trademark is the replacement of the letter i with the letter l and the addition of the generic extension ".com". It is further submitted that the replacement of a capitalised l with a lowercase "L" is a common typo squatting attempt as has been held in previous UDRP decisions involving well-known trademarks such as SALESFORCE, MULTIPLAN, and MICROSOFT. The Complainant further submits that the addition of the generic Top-Level Domain ("gTLD") ".com" is irrelevant when conducting a confusing similarity inquiry following *BIC Deutschland GmbH & Co KG v. Paul Tweed*, WIPO Case No. [D2000-0418](#).

The Complainant further asserts that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name considering that the Complainant dispatched a cease and desist letter on November 14, 2022, to the Respondent but the Respondent failed to reply despite several reminders. The Complainant contends that if the Respondent had any legitimate interest, the Respondent would have given an explanation to the Complainant. The Complainant further argues that the Complainant never authorised or permitted the Respondent to use the Complainant's trademark to create a domain name and neither is the Respondent known by the name "ses imagotag" or "ses Imagotag" as can be confirmed by a simple Google search. Finally, it is submitted that the Respondent's presentation of Admin Console as owner of the Disputed Domain Name is further evidence of the Respondent's lack of rights or legitimate interests in respect of the Disputed Domain Name considering, as it is put, the name Admin Console is not a name and surname, and neither is it a known Company name.

On the issue of bad faith registration and use, the Complainant has advanced the following submissions in this order. In the first instance, it is submitted that since the Disputed Domain Name does not resolve to a website which in itself constitutes passive holding when considered together with other factors such as the distinctiveness of the Complainant's trademark and or the failure of the Respondent to provide a response or to provide any evidence of actual or contemplated good faith use, the registration of the Disputed Domain Name and inaction can constitute bad faith use in certain circumstances following the often quoted decision in *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). In further support of this submission, the Complainant refers to an extract from the [WIPO Overview 3.0](#) section 3.3 as follows:

“From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding.”

Secondly, it is submitted that the Respondent has not provided any evidence of use or any demonstrable preparation to use the Disputed Domain Name in connection with a *bona fide* offering of goods or services. Thirdly, it is asserted that the Respondent has acquired the Disputed Domain Name solely for the purpose of selling same to the Complainant who is the owner of the trademark or to a competitor of the Complainant if not to use it for phishing. Fourthly, it is submitted that since the Respondent obviously knew of the existence of the Complainant and its trademarks when the Disputed Domain Name was created, undoubtedly, the Respondent registered the Disputed Domain Name in order to make money or disrupt the Complainant’s business.

## **B. Respondent**

The Respondent did not reply to the Complainant’s contentions. In the circumstances, the Panel shall draw adverse inferences from the failure or refusal of the Respondent to reply to those contentions as it considers appropriate.

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, to succeed in the administrative proceedings the Complainant must prove that: (1) the Disputed Domain Name is identical and or confusingly similar to the trademark or service mark of the Complainant; (2) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and (3) the Disputed Domain Names been registered and is being used in bad faith.

As expressly stated in the Policy the Complainant must establish the existence of each of these three elements in any UDRP proceeding.

### **A. Identical or Confusingly Similar**

The Panel finds and accepts that the Complainant is a well-known company listed on the Paris Stock Exchange and engaged in providing digital solutions for food and specialty retailers in Europe, Asia, and North America. The Complainant is also the registered owner of numerous trademark registrations of SESIMAGOTAG as evidenced by the Complainant. Without any hesitation, the Panel is satisfied that the Disputed Domain Name is confusingly similar to the Complainant’s trademark as can be deduced from a visual examination of the Disputed Domain Name. This is clearly a case of typosquatting. The only difference between the Complainant’s trademark and the Disputed Domain Name is the replacement of the letter “i” with the letter “l”, the addition of a hyphen, and the addition of the gTLD “.com”. The Panel also finds that the mere addition of the gTLD “.com” does not preclude a finding of confusing similarity. See in this regard section 1.11 of the [WIPO Overview 3.0](#) and a previous UDRP decision in *BIC Deutschland GmbH & Co KG v. Paul Tweed, supra*.

The Panel is therefore satisfied that the Complainant has established the confusing similarity requirement of the Policy.

### **B. Rights or Legitimate Interests**

On the question of rights and legitimate interests, the Panel finds on the record that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Respondent has failed to rebut the Complainant’s submissions and to provide any evidence to demonstrate that the Respondent has been ever permitted, licensed or authorised to use the Complainant’s trademark to register the Disputed Domain Name or any other domain name. In the same vein, the Panel finds that there is no evidence to suggest that the Respondent is commonly known by the Disputed Domain Name. Furthermore since the Disputed Domain Name is inactive as it does not resolve to

a website, the Panel finds that inactivity in such circumstances evidences the absence of legitimate noncommercial or fair use of the Disputed Domain Name considering its confusing similarity with the Complainant's trademark. In addition, the Panel finds that the Disputed Domain Name incorporating the Complainant's trademark with a typographical error, is demonstrative of the Respondent's lack of rights or legitimate interests, considering that such typo illustrates the Respondent's intent to mislead unsuspecting Internet users.

In the circumstances the Panel is satisfied that the Complainant has established the Respondent's lack of rights and legitimate interests in the Disputed Domain Name as stipulated in the Policy.

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

Turning to the issue of bad faith registration and use, the Panel has considered a number of unchallenged factors which leave the Panel with no other choice but to arrive at the conclusion that the Respondent intentionally engaged in bad faith registration and use of the Disputed Domain Name with the objective of exploiting the Complainant's international reputation and goodwill.

In the first place, the Panel finds that the Respondent must have been or should have been aware of the existence of the Complainant and its pre-existing rights in its trademark before electing to register the Disputed Domain Name on November 7, 2022. UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar (particularly domain names comprising typos) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. (See section 3.1.4 of the [WIPO Overview 3.0](#)). The distinctiveness of the Complainant's trademark and the typo in the Disputed Domain Name support a finding of bad faith registration.

Secondly, as the Complainant correctly submits, the registration of a domain name together with inaction can constitute bad faith use in certain circumstances, following *Telstra Corporation Limited v. Nuclear Marshmallows, supra*. In this case, the distinctiveness of the Complainant's trademark, the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good faith use, and the implausibility of any good faith use to which the Disputed Domain Name may be put are all relevant factors when considered together with the inactivity of the Disputed Domain Name that may lead to a finding of bad faith use. See further in support section 3.3 of the [WIPO Overview 3.0](#), where it is stipulated that the non-use of a domain name may not necessarily prevent a finding of bad faith when weighing the totality of the surrounding circumstances.

Thirdly, the Panel has taken into account the fact that there is no evidence of the Respondent's use of or demonstrable preparations to use the Disputed Domain Name in connection with a *bona fide* offering of goods or services. Fourthly, the Panel has also considered the fact that the Respondent failed to respond to the Complainant's cease-and-desist letter dispatched to the Respondent on November 12, 2022, despite several reminders. Fifthly, as indicated in section 5.B above, this Panel has drawn adverse inferences from the failure of the Respondent to reply to the submissions of the Complainant in this matter.

## **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, <ses-lmagotag.com>, be transferred to the Complainant.

*/Ike Ehiribe/*

**Ike Ehiribe**

Sole Panelist

Date: February 22, 2023