

## **ADMINISTRATIVE PANEL DECISION**

Aromatech, Ltd. v. Carlos Paredes  
Case No. D2024-0911

### **1. The Parties**

The Complainant is Aromatech, Ltd., Canada, represented by K & G Law LLC, United States of America.

The Respondent is Carlos Paredes, Portugal.

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

The disputed domain name <aromatech.com> is registered with Spaceship, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 29, 2024. On March 1, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 4, 2024, 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 (Redacted for Privacy Purposes) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 11, 2024 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 March 12, 2024.

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 proceeding commenced on March 14, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 3, 2024. The Response was filed with the Center on April 3, 2024. The Complainant submitted an unsolicited Supplemental Filing on April 6, 2024 in reply to the Response. The Respondent submitted an unsolicited Supplemental Filing on April 8, 2024 in response to the Complainant’s unsolicited Supplemental Filing.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on April 18, 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**

##### **A. Complainant**

The Complainant is a company incorporated in Canada in 2009, and marketing and selling since 2009 a range of aromatic oils and related goods under the trade mark AROMATECH (the "Trade Mark").

The Complainant is the owner of numerous registrations for the Trade Mark, including Canadian registration No. 6881958, with a registration date of October 25, 2022.

##### **B. Respondent**

The Respondent is located in Portugal.

##### **C. The Disputed Domain Name**

The disputed domain name was registered on October 9, 2004. It was purchased by the Respondent apparently in 2005.

##### **D. Use of the Disputed Domain Name**

The disputed domain name has not been resolved to any active website.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

##### **B. Respondent**

The Respondent contends that he purchased the disputed domain name at auction on a presently unknown date in 2005. The Respondent relies on evidence of his renewal of the registration on October 5, 2006, October 9, 2007 and August 22, 2009.

The Respondent contends that his control of the disputed domain name several years before the existence of the Complainant and its Trade Mark voids any allegation of bad faith registration.

#### **6. Discussion and Findings**

##### **6.1 Procedural Issue: Supplemental Filing**

Paragraph 12 of the Rules expressly provides that it is for the panel to request, in its sole discretion, any further statements or documents from the parties it may deem necessary to decide the case. Unsolicited supplemental filings are generally discouraged, unless specifically requested by the panel (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.6).

Panels have sole discretion, under paragraphs 10 and 12 of the Rules, whether to accept an unsolicited supplemental filing from either party, bearing in mind the need for procedural efficiency, and the obligation to treat each party with equality and ensure that each party has a fair opportunity to present its case. The party submitting a supplemental filing would normally need to show its relevance to the case and explain why it was unable to provide that information in the complaint or response (for example, owing to some exceptional circumstance).

In the present proceeding, the Complainant's unsolicited supplemental filing seeks to respond to the Respondent's evidence that he purchased the disputed domain name in 2005 and subsequently renewed his registration for the disputed domain name prior to the existence of the Complainant. The Complaint submits in its supplemental filing essentially that (1) the Respondent was not the original owner of the disputed domain name; and (2) the Respondent's continued passive holding of the disputed domain amounts to bad faith.

The Panel finds that the above submissions are not relevant to the central issue of bad faith registration and use, on the facts of this case. Faced with the Respondent's incontrovertible evidence of his ownership of the disputed domain name since at least October 2006, the Complainant should have assessed the proper approach to follow noting that the date on which the Respondent acquired the disputed domain name is the date the Panel would consider in assessing the registration in bad faith. [WIPO Overview 3.0](#), section 3.9.

Considering the above, the Panel determines that it will refuse the Parties' supplemental filings. However, the Panel notes that even if considered, the Parties' supplemental filings would not have altered the outcome of this decision.

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

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 trade mark 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 Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the first element of the Policy has been established.

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

In light of the Panel's finding in respect of the third element of the Policy, it is not necessary to address the second element of the Policy.

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

The evidence in the case file as presented does not indicate that the Respondent's aim in registering the disputed domain name was to profit from or exploit the Complainant's Trade Mark.

The Panel notes that for the purposes of the analysis of the registration of the disputed domain name, the date on which the current registrant acquired the domain name is the date a panel will consider in assessing the registration in bad faith. The Panel finds that the Respondent did not register the disputed domain name in bad faith targeting the Complainant or its trade mark rights because the Complainant had no trade mark rights at the time that the Respondent registered the disputed domain name. [WIPO Overview 3.0](#), section 3.8.1, and 3.9. Furthermore, while the disputed domain name was originally created in 2004, the Respondent apparently purchased it in 2005, and in any case, the Respondent relied on the evidence of his

renewal of the registration on October 5, 2006. However, according to the Complaint, the Complainant is a company founded in Canada in 2009, so the Respondent could not have targeted the Complainant at the time of its acquisition of the disputed domain name.

The Panel finds the third element of the Policy has not been established.

#### **D. Reverse Domain Name Hijacking**

Paragraph 15(e) of the Policy provides that, if after considering the submissions, the Panel finds that the Complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or to harass the domain-name holder, the Panel shall declare in its decision that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding. The mere lack of success of the complaint is not, on its own, sufficient to constitute reverse domain name hijacking. [WIPO Overview 3.0](#), section 4.16.

The Panel considers that, in all the circumstances, the Complainant, being legally represented, ought to be held to a higher standard.

This is a proceeding in which, on the facts, the Complainant and its legal representatives ought to have recognised it would not be possible to establish bad faith registration, in light of the fact the Complainant did not come into existence, and did not commence using its Trade Mark, until 5 years after the date of first registration of the disputed domain name. Nor was there any evidence to suggest that the Respondent, as the current registrant of the disputed domain name, acquired the disputed domain name after the Complainant had been incorporated and commenced use of the Trade Mark.

#### **7. Decision**

For the foregoing reasons, the Complaint is denied. Moreover, the Panel finds that the Complaint has been brought in bad faith and constitutes an attempt at Reverse Domain Name Hijacking.

*/Sebastian M.W. Hughes/*

**Sebastian M.W. Hughes**

Sole Panelist

Date: May 3, 2024