

## **ADMINISTRATIVE PANEL DECISION**

Corporación Gestamp, S.L. v. Above.com Domain Privacy / Transure Enterprise Ltd  
Case No. D2012-1367

### **1. The Parties**

The Complainant is Corporación Gestamp, S.L. (“Gestamp”) of Madrid, Spain represented by Herrero & Asociados, Spain.

The Respondent is Above.com Domain Privacy of Beaumaris, Victoria, Australia / Transure Enterprise Ltd of Tortola, British Virgin Islands, Overseas Territory of the United Kingdom of Great Britain and Northern Ireland (“UK”).

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

The Disputed Domain Name <gestamp-e.com> is registered with Above.com, Inc.

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 5, 2012. On July 5, 2012, the Center transmitted by email to Above.com, Inc a request for registrar verification in connection with the Disputed Domain Name. On July 10, 2012, Above.com, Inc transmitted by email to the Center its verification 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 July 18, 2012 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 July 23, 2012.

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(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on July 23, 2012. In accordance with the Rules, paragraph 5(a), the due date for Response was August 12, 2012. The Respondent did not submit any response.

Accordingly, the Center notified the Respondent's default on August 14, 2012.

The Center appointed Richard W. Page as the sole panelist in this matter on August 24, 2012. 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 a company which belongs to the Gonvarri Group and is a consolidated business that stands as one of Spain's leading companies in steel services. Technology innovation is an essential point in the Complainant's business strategy. The Complainant's know how is focused on reducing weight and on the consequent reduction of atmospheric emissions and improvement of safety in collisions. The three lines of Complainant's business are: automobile components, steel service centers, and renewable energies. Gestamp and other Gonvarri Group companies have specialized in flat steel bar services (which are their main lines of business) since the late 1950's. The automotive components business is present in 22 countries, has 95 production centers (49 in Western Europe, 15 in Eastern Europe, 8 in North America, 9 in South America and 14 in Asia) and over 25,000 employees. Gonvarri Group Income in 2012 was EUR 4,775 million.

The Complainant has become a leading supplier to such companies as Volkswagen, Renault-Nissan, Peugeot-Citröen, Daimler, GM, Ford, Chrysler, Audi, Bentley, Daewo, BMW, Fiat, Jaguar and Mercedes-Benz. The Gonvarri Group is the European leader in steel service centers, having established a strong presence in South America and taking an important position in Asia and North America. The Gonvarri Group's success is a result of the development of products and services with greater value added.

The Gonvarri Group is a major participant in the steel processing market and an "ally" of great value in contributing logistical and administrative solutions. The Gonvarri Group has made a great effort to grow and become important in its sectors.

The Complainant is the owner of numerous trademarks in Spain and the European Community which have "Gestamp" as their principal element (the "GESTAMP Mark"). In addition, the Complainant has registered many domain names again using "Gestamp" as their common element.

The Respondent registered the Disputed Domain Name on November 30, 2011.

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

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

The Complainant contends that it has enforceable rights in the GESTAMP Mark and that the Disputed Domain Name is confusingly similar to the GESTAMP Mark. The Complainant contends that the Disputed Domain Name incorporates the entirety of the GESTAMP Mark with the addition of "-e" which is non-distinctive.

The Complainant further contends that the Respondent has no rights or legitimate interests in the Disputed Domain Name. Complainant's rights began at least 30 years before the registration of the Disputed Domain Name and the Respondent does not have any association with the Complainant. In particular, the Complainant has not licensed or otherwise authorized the Respondent to use the GESTAMP Mark or to apply for any domain name incorporating the GESTAMP Mark.

The Complainant further contends that the Respondent is not making any legitimate noncommercial or fair use of the Disputed Domain Name. In fact, the Complainant continues that the Disputed Domain Name is

being parked and linked to sites offering commercial information.

The Complainant alleges that the only conceivable purpose for the registration of the Disputed Domain Name is to mislead Internet users to the Respondent's website.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions.

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: "A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable."

A respondent is not obliged to participate in a domain name dispute proceeding, but if it were to fail to do so, asserted facts that are not unreasonable would be taken as true and the respondent would be subject to the inferences that flow naturally from the information provided by the complainant: *Reuters Limited v. Global Net 2000, Inc.*, WIPO Case No. D2000-0441. See also *Hewlett-Packard Company v. Full System*, NAF Claim No. FA 0094637; *David G. Cook v. This Domain is For Sale*, NAF Claim No. FA0094957 and *Gorstew Jamaica and Unique Vacations, Inc. v. Travel Concierge*, NAF Claim No. FA0094925.

Even though Respondent has failed to file a Response or to contest Complainant's assertions, the Panel will review the evidence proffered by the Complainant to verify that the essential elements of the claims are met.

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- i) that the Disputed Domain Name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and,
- ii) that the Respondent has no 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. Identical or Confusingly Similar**

The Complainant contends that it has numerous registrations of the GESTAMP Mark in Spain and in the European Community. The Complainant further contends that the Disputed Domain Name is confusingly similar to the GESTAMP Mark pursuant to the Policy paragraph 4(a)(i). The Complainant contends that the Disputed Domain Name incorporates the entirety of the GESTAMP Mark with the addition of "-e" which is non-distinctive.

Panel decisions have held that registration of a mark is *prima facie* evidence of validity, which creates a rebuttable presumption that the mark is inherently distinctive. The Respondent has the burden of refuting this assumption. See, e.g., *EAuto, L.L.C. v. Triple S. Auto Parts d/b/a Kung Fu Yea Enterprises, Inc.*, WIPO Case No. D2000-0047.

The Respondent has not contested the assertions by the Complainant that the Disputed Domain Name is confusingly similar to the GESTAMP Mark.

As numerous courts and prior UDRP panels have recognized, the incorporation of a trademark in its entirety is generally sufficient to establish that a domain name is identical or confusingly similar to the complainant's registered mark. See *Paccar Inc. v. Telescan Technologies, L.L.C.*, 115 F. Supp. 772 (E.D. Mich. 2000) (finding that <peterbuilttrucks.com>, <kenworthtrucks.com> and similar domain names are not appreciably different from the trademarks PETERBUILT and KENWORTH); *Quixar Investments Inc. v. Dennis Hoffman*,

WIPO Case No. D2000-0253 (May 29, 2000) (finding that QUIXTAR and <quixtarmortgage.com> are legally identical). The addition of other terms in the Disputed Domain Name does not affect a finding that the Disputed Domain Name is identical or confusingly similar to the GESTAMP Mark. The Panel notes that the entirety of the GESTAMP Mark is included in the Disputed Domain Name with the addition of the phrase “-e.”

Generally, a user of a mark “may not avoid likely confusion by appropriating another’s entire mark and adding descriptive or non-distinctive matter to it.” 3 J. Thomas McCarthy, *McCarthy on Trademarks & Unfair Competition* § 23:50 (4<sup>th</sup> ed. 1998). See also, *General Electric Company v. Stephen Harper*, WIPO No. D2001-0046.

The Panel finds the phrase “-e” to be non distinctive. Therefore, the Disputed Domain Name is confusingly similar to the GESTAMP Mark pursuant to the Policy paragraph 4(a)(i).

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

The Complainant contends that the Respondent has no rights or legitimate interests in the Disputed Domain Name pursuant to the Policy paragraph 4(a)(ii).

Paragraph 4(a)(ii) requires the complainant to prove that the respondent has no rights to or legitimate interests in the Disputed Domain Name. Once a complainant establishes a *prima facie* showing that none of the three circumstances establishing legitimate interests or rights applies, the burden of production on this factor shifts to the respondent to rebut the showing. The burden of proof, however, remains with the Complainant to prove each of the three elements of paragraph 4(a). See *Document Technologies, Inc. v. International Electronic Communications, Inc.*, WIPO Case No. D2000-0270 (June 6, 2000).

The Complainant contends in this proceeding that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The Complainant’s rights began at least 30 years before the registration of the Disputed Domain Name and the Respondent does not have any association with the Complainant. In particular, the Complainant has not licensed or otherwise authorized the Respondent to use the GESTAMP Mark or to apply of any domain name incorporating the GESTAMP Mark.

The Complainant further contends that the Respondent is not making any legitimate noncommercial or fair use of the Disputed Domain Name. In fact, the Complainant continues that the Disputed Domain Name is being parked and linked to sites offering commercial information.

The Policy paragraph 4(c) allows three nonexclusive methods for the respondent to demonstrate it has rights or a legitimate interests in the Disputed Domain Name:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are 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.

The Complainant has sustained its burden of coming forward with allegations that the Respondent lacks rights to or legitimate interests in the Disputed Domain Name.

The Respondent has not contested the Complaint’s allegations. Furthermore, the file contains no evidence that the use of the Disputed Domain Name meets the elements for any of the nonexclusive methods provided for in the Policy paragraph 4(c). Therefore, the Panel finds that the Respondent has no rights or legitimate interest in the Disputed Domain Name pursuant to the Policy paragraph 4(a)(ii).

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

The Complainant contends that the Respondent registered and is using the Disputed Domain Name in bad faith in violation of the Policy paragraph 4(a)(iii).

The Complainant alleges that the only conceivable purpose for the registration of the Disputed Domain Name is to intentionally mislead Internet users to the Respondent's website using the confusing similarity of the Disputed Domain Name to the GESTAMP Mark.

The Policy paragraph 4(b) sets forth four nonexclusive criteria for a complainant to show bad faith registration and use of domain names, of which paragraph 4(b)(iv) is relevant:

- (iv) by using the domain name, you [Respondent] have intentionally attempted to attract, for commercial gain, Internet users to your website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product

The Panel has already found above that the Disputed Domain Name is confusingly similar to the GESTAMP Mark pursuant to the Policy paragraph 4(a)(i). The Panel additionally finds that this evidence is sufficient to establish the necessary elements of bad faith under the Policy paragraph 4(b)(iv).

### **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 domain name <gestamp-e.com> be transferred to the Complainant.

**Richard W. Page**

Sole Panelist

Dated: August 26, 2012