

ADMINISTRATIVE PANEL DECISION

Glovoapp23, S.L. v. Ketevan Vadachkoria

Case No. DGE2018-0001

1. The Parties

The Complainant is Glovoapp23, S.L. of Barcelona, Spain, internally represented.

The Respondent is Ketevan Vadachkoria of Tbilisi, Georgia, self-represented.

2. The Domain Names and Registry

The disputed domain names <glovoapp.ge> and <glovo.ge> (the “Disputed Domain Names”) are registered with Caucasus Online LLC (the .GE Registry).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 18, 2018. On September 19, 2018, the Center transmitted by email to the .GE Registry a request for registry verification in connection with the Disputed Domain Names. On September 21, 2018, the .GE Registry transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the .GE Domain Name Dispute Resolution Policy (the .GE Policy), the Rules for .GE Domain Name Dispute Resolution Policy (the .GE Rules), and the WIPO Supplemental Rules for .GE Domain Name Dispute Resolution Policy (the Supplemental Rules).

In accordance with the .GE Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on September 26, 2018. In accordance with the .GE Rules, paragraph 5, the due date for Response was October 16, 2018. The Response was filed with the Center on October 15, 2018.

The Center appointed Nick J. Gardner as the sole panelist in this matter on October 19, 2018. 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 .GE Rules, paragraph 7.

On October 22, 2018 the Panel issued a Procedural Order directing each Party to file further submissions explaining in more detail matters they had raised. Each Party subsequently filed a supplementary submission in accordance with this Order. For convenience and ease of reference the Panel will treat the material contained in each of these submissions as part of the Complaint and Response respectively.

4. Factual Background

The Complainant is a Spanish company. Its primary activity is the development and management of a technology platform. This platform offers to the public a service which the Complainant calls “glovo” which by means of a smartphone app (called the “glovo app”) enables individuals in cities where the service operates to place orders with local shops which will then be delivered to the customer by a third party independent courier.

The Complainant’s business commenced in 2015 and appears to have been successful. It is now available in over 60 cities in different countries around the world.

In July 2018, the Complainant raised EUR 115 million in financing. The evidence indicates this funding transaction completed on July 18, 2018. The evidence also indicated there had been at least two previous funding rounds where the Complainant had previously raised substantial sums from investors.

The Complainant creates subsidiaries in countries where it provides its service. In September 2018 it has created such a subsidiary in Georgia, Glovoapp Georgia LLC. In general terms the Complainant registers and uses domain names in the format <glovo.countrycode> and <glovoapp.countrycode> in each country it operates and it has well over 50 such domain names.

The Complainant owns several trademarks for the word “glovo” in stylized and coloured form – see for example international registration 1412099 registered on April 23, 2018.

The Respondent is an individual resident in Georgia. She registered the Disputed Domain Names on July 8, 2018 and both of them resolve to parked pages.

5. Parties’ Contentions

A. Complainant

The Complaint is relatively short and contains a limited amount of information about the Complainant.

The Complainant says its technology platform allows local stores in cities where the service is provided to offer their products by means of a mobile or web application. It claims to be different from other similar services because it says the platform allows users to buy or deliver almost anything in their city at the press of a button on their smartphone, the platform connects the order to the nearest available couriers and therefore optimizes distance and time.

The Complainant says its mission is to help small urban stores fight back against giant online retailers. It says it aims to take the legwork out of city shopping and enhance the attractiveness of buying locally while making life easier for its customers.

The Complainant’s case is in summary as follows:

- a) The Disputed Domain Names are confusingly similar to its GLOVO trademark.
- b) The Respondent does not have any rights or legitimate interests in the Disputed Domain Names.

c) The Respondent registered and used the Disputed Domain Name in bad faith. The Complainant relies upon a series of telephone calls where the Respondent offered to sell the Disputed Domain Names to the Complainant. It says these prove the Respondent's bad faith. These telephone calls are discussed below.

B. Respondent

The Respondent in essence makes two points. She denies having any knowledge of the Complainant or its business when she registered the Disputed Domain Names. She says they were chosen in anticipation of starting a family business involving the sale of gloves. She points out the date of registration of the Disputed Domain Names; July 8, 2018 is prior to the date the Complainant's financing round closed on July 18, 2018. She also disputes that the Complainant has any relevant trademark rights in Georgia.

The Respondent accordingly says she has a legitimate interest in the Disputed Domain Names and denies acting in bad faith.

6. Discussion and Findings

Preliminary issue - Nature of the .GE Policy

So far as the .GE Policy is concerned the Panel notes that it is substantially similar to (though not identical to) the Uniform Domain Name Dispute Resolution Policy (the "UDRP") as adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN"). The Panel will where appropriate apply principles that have been established in relation to the UDRP in determining this dispute.

Substantive Issues

Paragraph 4(a) of the .GE Policy states that the Complainant must prove each of the three following elements:

- (i) the Disputed Domain Names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names;
- (iii) the Disputed Domain Names have been registered or are being used in bad faith.

A. Identical or Confusingly Similar

The Complainant clearly has registered trademarks in respect of the term "glovo" (the "GLOVO trademark"). These all seem to be for the term in a stylised and coloured format but the word "glovo" is in each case the predominant feature of the trademark. In these circumstances the Panel concludes the Disputed Domain Names are each confusingly similar to the GLOVO trademark. Confusing similarity between a domain name and a device mark which includes words or letters is a readily accepted principle where the words or letters comprise a prominent part of the trademark in question – see for example *EFG Bank European Financial Group SA v. Jacob Foundation*, WIPO Case No. D2000-0036 and *Sweeps Vacuum & Repair Centre, Inc. v. Nett Corp.*, WIPO Case No. D2001-0031.

The Panel considers the Disputed Domain Name <glovo.ge> to be confusingly similar to the GLOVO trademark as it is well established that the Top-Level Domain ("TLD"), in this case ".ge", does not generally affect the domain name for the purpose of determining whether it is identical or confusingly similar – see for example *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. D2000-0429.

The Panel considers the Disputed Domain Name <glovoapp.ge> to be confusingly similar to the GLOVO

trademark as it is well established that the addition of a descriptive term (such as here “app”) to the disputed domain name has little, if any, effect on a determination of identity or confusing similarity between the domain name and the mark (*Quixtar Investments, Inc. v. Dennis Hoffman*, WIPO Case No. D2000-0253); furthermore, mere addition of a generic or descriptive term does not prevent a finding of confusing similarity under the first element (*PRL USA Holdings, Inc. v. Spiral Matrix*, WIPO Case No. D2006-0189).

Accordingly, the Panel finds that the Disputed Domain Names are each confusingly similar to the Complainant’s trademark and hence the first condition of paragraph 4(a) of the .GE Policy has been fulfilled.

B. Rights or Legitimate Interests

The Complainant has not authorized, licensed, or permitted the Respondent to register or use the Disputed Domain Names or to use the GLOVO trademark. The Complainant has prior rights in the GLOVO trademark which precede the Respondent’s registration of the Disputed Domain Names. The Complainant has therefore established a *prima facie* case that the Respondent has no rights or legitimate interests in the Disputed Domain Names and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Names (see, e.g., *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. D2000-0624; *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455).

The Respondent’s case is clear. She says firstly that she had never heard of the Complainant or its business and secondly that she registered the Disputed Domain Names with a view to starting a business in Georgia selling gloves.

The Respondent says that she has rights and legitimate interests in the Disputed Domain Names. In effect her case is that the following provision of the .GE Policy applies: “before any notice to you 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 (paragraph 4(c)(i) of the .GE Policy)”. She says she was under no obligation to commence her business straight away.

Looking at the evidence as a whole the Panel on the balance of probabilities does not accept the explanation offered by the Respondent. The Panel is conscious that proceedings under the .GE Policy are of a limited and restricted nature, do not involve oral hearings, discovery or cross examination, and hence are only applicable to clear cut cases, and it is not usually appropriate to decide disputed questions of fact or matters of truth or falsehood. That does not however mean the Panel cannot reach a conclusion as to the veracity of a case that is being advanced where the only evidence that is provided is in the form of conclusory statements that are inherently not credible, and which are not supported by relevant corroborative or third party evidence. The Panel considers this to be such a case. The Respondent’s case is simply not credible and the Panel concludes that on the balance of probabilities the Respondent’s claim to have independently decided to register the Disputed Domain Names without knowledge of the Complainant or its business is not true.

This is for the following reasons:

- The Respondent has produced no corroborative evidence to support her claim to have intended to start a business selling gloves. There is no indication the Respondent has any experience relevant to such a venture and not a single piece of documentation relating to such a venture has been provided. The .GE Policy (above) requires “demonstrable” preparations to use and none have been shown.
- Even if such a business was contemplated no explanation has been offered as to why the fanciful word “glovo” was thought to be suitable for a business based in Georgia.
- No steps have yet been taken to commence such a business.
- No evidence has been provided of what searches the Respondent did at the time she registered the

Disputed Domain Names (despite the Panel expressly requesting the same). It seems likely that had the Respondent independently arrived at the name “glovo” she would have carried out at least some basic Internet searches as to its suitability which would have revealed the existence of the Complainant and its business. The Panel finds it difficult to believe the Respondent when she says she had never heard of the Complainant as at July 8, 2018.

- All of the above factors suggest the Respondent’s account is unlikely to be true. That is in the Panel’s opinion confirmed when it considers the fact that the Respondent registered not only <glovo.ge> but also registered <glovoapp.ge>. No explanation has been provided as to why a business selling gloves would want a domain name comprising the term “glovoapp” which seems of no relevance whatsoever to such a business. The Complainant promotes its service under the name “glovo” and typically in each country it operates uses domain names comprising both “glovo” and “glovoapp” in conjunction with the relevant country code (see above) to promote its business. The level of coincidence that would have been required for the Respondent to have independently arrived at exactly the same two names is simply not believable in the absence of any credible corroborating evidence.

In reaching this conclusion the Panel has considered the Respondent’s case that the Complainant’s financing round closed on July 18, 2018 whereas she registered the Disputed Domain Names on July 8, 2018. The evidence does not enable the Panel to assess what, if any, publicity was circulating about the Complainant’s financing prior to July 8, 2018 but it is clear that in any event the Complainant had by this date developed a substantial business which had been expanding internationally and was operating in many major cities. Whether or not the Respondent knew of the details of the financing round does not in the Panel’s opinion matter – what is relevant is that the Respondent must, in the Panel’s opinion, for the reasons explained above, have had the Complainant in mind when she registered the Disputed Domain Names.

The Panel therefore concludes that on balance, so far as the .GE Policy is concerned, the Complainant has established that the Respondent lacks rights or legitimate interests in the Disputed Domain Names.

C. Registered and Used in Bad Faith

For the same reasons as discussed above the Panel concludes that the Respondent must have known of the Complainant and decided to register the Disputed Domain Names because of the fact their nature corresponded to domain names used by the Complainant in other countries into which it had expanded its business. The Panel infers that the Respondent guessed that the Complainant would at some stage expand its business into Georgia and would then wish to acquire the Disputed Domain Names.

It appears clear the Respondent was correct and the Complainant did decide to expand into Georgia and discovered that the Respondent had registered the Disputed Domain Names.

There is no dispute that when the Complainant identified that the Respondent had registered the Disputed Domain Names it approached the Respondent and one or more telephone calls took place before the Respondent suggested to the Complainant that she was prepared to sell the Disputed Domain Names. The Respondent goes into considerable detail about the nature and length of these calls, and the fact that the Complainant made the first approach, but does not dispute that ultimately she offered to sell them for a substantial sum – the figure mentioned appears to be in dispute but the Respondent says it was EUR 10,000.

Paragraph 4(b) of the .GE Policy provides that evidence of the registration and use of a domain name in bad faith is established by “(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name”. In the present case the Panel concludes the Respondent opportunistically registered the Disputed Domain Names hoping to sell them to the Complainant for a sum significantly in excess of her acquisition costs. As such her conduct is squarely within this paragraph. The Panel does not consider it matters that

the Complainant approached the Respondent first. It is not unusual for persons speculatively registering domain names which they hope to then sell to a trademark owner to wait to be approached and then in turn claiming that this somehow provides scope for arguing that the relevant provisions of the applicable policy would not apply. The Panel does not consider this to be conduct becoming of a legitimate actor.

As a result, the Panel finds that the Disputed Domain Names have been registered and are being used in bad faith. Accordingly, the third condition of paragraph 4(a) of the .GE Policy has been fulfilled.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the .GE Policy and 15 of the .GE Rules, the Panel orders that the Disputed Domain Names <glovo.ge> and <glovoapp.ge> be transferred to the Complainant.

Nick J. Gardner

Sole Panelist

Date: November 8, 2018