

ADMINISTRATIVE PANEL DECISION

Mr. Alberto Bottaro, Mr. Marco Bottaro v. Luo Yang, Lucas Groups LLC
Case No. D2022-0906

1. The Parties

Complainants are Mr. Alberto Bottaro, Mr. Marco Bottaro, Italy, represented by Studio Legale Jacobacci e Associati, Italy.

Respondent is Luo Yang, Lucas Groups LLC, Australia.

2. The Domain Name and Registrar

The disputed domain name <bottarro.org> (the “Domain Name”) is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 15, 2022. On March 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 17, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email to Complainant on March 22, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed amended Complaints on March 27, and March 31, 2022.

The Center verified that the Complaint together with the amended Complaints 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 April 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 24, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on April 26, 2022.

The Center appointed Robert A. Badgley as the sole panelist in this matter on May 4, 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.

4. Factual Background

Complainants are the sons of Mario Bottaro, the founder of the Italian firm Bottaro Mario SRL. Complainants are now the principals of that firm, which was founded in 1956.

According to an Italian financial newspaper (*Il Sole 24 Ore*) article dated December 2, 2017, annexed to the Complaint, Bottaro Mario SRL has been for many years a global leader in the manufacture of iron wire.

Complainants (through their company Bottaro Mario S.r.l.) undertook to register a number of European Union Trademarks filed on December 23, 2021, including number 018628757 for the stylized mark BOTTARO WIRE POWER SINCE 1956, registered on May 11, 2022. These trademarks postdate the registration of the Domain Name at issue in this proceeding.

Since 1998, Complainants have owned the domain name <bottaro.org>, which domain name is used for Complainants' commercial website.

The Domain Name was registered on December 6, 2021. The Domain Name does not resolve to an active website. According to Complainants, however, the Domain Name has been used to defraud at least one of Complainants' clients. Specifically, in January 2022, Complainants sent a reminder notice to a Danish client regarding an invoice of roughly EUR 30,000, which invoice had first been issued on December 3, 2021. The client advised that it had already paid the invoice, using the bank details supplied in the most recent invoice it had received (dated December 10, 2021). Upon investigation, it was learned that the second invoice the client received had been fraudulent. Complainants notified the Italian police authority about the incident.

Respondent has not disputed any of the foregoing allegations.

5. Parties' Contentions

A. Complainant

Complainants contends that they have established all three elements required under the Policy for a transfer of the Domain Name.

B. Respondent

Respondent did not reply to Complainants' contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainants must satisfy with respect to the Domain Name:

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

A. Identical or Confusingly Similar

The Panel concludes that Complainants have rights in the trademark BOTTARO and BOTTARO WIRE POWER SINCE 1956 through registration and use demonstrated in the record. In addition, the Panel notes that Respondent has been targeting Complainants' mark (based on the manner in which the Domain Name has been used) which supports a finding that BOTTARO has achieved significance as a source identifier of Complainant's products. The Panel also concludes that the Domain Name is confusingly similar to that mark. The only difference between the mark and the Domain Name is the additional letter "r". In addition, the Panel finds that the Domain Name is confusingly similar to the dominant element of the BOTTARO WIRE POWER SINCE 1956 trademark. The Panel concludes that Complainants' marks (or its dominant element, *i.e.* BOTTARO) is clearly recognizable within the Domain Name, notwithstanding this small difference. Complainants have established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (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 Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Name. Respondent has not come forward in this proceeding to articulate or prove any legitimate reason for registering the Domain Name, which is very similar to Complainants' mark.

Based on the undisputed allegations and evidence presented by Complainants, and Respondent's lack of any denial of those serious allegations, the Panel concludes that Respondent more likely than not targeted Complainants' BOTTARO mark in order to perpetrate fraud upon one or more of Complainants' clients by impersonating Complainants' company and issuing bogus invoices. Such conduct is clearly illegitimate.

The Panel concludes that Complainants have established Policy paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation", are evidence of the registration and use of the Domain Name in "bad faith":

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or

(iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or

(iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith. The Panel incorporates its discussion above in the "Rights or Legitimate Interests" section. Complainants have plausibly alleged that a fraud was attempted just a few days after the Domain Name was registered. Respondent had the opportunity to come forward and deny any role in the fraud, but Respondent did not do so. The Panel also notes that the slight difference between the BOTTARO unregistered trademark and the Domain Name (the Domain Name having the extra letter "r") constitutes typosquatting, *i.e.* an additional indication of bad faith registration in many UDRP cases.

It is also noteworthy that the Domain Name has the generic Top-Level Domain ("gTLD") ".org", which is the same gTLD as Complainants' have used for their commercial website. Given that the Domain Name is a typosquatted version of Complainants' domain name, the Panel views Respondent's choice of a Domain Name with that gTLD with additional suspicion.

On the undisputed record before it, the Panel is left with little option but to credit the unrebutted allegations and evidence put forth in the Complaint, and to conclude that Respondent registered the Domain Name to target Complainants, Complainants' company, and/or Complainants (unregistered) mark and launch a fraudulent scheme, in violation of the above-quoted Policy paragraph 4(b)(iv).

Complainant has established Policy paragraph 4(a)(iii).

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 <bottarro.org> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: May 11, 2022