

ADMINISTRATIVE PANEL DECISION

Vera Bradley Designs, Inc. v. V Era Bradley Outlet LC
Case No. D2023-4669

1. The Parties

Complainant is Vera Bradley Designs, Inc., United States of America (“United States” or “US”), represented by 101domain.com, United States.

Respondent is V Era Bradley Outlet LC, United States, represented by Schepps Law Offices, United States.

2. The Domain Name and Registrar

The disputed domain name <verabradleyoutlet.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 9, 2023. On November 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 10, 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 (Information not available on WHOIS) and contact information in the Complaint. The Center sent an email communication to Complainant on November 13, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on November 17, 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 Respondent of the Complaint, and the proceedings commenced on November 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 18, 2023. The Response was filed with the Center on December 18, 2023.

On December 28, 2023, Complainant submitted a supplemental filing styled as Answer to Response, including various exhibits.

The Center appointed Frederick M. Abbott as the sole panelist in this matter on January 10, 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.

On January 15, 2024, Respondent submitted a supplemental filing styled as Response to Complainant's Supplemental Submission.

Complainant requests the Panel to accept its supplemental filing on the basis that disclosure by the registrar of Respondent's identity led to the discovery of information that could not reasonably have been discovered absent the additional information regarding Respondent's identity. The Panel accepts Complainant's rationale for the filing of its supplemental submission and accepts it. Respondent's response to Complainant's supplemental submission largely repeats arguments previously made in Respondent's initial Response. Nonetheless, in the interests of balancing the opportunities to submit information beyond the initial filings, the Panel accepts Respondent's supplemental submission.

4. Factual Background

Complainant manufactures, markets, and sells clothing and fashion accessories in the United States and other countries under the trademark VERA BRADLEY. Complainant was established in 1982, and it has used the VERA BRADLEY trademark in commerce since on or about that date. Complainant operates its primary commercial website at the web address "verabradley.com", in addition to operating at addresses including "verabradleyoutlet.biz" and "verabradleyoutlet.net". Vera Bradley, Inc. is a publicly traded enterprise with shares listed on the NASDAQ exchange.

Complainant is the owner of registrations for the word trademark VERA BRADLEY on the Principal Register of the United States Patent and Trademark Office (USPTO), including registration number 1745799, registration dated January 12, 1993, in international classes (ICs) 18 and 25; registration number 2800307, registration dated December 30, 2003, in ICs 9, 21, 24, and 36, and; registration number 3161672, registration dated October 24, 2006, ICs 9, 18, and 24. Complainant owns registrations for its VERA BRADLEY trademark in numerous foreign countries.

According to the Registrar's verification, Respondent is registrant of the disputed domain name. According to that verification, the disputed domain name was initially created on March 30, 2005. Respondent indicates that it purchased the disputed domain name in or around 2020 from a prior registrant/owner. As discussed further below, the Panel accepts that Respondent acquired the disputed domain name in or around 2020.

Respondent has used the disputed domain name in connection with a parking page that includes links to various merchandise including, "Bold Prints", "Picasso Prints for Sale", and "Artwork Prints". Respondent has provided evidence of a certificate of organization dated August 8, 2020, for the limited liability company ("LLC") "V Era Bradley Outlet LC" in the state of Virginia. Complainant has provided evidence that the aforesaid LLC was inactive as of November 30, 2021, for failure to pay registration fees. Respondent asserts that while the entity may be inactive, it has not been formally dissolved. Respondent has not substantiated that assertion.

The individual representing Respondent in this proceeding is Gary N. Schepps. Much of the information provided by Respondent is said to be of Mr. Schepps' personal knowledge. Mr. Schepps was a party to complex litigation involving determination of the rightful ownership of a substantial number of domain names. Mr. Schepps ultimately represented an interim owner of the disputed domain name, Domain Protection, LLC. The complex litigation resulted in a decision by the US Court of Appeals for the Fifth Circuit, *Domain Protection, L.L.C and Gary N. Schepps v. Sea Wasp, L.L.C.*, No. 20-40411, January 13, 2022. For present purposes, the Panel need not elaborate on the details of the series of events resulting in the Fifth Circuit decision insofar as Mr. Schepps has asserted that he acquired the disputed domain name for the newly formed V Era Bradley Outlet LC in or around 2020. This constitutes that entity as an independent new registrant.

Although the details of transfers of the disputed domain name are shrouded behind privacy services, Complainant has provided registration search records indicating that multiple changes took place with respect to the registrar and nameservers associated with the disputed domain name since its initial creation date in 2005. Those changes included a change of registrar to the current Registrar in 2019.

Complainant transmitted a cease-and-desist letter to Mr. Schepps on September 28, 2023. Although Complainant did not include a copy of its demand letter with its Complaint, it asserted that it offered to reimburse Mr. Schepps in connection with his administrative costs relating to registration of the disputed domain name. By return email letter of September 29, 2023, Mr. Schepps indicated that he represented Respondent, stating:

“The V-Era Bradley Outlet domain name receives tens of thousands of visitors, and while my client was not previously aware of Vera Bradley Designs, Inc., after now researching Bradley Designs on the internet, my take is that the domain name would likely generate more revenue for your client than it would cost for my client to rebrand as a company.

If that is something which interests your client, please let me know.”

5. Parties' Contentions

A. Complainant

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

Complainant contends that it owns rights in the trademark VERA BRADLEY and that the disputed domain name is confusingly similar to that trademark.

Complainant argues that Respondent lacks rights or legitimate interests in the disputed domain name because: (1) Respondent has used the disputed domain name only in connection with a parking page; (2) Respondent's efforts to establish rights or legitimate interests based on alleged preparation to establish a bona fide business using its corporate name are spurious efforts to establish such rights; (3) Respondent has no rights in the trademark VERA BRADLEY or the corresponding disputed domain name; (4) Respondent has not been authorized or licensed by Complainant to use its trademark in the disputed domain name or otherwise, and; (5) Respondent registered the disputed domain name to confuse Internet users and for the purpose of disrupting Complainant's business.

Complainant alleges that Respondent registered and is using the disputed domain name in bad faith because: (1) Respondent is using the disputed domain name to attract Internet users to a parking page with tens of thousands of visitors; (2) although the disputed domain name was initially registered in 2005, that is long after Complainant acquired rights in its trademark, and Respondent is using the disputed domain name to confuse Internet users and damaging Complainant's business; (3) Respondent deliberately targeted Complainant's well-known trademark to profit from Complainant's corporate reputation.

Complainant requests the Panel to direct the Registrar to transfer the disputed domain name to Complainant.

B. Respondent

Respondent contends that its certificate of organization is sufficient to establish that it is commonly known by the disputed domain name. Respondent refers to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 2.3, as the basis for this assertion.¹

¹[WIPO Overview 3.0](#), section 2.3, provides: “2.3 How would a respondent show that it is commonly known by the domain name or a name corresponding to the domain name?”

Respondent argues that Complainant did not make adequate efforts to determine the identity of Respondent because Complainant knew that such information would defeat its claim.

Respondent argues that it registered the disputed domain name because of an association with the "Bradley Fighting Vehicle", which included at some point a "V" platform. Respondent refers to several websites discussing Bradley Fighting Vehicles.

According to Respondent:

"The Respondent received tremendous positive feedback at various Bradley related conventions, but at this point, primarily due to complications that arose from the COVID pandemic that have not yet been resolved, the domain name currently is parked at the default page, and any links on the page are not generated by the Respondent, and, the Respondent receives no money, what-soever, from the links on the default page."

In its supplemental submission, Respondent argues that Complainant has engaged in a sophisticated attempt at reverse domain name hijacking.

6. Discussion and Findings

The registration agreement between Respondent and the Registrar subjects Respondent to dispute settlement under the Policy. The Policy requires that domain name registrants submit to a mandatory administrative proceeding conducted by an approved dispute resolution service provider, one of which is the Center, regarding allegations of abusive domain name registration and use (Policy, paragraph 4(a)).

Paragraph 4(a) of the Policy sets forth three elements that must be established by a complainant to merit a finding that a respondent has engaged in abusive domain name registration and use and to obtain relief. These elements are that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights;
- (ii) respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

Panels have addressed a range of cases involving claims that the domain name corresponds to the respondent's actual given name (including in combination with initials), stage name, nickname, or other observed moniker.

For a respondent to demonstrate that it (as an individual, business, or other organization) has been commonly known by the domain name or a name corresponding to the domain name, it is not necessary for the respondent to have acquired corresponding trademark or service mark rights.

The respondent must however be "commonly known" (as opposed to merely incidentally being known) by the relevant moniker (e.g., a personal name, nickname, corporate identifier), apart from the domain name. Such rights, where legitimately held/obtained, would *prima facie* support a finding of rights or legitimate interests under the UDRP.

Insofar as a respondent's being commonly known by a domain name would give rise to a legitimate interest under the Policy, panels will carefully consider whether a respondent's claim to be commonly known by the domain name – independent of the domain name – is legitimate. Mere assertions that a respondent is commonly known by the domain name will not suffice; respondents are expected to produce concrete credible evidence.

Absent genuine trademark or service mark rights, evidence showing that a respondent is commonly known by the domain name may include: a birth certificate, driver's license, or other government-issued ID; independent and sustained examples of secondary material such as websites or blogs, news articles, correspondence with independent third parties; sports or hobby club publications referring to the respondent being commonly known by the relevant name; bills/invoices; or articles of incorporation. Panels will additionally typically assess whether there is a general lack of other indicia of cybersquatting. In appropriate cases panels may refer to the respondent's domain name-related track record more generally."

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 Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Complainant has shown rights in respect of a trademark 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. The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here "outlet", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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

B. Rights or Legitimate Interests

The second element of a claim of abusive domain name registration and use is that respondent has no rights or legitimate interests in respect of the domain name (Policy, paragraph 4(a)(ii)). The Policy enumerates several ways in which a respondent may demonstrate rights or legitimate interests:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (i) 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; or
- (ii) you (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 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." (Policy, paragraph 4(c))

Complainant's allegations to support Respondent's lack of rights or legitimate interests in the disputed domain name are outlined above in section 5.A., and the Panel finds that Complainant has made a *prima facie* showing that Respondent lacks rights or legitimate interests in the disputed domain name.

Respondent's sole use of the disputed domain name is in connection with a parking page that includes links to various goods or services. The disputed domain name is confusingly similar to Complainant's distinctive and well-known trademark. Respondent's use does not constitute legitimate noncommercial or fair use of the disputed domain name or a *bona fide* offering of goods or services such as to establish rights or legitimate interests within the meaning of the Policy.

Respondent attempts to establish rights or legitimate interests in terms of having been commonly known by the disputed domain name. Respondent relies on a certificate of organization for a LLC named "V Era Bradley Outlet LC" in Virginia in 2020. The only evidence of ownership of the LLC is Respondent's assertion. Respondent argues that Mr. Schepps registered the LLC in order to establish some type of business relating to Bradley Fighting Vehicles without providing any evidence of activity directed towards accomplishing that end. Respondent attempts to account for addition of the capital letter "V" at the beginning

of the name by suggesting that there was a “V” series Bradley Fighting Vehicle, referring to the “FiST-V platform”, with that series coming to an end with the “B-FiST” platform, “ending the ‘V’ era”. Respondent asserts that it has received tremendous positive feedback at various Bradley conventions without providing any substantiation regarding this assertion. Respondent fails to address the term “Outlet” in the name of the LLC.

Referring to [WIPO Overview 3.0](#), section 2.3, Respondent is under the impression that merely incorporating in a state register in the United States suffices to establish rights or legitimate interests and supersedes the rights of a trademark owner, here involving a well-known mark.

If merely registering an LLC in some state of the United States with a name identical or confusingly similar to a well-known trademark was enough to demonstrate that a domain name registrant has been commonly known by that name and therefore has established rights or legitimate interests the purpose of the Policy would effectively be defeated. Registration of an LLC is an inexpensive and perfunctory proposition and does not involve a federal trademark conflict search. In Respondent’s view, it is enough to defeat a claim of abusive domain name registration and use simply to register an LLC contemporaneously with a domain name. Here the VERA BRADLEY trademark has been used since the 1980s, registered in the 1990s, and is the corporate name of a clothing and accessory firm listed on the US NASDAQ exchange.

[WIPO Overview 3.0](#), section 2.3, refers to “articles of incorporation” as one form of evidence that may show that a respondent is commonly known by a domain name, but that does not establish a right to register a domain name confusingly similar to the name of a well-known brand. It is for the Panel to evaluate all of the evidence presented which includes the context in which actions of the domain name registrant take place. The rights that may be accorded as a consequence of having been commonly known by a name prior to registration of that name as a domain name are intended to permit the continuity of business by parties that adopted a name legitimately and in good faith. Adopting a name that is the same as a distinctive well-known brand without having undertaken any business activities other than registration of a legal entity does not enable legitimate business continuity.

Respondent’s proffered explanation for the selection of the name of the LLC is highly implausible. The fact that the name of the LLC is the same as that of a well-known brand and includes a term that would commonly be associated with the activities of a clothing business, that is an “outlet”, is the far more plausible conclusion to be drawn regarding the basis for Respondent’s registration of the LLC name.

The Panel rejects Respondent’s contention that it has been commonly known by the disputed domain name. The Panel rejects that registration of a corporate name under the circumstances here establishes rights or legitimate interests.

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

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. Paragraph 4(b) of the Policy indicates that certain circumstances may, “in particular but without limitation”, be evidence of the registration and use of a domain name in bad faith. These include “(i) circumstances indicating that [the respondent has] registered or [the respondent has] 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 [the respondent’s] documented out-of-pocket costs directly related to the domain name; (ii) [the 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 [the respondent has] engaged in a pattern of such conduct; (iii) [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent’s] website or other online location, by creating a likelihood

of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location".

By its own account, Respondent purchased the disputed domain name in or around 2020: "Upon the undersigned's [Gary Schepps] personal knowledge—which knowledge is established by the Complainant's own evidence—the Respondent is the registrant, V Era Bradley, LC, and the Respondent registered the domain name after purchasing it, in or around 2020." (Respondent's Supplemental Submission)

It is well established that registration of a domain name acquired from a third party is assessed under the Policy as a de novo registration.

The registration and use of the newly registered domain name is assessed on the basis of the elements of paragraph 4(b) of the Policy as of the date of acquisition. [WIPO Overview 3.0](#), section 3.9: "the transfer of a domain name registration from a third party to the respondent is not a renewal and the date on which the current registrant acquired the domain name is the date a panel will consider in assessing bad faith. This holds true for single domain name acquisitions as well as for portfolio acquisitions."

Since Respondent acquired the disputed domain name in 2020, it did so long after Complainant had established rights in its VERA BRADLEY trademark, which distinctive trademark at that time was well-known in the United States. Respondent knew or should have known of Complainant's trademark rights at the time of registration, and Respondent's conduct in registering an LLC with a thinly disguised version of Complainant's trademark is evidence of Respondent's knowledge. As noted previously, Respondent's attempt to portray the terms of the disputed domain name as a reference to a military vehicle is highly implausible. The implausibility is illustrated through inclusion of the term "outlet" store in the LLC name. That is, unless one is willing to believe that Respondent decided to create an outlet store for "Bradley Fighting Vehicles" from the "V ERA". This without any supporting evidence that Respondent undertook activities in this regard beyond mere assertion. The Panel is not inclined to step through the looking glass and accept that words mean whatever Respondent says that they mean.²

Putting aside Complainant's unsupported and implausible assertions, this proceeding involves a routine effort by a domain name registrant to abuse the rights of a trademark owner by registering and using a disputed domain name substantially similar to that of the trademark owner.

Upon receiving a cease-and-desist letter from Respondent, Complainant responded as follows:

"My name is Gary Schepps and I represent the V-Era Bradley Outlet company with respect to your desire to obtain their V-Era Bradley Outlet domain name.

The V-Era Bradley Outlet domain name receives tens of thousands of visitors, and while my client was not previously aware of Vera Bradley Designs, Inc., after now researching Bradley Designs on the internet, my take is that the domain name would likely generate more revenue for your client than it would cost for my client to rebrand as a company.

If that is something which interests your client, please let me know." (Letter from Gary Schepps of September 29, 2023)

The Panel interprets this letter as an offer from Respondent to sell the disputed domain name to Complainant for a price in excess of Respondent's documented out-of-pocket costs directly related to the domain name. Respondent, *inter alia*, knew or reasonably should have known of Complainant's trademark rights when it registered the disputed domain name, and its assertion that it was not previously aware of Complainant is implausible.

²Per Humpty Dumpty: "When I use a word, it means just what I choose it to mean — neither more nor less." LEWIS CARROLL, THROUGH THE LOOKING GLASS (1871).

The Panel concludes that Respondent registered and used the disputed domain name to sell it to Complainant or a competitor for valuable consideration in excess of its out-of-pocket expenses, in contravention of paragraph 4(b)(i) of the Policy.

Respondent directed the disputed domain name to a parking page with links to third party providers of goods and services. Because the disputed domain name would be associated by Internet users with Complainant and its clothing and accessory products, such diversion creates confusion among those Internet users and interferes with Complainant and its business.

The Panel concludes that Respondent registered and used the disputed domain name to disrupt Complainant's business in contravention of paragraph 4(b)(iii) of the Policy, at a minimum for purposes of inducing Complainant to seek to end that disruption. Such ending may include Complainant's attempts to acquire the disputed domain name for a price related to the expenses of registration, or to the initiation of a dispute settlement proceeding such as this one, including its associated expenses.

Respondent used the disputed domain name to direct Internet users to a parking page with links to third party providers of goods and services. Respondent states that it did not receive any payments in connection with that parking page, although Respondent did not provide any evidence to substantiate that assertion. Even assuming that to be true, under the circumstances of this proceeding in which Respondent undertook to register the name of a LLC as a thinly disguised version of Complainant's trademark, Respondent deliberately engaged in activities for commercial gain that would be based on Internet user confusion between Complainant's trademark and the disputed domain name. The Panel concludes that Respondent registered and used the disputed domain name for commercial gain by using the disputed domain name to create Internet user confusion between the disputed domain name and Complainant's trademark as to whether Complainant was the source, sponsor or affiliate of Respondent's website location, in contravention of paragraph 4(b)(iv) of the Policy.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1. The Panel determines that the totality of the circumstances in this case evidences Respondent's registration and use of the disputed domain name in bad faith in contravention of paragraph 4(b) of the Policy.

The Panel finds that Complainant has established the third element of the Policy.

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.

Given the evident bad faith demonstrated by Respondent, the Panel rejects as spurious Respondent's allegation of reverse domain name hijacking by Complainant.

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 <verabradleyoutlet.com> be transferred to Complainant.

/Frederick M. Abbott/

Frederick M. Abbott

Sole Panelist

Date: January 24, 2024