

## **ADMINISTRATIVE PANEL DECISION**

SRL BOWTEX v. Mira Holdings

Case No. D2024-1632

### **1. The Parties**

The Complainant is SRL BOWTEX, Belgium, represented by Sybarius, Belgium.

The Respondent is Mira Holdings, United States of America (“United States”).

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

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 18, 2024. On April 18, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Domains By Proxy LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 19, 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 April 23, 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 proceedings commenced on April 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 16, 2024. On April 29, 2024, the Respondent requested an extension of time of four calendar days to respond to the Complaint. On the following day, the Center granted the Respondent an extension of four calendar days until May 20, 2024, in accordance with paragraph 5(b) of the Rules. The Response was filed with the Center on May 20, 2024.

Alongside the above-mentioned communications, the Respondent sent several email communications to the Center on April 23, May 21, May 23, and May 28, 2024.

The Center appointed Andrew D. S. Lothian, Alissia Shchichka, and John Swinson as panelists in this matter on July 9, 2024. The Panel finds that it was properly constituted. Each member of 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 limited liability company incorporated under Belgian law, with its registered office in Forest, Belgium. It specializes in protective products for motorcyclists. The Complainant and/or its director, Mr. Robert Souery, are the owners of a variety of registered trademarks in respect of the mark BOWTEX, namely two figurative marks and a word mark.

For example, Mr. Souery is the owner of United States Registered Trademark Number 5722268 for the word mark BOWTEX, registered on April 9, 2019, in Class 9. The Complainant is the owner of Benelux Registered Trademark Number 1422259 for the figurative/combined mark BOWTEX consisting of a stylized capitalized representation of the word in a distinctive typeface, registered on November 11, 2020 in Classes 9, 12, and 42. Mr. Souery is the owner of European Union Registered Trademark Number 13499975 for the figurative mark consisting of the word BOWTEX consisting of said word in a lower-case distinctive sans-serif typeface with graphical yellow letter “w” beneath a representation of the same graphical “w” superimposed on a grey circle, registered on March 12, 2015 in Classes 9, 12, and 42.

The Complainant also owns a variety of “bowtex” domain names, including <bowtex.be>, <bowtex.eu>, <bowtex.co.uk>, <bowtex.fr>, <bowtex.de>, and <bowtex.store>. The latter hosts the Bowtex e-commerce website, on which it markets its products.

The disputed domain name was registered on December 11, 2021. The Respondent states that it is a professional domain name investor with more than 1,000 domain names under its ownership. The website associated with the disputed domain name offers it for sale or lease and invites interested parties to make an offer therefor. The Respondent notes that it acquired the disputed domain name in an expiring domain name auction, in which it won with a bid of USD 2,056.

On January 26, 2024, following an earlier attempt to make contact, the Complainant sent an email to the Respondent in which the Complainant offered to purchase the disputed domain name for USD 150. On February 4, 2024, the Respondent replied with a counteroffer of USD 25,000.

#### **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.

Notably, the Complainant contends that the disputed domain name is identical to the Complainant’s word trademarks and to the predominant word element in the Complainant’s figurative/combined trademarks. The Complainant asserts that there is no evidence or record indicating that the Respondent has any rights or legitimate interests in respect of the disputed domain name. The Complainant submits that it has never authorized the Respondent to use its BOWTEX trademark, noting that its three registered trademarks predate the registration of the disputed domain name. The Complainant contends that the Respondent is not commonly known by the disputed domain name but carries on business under the name “Mira Holdings”.

The Complainant notes that the Respondent has registered a domain name that is identical to its trademarks, contending that this renders it undisputed that the disputed domain name was registered in bad faith, and adding that no legitimate use is being made of the disputed domain name. The Complainant contends that the Respondent's counteroffer for the sale of the disputed domain name was so unreasonable that it demonstrates the Respondent's bad faith, and that the Respondent acquired the disputed domain name with a view to reselling it for a price exceeding the amount of the costs incurred in its acquisition.

## **B. Respondent**

The Respondent contends that the Complainant has not satisfied the elements required under the Policy for a transfer of the disputed domain name.

The Respondent contends that the disputed domain name is a short, memorable, six letter domain name made up of the words "bow" (a weapon for shooting arrows, or a bow as in "bow-tie") and "tex" (short form of "Texan" or "Texas", shortened form of "text" or "textile", or homophone of "tech") with an estimated value of USD 2,500 according to a "GoDaddy" appraisal tool. The Respondent submits that the disputed domain name has many possible meanings and potential to be used in a variety of business fields, adding that the Respondent has sold comparable domain names such as <netint.com> for USD 23,899 and <textit.com> for USD 35,000, while others have sold <vertex.net> for USD 25,000 and <bowmar.com> for USD 9,999. The Respondent asserts that it took the decision to acquire the disputed domain name to list it for sale or lease to the general public based on these values when it became available in December 2021 via an auction at "dropcatch.com". The Respondent states that its winning bid was based on the shortness and memorable nature of the disputed domain name, adding that it holds other domain names such as <bockel.com>, <qotex.com>, <safemix.com>, <sealtec.com>, <telris.com>, and <zotexo.com>, which were purchased in a similar manner. The Respondent contends that it was not specifically targeting the Complainant in any way by acquiring the disputed domain name.

The Respondent submits that a Google search lists other companies that use the "BowTex" name, including an entity based in Houston, Texas, which appears to have senior common law trademark rights to the Complainant's rights. The Respondent also notes that a custom bow-tie maker goes by this name, based upon its Instagram handle dating back to 2012, adding that six additional companies go by said name based on a company search. The Respondent submits that the Complainant's trademark is used for a narrow class of goods, being motorcycle clothing, adding that the Respondent has not used the disputed domain name for the same goods, and asserting that the Complainant's mark was not famous or well-known when the disputed domain name was registered. The Respondent notes that the Internet Archive shows that the Complainant's domain name <bowtex.store> was active from August 6, 2020, being 16 months before its acquisition of the disputed domain name, and asserts that minimal trademark rights had accrued in the intervening period.

The Respondent states that it has not used the disputed domain name to interfere with the Complainant's business but has parked it at a professional monetizer site with an inquiry page since acquisition, adding that offering a generic domain for sale is not bad faith. The Respondent accepts that it sent a counteroffer to the Complainant of USD 25,000 in respect of the disputed domain name but states that this was merely a starting point in the negotiations. The Respondent submits that the Complainant engaged in a "Plan B" approach to acquire the disputed domain name when the price was deemed to be too high, contending that this can often constitute Reverse Domain Name Hijacking.

The Respondent submits that it had no knowledge of the Complainant or its products when it purchased the disputed domain name, adding that the Respondent is in the United States, while the Complainant is in Europe, and that the Complainant is not a household name. The Respondent asserts that panels in previous cases under the Policy have found that respondents should not be held responsible for searching the world for possible foreign trademarks. The Respondent argues that its business of domain investing, demonstrated by its purchase of multiple six letter domain names, provides a bona fide offering of goods and services.

## 6. Discussion and Findings

### 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 trademark 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 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. 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 notes that the word mark cited by the Complainant is owned by the Complainant's director. The Complainant is an affiliate of its director. A trademark owner's affiliate is considered to have rights in a trademark under the UDRP for purposes of standing to file a complaint. [WIPO Overview 3.0](#), section 1.4.

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

### B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The essence of the Respondent's rebuttal argument is that it is a domainer engaged in the legitimate business practice of acquiring generic domain names for resale, and that it acquired the disputed domain name without reference to or awareness of the Complainant's trademark because of its inherent value as a short, memorable, six character domain name that would be suitable for resale.

The Panel acknowledges that, as a general rule, a person such as the respondent has the right to acquire a domain name containing a dictionary word or phrase based upon its dictionary meaning and to offer this for sale at a price of its choosing, provided that in so doing it does not target the trademark value of the term. The problem for the Respondent in this case is that the argument that the disputed domain name contains a dictionary term rather than a trademark seems particularly contrived. It requires the Respondent to separate the second level of the disputed domain name into two words, then abbreviate the latter word, then find some kind of dictionary meaning in the two words taken together within the portmanteau that it has created. For the Panel, these steps are steps too far when the domain name itself has the appearance of being a trademark or coined term rather than having any logical dictionary meaning. In these circumstances, the value of the term "bowtex" in the disputed domain name appears to the Panel to derive primarily from the former and not from any alleged dictionary meaning.

Furthermore, the Complainant's mark was registered and in force in the jurisdiction where the Respondent is based at the point when it decided to acquire the disputed domain name. The Respondent either knew about this, or it deliberately chose to look the other way in an act of willful blindness. In that context, it should be borne in mind that the Respondent warranted to its Registrar in terms of paragraph 2 of the Policy that to its knowledge the registration of the disputed domain name would not infringe upon or otherwise violate the rights of any third party.

Importantly, the Respondent acknowledges that the disputed domain name was acquired via an auction at "dropcatch.com". In other words, it was an expiring domain name that had not been renewed. The Respondent was thus on notice that this particular domain name had a history, and yet it appears not to have researched that history before acquiring it. The Panel notes that if the Internet Archive is consulted in respect of the disputed domain name, it reveals that the disputed domain name was used by the Complainant in the course of its business as late as October 26, 2020.<sup>1</sup> "A domainer [...] has a duty to investigate whether the prior owner of a lapsed domain name has rights in the domain name of interest [...]" An Internet archive search would have shown Complainant's prior use of the Disputed Domain Name and also of the continuity of those services under the current version of the Mark" (*Haringey London Borough Council v. Host Master, 1337 Services LLC*, WIPO Case No. [D2023-1321](#)).

The Respondent is critical of the Complainant's submission that its mark is well-known. Indeed, there is no hard evidence before the Panel as to the fame of the Complainant's mark at the point when the disputed domain name was registered, other than the fact that it maintains a retail website at "www.bowtex.store". Nevertheless, as of May 16, 2024 (the date of the Respondent's Google search), this site appears as the number one search item ("results for Minneapolis [zipcode]") under the heading "Bowtex® Official Webshop – Ultralight protective baselayers". While the Panel does not know what the Complainant's status on a Google search for BOWTEX would have been at the material date, it seems very unlikely that it would not have been present or noticeable at all. It should also be noted that the Respondent's Google search was for the two-word term "bowtex company"<sup>2</sup> rather than simply for the term "bowtex" alone, and yet the Complainant was the top result. In any event, the Respondent would and should have become aware of the Complainant's rights had it considered the history of the disputed domain name or performed a basic trademark search in its own jurisdiction. The Complainant's activities are supported by a United States trademark that had been filed some three years before the disputed domain name was acquired by the Respondent. The Respondent does not have to be held responsible for searching the world for possible foreign trademarks in order to identify the Complainant's interest.

In conclusion, given that the term in the disputed domain name has the appearance of a trademark rather than that of a dictionary word or phrase, the Respondent, as a domain name investor, should have shown a level of due diligence when acquiring the disputed domain name from a drop catching auction. In that regard, it need have looked no further than a brief trademark search in the jurisdiction where it is based, and/or a basic search on the history of the disputed domain name, and/or a Google search for the trademark owner's official website. Indeed, one search or the other would more probably than not have disclosed the Complainant's interest. It seems implausible to the Panel that the Respondent performed no such investigations especially given its awareness of the Internet Archive, but if it did not, then the Panel considers that it should have done so and that its willful blindness to the Complainant's rights does not absolve it from the consequences of the Policy.

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

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<sup>1</sup> The Panel considered putting the outcome of its research in this connection to the Parties but determined that this was not necessary because (1) the fact that the disputed domain name was used by the Complainant is likely to be within the Complainant's knowledge; and (2) the Respondent was aware that the disputed domain name had a history when it was auctioned and has demonstrated that it is familiar with the workings of the Internet Archive "Wayback Machine", given that it has used this in its Response to review the history of the Complainant's <bowtex.store> domain name.

<sup>2</sup> This term is searched for as two words rather than as a Google phrase search.

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

The Panel's analysis of the question of registration and use in bad faith in this case mirrors its analysis of rights and legitimate interests as noted above. In short, for the reasons outlined above, the Panel considers that the Respondent either acquired the disputed domain name in the knowledge of the Complainant's rights and with intent to target these or was willfully blind to the interests of rights holders when it acquired a domain name that it knew to have a history without performing even basic due diligence as to its previous history and/or any rights which the previous registrant is likely to have possessed.

The Respondent lists several possibilities as to what the disputed domain name might mean and seeks to rely upon the fact that certain other companies use the term. This does not demonstrate that the term is descriptive, generic, or a dictionary term or well-known phrase, and the Panel does not consider it useful to examine each of the Respondent's various examples in any detail, given that they have the flavor of being reverse-engineered after the Respondent was required to justify its purchase. What is important to the question of registration and use in bad faith in a case of this type is not the range or volume of allegedly good faith possibilities that a respondent may find on a trawl of the Internet after the registration or acquisition, but what was and equally what should have been in its mind at the point of acquisition.

On the subject of the disputed domain name being acquired in an expiring domain name auction, the Panel considers that the following observations of the panel in *Supermac's (Holdings) Limited v. Domain Administrator, DomainMarket.com*, WIPO Case No. [D2018-0540](#) are apposite: "The Panel emphasizes that critical to its reasoning and its conclusion in this case is that the Respondent acquired the disputed domain name through drop-catching. Registration of a domain name in that circumstance is not the same as "ordinary" registration of a domain name (i.e., registration of a domain name which is not held by another person immediately prior to registration). Where registration occurs through drop-catching, the registrant is objectively aware that another person held the registration immediately prior. This, in effect, puts the registrant on notice that another person (the immediately prior registrant) may have rights in a trademark to which the domain name is identical or confusingly similar. Where, as in this case, the drop-catching registrant fails to take any steps to determine if such rights exist, then the registrant is taking the risk that such rights do exist. Where such rights do exist, where the value of the domain name derives primarily from those rights, and where the registrant's only meaningful use of the domain name is to offer it for sale, then the registrant is liable to be considered as having registered the domain name primarily for the purpose of selling it to the person who has those rights".

The disputed domain name does not consist of a dictionary word or phrase and has the appearance of a coined term. Given this fact, and the requirement of the Respondent to carry out at least modest due diligence into the prior registrant of the disputed domain name, the Respondent was or should have been on notice of the Complainant's interests therein.

That is not to say that the Respondent would have been barred from registering the disputed domain name (and using it for purposes unrelated to the Complainant) but the Respondent's acquisition of the disputed domain name and immediate offering for sale supports the Panel's conclusion that the Respondent's conduct in this case constitutes registration and use in bad faith within the meaning of paragraph 4(b)(i) of the Policy. The fact that there might be other trademark owners (whether of common law marks or otherwise) who may also have had an interest in the disputed domain name and/or the fact that the Respondent has registered other six letter domain names without challenge does not absolve the Respondent of the consequences of the Policy in this respect.

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

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

In light of its findings above in the Complainant's favor, the Panel need not consider the Respondent's observations relating to Reverse Domain Name Hijacking.

## 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 <bowtex.com> be transferred to the Complainant.

*/Andrew D. S. Lothian/*

**Andrew D. S. Lothian**

Presiding Panelist

*/Alissia Shchichka/*

**Alissia Shchichka**

Panelist

*/John Swinson/*

**John Swinson**

Panelist

Date: July 22, 2024