

## **ADMINISTRATIVE PANEL DECISION**

Balfour Beatty plc v. Privacy service provided by Withheld for Privacy ehf /  
Morgani Singh

Case No. D2022-0162

### **1. The Parties**

The Complainant is Balfour Beatty plc, United Kingdom, represented by Stobbs IP Limited, United Kingdom.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Morgani Singh, United States of America.

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

The disputed domain name <balfourbeatty.com> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 18, 2022. On January 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 18, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on January 18, 2022 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 January 20, 2022.

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 January 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 10, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 11, 2022.

The Center appointed James Bridgeman SC as the sole panelist in this matter on February 14, 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**

The Complainant is the parent company of an international infrastructure group providing engineering, construction, and support services worldwide in which it uses the BALFOUR BEATTY mark, for which it owns an international portfolio of registrations including European Union Trade Mark, BALFOUR BEATTY, registration number 002809408, registered on March 24, 2004 for goods and services in international classes 6, 7, 9, 11, 16, 19, 35-37, 39, 41, 42.

In addition, the Complainant has an established Internet presence: it owns the domain name <balfourbeatty.com> which it uses as a website address and has active social media accounts on Twitter, Facebook, Instagram and YouTube.

The disputed domain name <balfourbeatty.com> was registered on July 16, 2021 and does not resolve to any active website but has been used to establish an email account from which at least one message has been sent to a client of the Complainant's group, impersonating the Complainant.

The registrant of the disputed domain name has availed of a privacy protection service to conceal his identity on the published Whois and the Registrar has provided the registration details in response to the request from the Center in the course of this proceeding, confirming that the Respondent is the registrant.

There is no information available about the Respondent, except for that which is contained in the Complaint, on the Registrar's Whois for the disputed domain name, and the information provided by the Registrar in response to a request from the Center to provide registration details of the disputed domain name.

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

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

The Complainant submits that it is an international infrastructure group providing engineering, construction, and support services worldwide, and since it was established in 1945, it has grown to have 26,000 employees, with a market capitalization value on the London Stock Exchange of GBP 1.724 billion and underlying annual revenue of GBP 8.6 billion in the financial year ending December 31, 2020 as evidenced by documentation annexed to the Complaint.

The Complainant claims rights in the BALFOUR BEATTY trademark and service mark established by its ownership of its international portfolio of trademark registrations described above and its extensive international use of the mark by its group providing its infrastructure services.

The Complainant alleges that the disputed domain name is confusingly similar to the Complainant's BALFOUR BEATTY mark as it incorporates a misspelling of the trademark through the addition of the letter "i" within second word of the mark. It is submitted that the additional letter does nothing to alter the overall impression of the disputed domain name in the eyes of an unsuspecting Internet user.

It is further submitted that the Panel should ignore the generic Top-Level Domain ("gTLD") ".com" when making an assessment of the disputed domain name, because this is merely a technical requirement used for domain name registrations as confirmed in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), paragraph 1.11: "The applicable Top Level Domain ('TLD') in a domain name (e.g., '.com', '.club', '.nyc') is viewed as a standard registration requirement and as such is

disregarded under the first element confusing similarity test.”

The Complainant next alleges that the Respondent has no rights or legitimate interests in the disputed domain name, asserting that to the best of its knowledge the Respondent has never been known as BALFOUR BEATTY at any point in time.

The Complainant adds that because of the long established, considerable reputation of the BALFOUR BEATTY brand and the Complainant's operations in a wide range of goods and services there is no believable or realistic reason for registration or use of the disputed domain name other than to take advantage of the Complainant's rights. The disputed domain name was created on July 16, 2021, by which time, the Complainant already had extensive rights in the BALFOUR BEATTY brand dating back over twenty years.

It is further alleged that the disputed domain name at present does not resolve to a live website but has an active MX (Mail) Record in place and is being used by the Respondent to engage in illegal phishing activity.

Specifically, it is alleged that the Respondent has used the disputed domain name for the purpose of spear phishing by sending fraudulent emails to a client of the Complainant, posing as one of the Complainant's employees.

In support of this submission the Complainant refers to copy email correspondence, elements of which have been redacted for privacy, annexed to the Complaint. The Complaint asserts that the copy email dated August 4, 2021 purports to have been sent from Accounts Receivable – CSUK (Balfour Beatty) from an email address linked to the disputed domain name to a client of the Complainant. Details within the document have been redacted for privacy. The brief message states: “Hi We have updated your creditor details accordingly as requested, Kind regards....”

It is alleged that the Respondent's use of the disputed domain name for an illegal activity in this manner is evident of illegitimate intent and does not establish any rights or legitimate interests as stated in the [WIPO Overview 3.0](#), paragraph 2.13.1: “Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.”

In summation, the Complainant submits that there is nothing to suggest that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

The Complainant next alleges that the disputed domain name was registered and is being used in bad faith, arguing that the BALFOUR BEATTY is an indicator of trade origin of the Complainant and the Complainant alone; and the incorporation of the Complainant's distinctive mark within the disputed domain name, combined with the nefarious phishing use shows that the only reason that the Respondent registered the disputed domain name was to take advantage of the Complainant's goodwill and valuable reputation. No other logical or reasonable conclusion can be gleaned.

The Complainant adds that in view of the distinctive nature of the BALFOUR BEATTY trademark, and the colossal scope of the Complainant's business, there is no way in which the Respondent could use the disputed domain name without falling foul of paragraph 4(b) of the Policy.

In conclusion, the Complainant submits that the Respondent acquired the disputed domain name with fraudulent intent, and has since used the disputed domain name for the purpose of sending phishing emails to the general public with the intention of obtaining personal information.

## **B. Respondent**

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

## 6. Discussion and Findings

### A. Identical or Confusingly Similar

The Complainant has provided uncontested evidence of its rights in the BALFOUR BEATTY mark established by its extensive use of the mark providing engineering, construction, and support services with an established Internet presence and as asserted that it has rights in an international portfolio of registered trademark for BALFOUR BEATTY mark. Evidence of the trademark registrations is provided in the form of a list, rather than copies of the registration details or search results, but in view of the other evidence adduced, this Panel accepts the uncontested evidence that the Complainant is the owner of the registrations.

The BALFOUR BEATTY mark is clearly identifiable within the disputed domain name <balfourbeatty.com> and, in fact, the disputed domain name is almost identical to the Complainant's mark except for the addition of a single letter "i" in the disputed domain name.

The addition of the letter "i" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark. It would probably go unnoticed by Internet users or else it would be perceived as a misspelling of the BALFOUR BEATTY mark.

In the context of this proceeding the gTLD extension ".com" is a necessary technical requirement for the disputed domain name.

This Panel finds therefore that the evidence shows that the Complainant has rights in the BALFOUR BEATTY mark and that the disputed domain name is confusingly similar to the BALFOUR BEATTY mark in which the Complainant has rights.

The Complainant has therefore succeeded in the first element of paragraph 4(a).

### B. Rights or Legitimate Interests

The Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name arguing that:

- to the best of its knowledge the Respondent has never been known as BALFOUR BEATTY at any time;
- because of the long established, considerable reputation of the BALFOUR BEATTY brand and the Complainant's operations providing a wide range of goods and services, there is no believable or realistic reason for registration or use of the disputed domain name other than to take advantage of the Complainant's rights;
- the disputed domain name was created on July 16, 2021, by which time, the Complainant already had extensive pre-existing rights in the BALFOUR BEATTY brand dating back over twenty years;
- the disputed domain name at present does not resolve to a live website but has an active MX (Mail) Record in place, and is being used by the Respondent in order to engage in illegal activity;
- the Respondent has used the disputed domain name for the purpose of spear phishing by sending fraudulent emails to a client of the Complainant, posing as one of the Complainant's employees;
- a partially redacted copy of email message annexed to the Complaint, dated August 4, 2021, purports to have been sent to a client by the Accounts Receivable department of the Complainant's group to a client of Complainant in an act of spear phishing;

- the message purports to be from Accounts Receivable – CSUK (Balfour Beatty), from an email address linked to the disputed domain name to a client of the Complainant with the brief message which states: “Hi We have updated your creditor details accordingly as requested, Kind regards....”
- Such use of the disputed domain name in this unlawful manner does not establish any rights or legitimate interests for the Respondent in the disputed domain name;
- there is nothing to suggest that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

It is well established that once a complainant makes out a *prima facie* case that a respondent has no rights or legitimate interests in the domain name at issue, the burden of production shifts to the respondent to prove its rights or legitimate interests.

The Respondent has failed to discharge that burden and therefore this Panel must find that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has therefore succeeded in the second element of paragraph4(a).

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

The Complainant is a large PLC quoted on the London Stock Exchange, and has shown in uncontested evidence that it has a long-established extensive international goodwill and reputation in the use of the BALFOUR BEATTY mark and the Balfour Beatty name.

Additionally, the Complainant has an established Internet presence with a website and social media accounts.

The BALFOUR BEATTY trademark is a distinctive combination of two family names viz Balfour and Beatty.

The disputed domain name is almost identical to the Complainant’s name, mark and pre-existing <balfourbeatty.com> domain name, which is used as the address for the Complainant’s website.

Taking these factors together, this Panel must find that it is improbable that the registrant would have chosen the disputed domain name, without knowledge of the Complainant, its BALFOUR BEATTY mark and <balfourbeatty.com> domain name.

The disputed domain name consists of the Complainant’s trademark with only the additional letter “i” and in the absence of any explanation, this Panel finds that by choosing and registering the disputed domain name, the registrant was engaged in an act of typosquatting.

On the balance of probabilities therefore, this Panel finds that the disputed domain name was registered in bad faith with the intention of targeting and taking predatory advantage of the Complainant’s mark and goodwill by creating confusion among Internet users.

The uncontested submissions and evidence of the Complainant show that the disputed domain name has been used to establish an email account which has been used to impersonate the Complainant in making contact with one of the Complainant’s clients to state that the account details were being updated.

There the message contains a brief statement: “Hi We have updated your creditor details accordingly as requested, Kind regards....” At the bottom of the email message there is the following statement: “You don’t often get email from [...]@[the disputed domain name]. Learn why this is important.” This statement appears to be hyperlinked.

The content of this email message is indicative of spear phishing activity, particularly because the message purports to have been sent by the Complainant to its client.

On the balance of probabilities therefore this Panel finds that the Respondent is using the disputed domain name in bad faith in an act of typosquatting for the purposes of spear phishing or similar fraudulent activity.

As this Panel has found that the disputed domain name was registered and is being used in bad faith, the Complainant has succeeded in the third element of paragraph 4(a).

## **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 <balfourbeaifty.com> be transferred to the Complainant.

*/James Bridgeman/*

**James Bridgeman**

Sole Panelist

Date: February 28, 2022