

ADMINISTRATIVE PANEL DECISION

Balfour Beatty plc v. Soula Daou
Case No. D2022-1180

1. The Parties

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

The Respondent is Soula Daou, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <balfourbeatty-uk.com> (the “Domain Name”) is registered with FastDomain, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 5, 2022. On April 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 5, 2022, the Registrar transmitted by email to the Center its verification 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 communication to the Complainant on April 11, 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 April 12, 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 April 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 9, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 12, 2022.

The Center appointed Alan L. Limbury as the sole panelist in this matter on May 20, 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, Balfour Beatty plc, is the parent company of the Balfour Beatty group, founded in 1909 by George Balfour and Andrew Beatty, an international infrastructure group providing leading worldwide engineering, construction, and support services.

The Complainant is the owner of United Kingdom registered trademark BALFOUR BEATTY, No. 1289212, registered on April 5, 1991 in Class 37. The Complainant has also registered numerous domain names incorporating the BALFOUR BEATTY mark, including <balfourbeatty.com>, registered on October 21, 1998.

The Domain Name <balfourbeatty-uk.com> was registered on July 1, 2021. The Domain Name resolves to a “coming soon” website, and the Complainant has provided evidence the Domain Name has been used in connection to a fraudulent email scheme.

5. Parties’ Contentions

A. Complainant

The Complainant says the Domain Name is confusingly similar to its BALFOUR BEATTY mark and the Respondent has no rights or legitimate interests with respect to the Domain Name, which was registered and is being used in bad faith.

As to legitimacy, the Respondent is not commonly known by the Domain Name, which is not being used in connection with a *bona fide* offering of goods or services. The Domain Name does not resolve to a live site but has an active MX (mail exchanger) Record in place and is being used by the Respondent in order to engage in illegal activity, namely for the purpose of spear phishing by sending fraudulent emails to a client of the Complainant, posing as one of the Complainant’s employees.

As to bad faith, the intention of the Respondent is to divert consumers intended for the Complainant to the Respondent’s website and to take advantage of the Complainant’s goodwill and reputation. The Respondent’s email address, associated with the disputed domain name, is set up to phish personal and/or financial information from the Complainant’s customers.

B. Respondent

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

6. Discussion and Findings

In accordance with paragraph 4(a) of the Policy, to obtain transfer of the Domain Name, the Complainant must prove the following three elements: (i) the Domain Name is 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 Domain Name; and (iii) the Respondent has registered the Domain Name and is using it in bad faith.

Under paragraph 15(a) of the Rules, “A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, asserted facts may be taken as true and reasonable inferences may be drawn from the information provided by the complainant. See *Reuters Limited v. Global Net 2000, Inc*, WIPO Case No. [D2000-0441](#).

A. Identical or Confusingly Similar

This element requires a comparison to be made between the Domain Name and a trademark in which the Complainant has rights. The generic Top-Level Domain (“gTLD”) of the Domain Name, “.com”, is generally considered irrelevant to this element and may be disregarded. See *Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr.*, WIPO Case No. [D2000-1525](#); *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. [D2000-0429](#).

The Complainant has shown that it has rights in the BALFOUR BEATTY mark through numerous registrations, including United Kingdom trademark No. 1289212, registered on April 5, 1991. The Panel finds the Domain Name to be confusingly similar to the Complainant’s mark, since it incorporates the Complainant’s mark in its entirety, only differing by the addition of “-uk”, which does not prevent a finding of confusing similarity, and the gTLD “.com”, which may be ignored.

The Complainant has established this element.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out three illustrative circumstances as examples which, if established by the Respondent, shall demonstrate rights to or legitimate interests in respect of the Domain Name for purposes of paragraph 4(a)(ii) of the Policy, *i.e.*

- (i) before any notice to the Respondent of the dispute, the use by the Respondent 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) the Respondent (as an individual, business or other organization) has been commonly known by the Domain Name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) the Respondent is making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

The Domain Name was registered on July 1, 2021, many years after the Complainant has shown that its BALFOUR BEATTY mark was registered and had become very well-known. The Domain Name does not resolve to an active website, but has been used to send phishing emails to the Complainant’s customers, purporting to be from an employee of the Complainant and seeking personal and financial information.

These circumstances, together with the Complainant’s assertions, are sufficient to constitute at least a *prima facie* showing of an absence of rights or legitimate interests in respect of the Domain Name on the part of the Respondent. The burden of production therefore shifts to the Respondent to show that it does have rights or legitimate interests in the Domain Name. See *Cassava Enterprises Limited, Cassava Enterprises (Gibraltar) Limited v. Victor Chandler International Limited*, WIPO Case No. [D2004-0753](#). The Respondent has made no attempt to do so.

The Panel therefore finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

The Complainant has established this element.

C. Registered and Used in Bad Faith

The four illustrative circumstances set out in paragraph 4(b) of the Policy as evidence of the registration and use of a domain name in bad faith for purposes of paragraph 4(a)(iii) are not exclusive.

The circumstances set out above in relation to the second element satisfy the Panel that the Respondent was fully aware of the Complainant's very well-known BALFOUR BEATTY mark when the Respondent registered the Domain Name and that the Respondent did so in bad faith in order to mislead unsuspecting customers of the Complainant into believing they are communicating with the Complainant by sending them phishing emails purporting to be from an employee of the Complainant in order to unduly obtain personal and financial details. Accordingly, the Panel finds that the Domain Name was registered and is being used in bad faith.

The Complainant has established this element.

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, <balfourbeatty-uk.com>, be transferred to the Complainant.

/Alan L. Limbury/

Alan L. Limbury

Sole Panelist

Date: May 23, 2022