

ADMINISTRATIVE PANEL DECISION

Bien-Air Holding SA v. Bhupesh Bhandari, Lucky digitals
Case No. D2022-4039

1. The Parties

The Complainant is Bien-Air Holding SA, Switzerland, represented by Infosuisse, Switzerland.

The Respondent is Bhupesh Bhandari, Lucky digitals, India.

2. The Domain Name and Registrar

The disputed domain name <bienair.org> (the “Domain Name”) 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 October 27, 2022. On October 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On October 31, 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 communication to the Complainant on November 1, 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 November 1, 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 November 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 21, 2022. The Respondent did not submit a response within the Response due date. Accordingly, the Center notified the Respondent’s default on November 23, 2022. Subsequently, the Respondent submitted several informal email communications, which the Panel has considered in making the below findings.

The Center appointed Dawn Osborne as the sole panelist in this matter on November 28, 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 owns the trademark BIEN AIR registered, *inter alia*, as an International trademark BIEN AIR No. 433700, registered on November 4, 1977 for surgical, medical, dental and veterinary instruments and appliances.

The Domain Name registered in 2014 formerly bore material copied from the Complainant's web site, but is currently being used to point to third party commercial competing businesses.

5. Parties' Contentions

A. Complainant

The Complainant's contentions can be summarised as follows:

The Complainant owns the trademark BIEN AIR registered, *inter alia*, as an International trademark BIEN AIR No. 433700, registered on November 4, 1977 for surgical, medical, dental and veterinary instruments and appliances.

The Domain Name registered in 2014 is identical to the Complainant's BIEN AIR Mark for the purposes of the Policy because it wholly incorporates it and is differentiated from it only by the addition of the generic Top-Level Domain ("gTLD") ".org".

The Respondent does not have rights or a legitimate interest in the Domain Name, is not commonly known by it and is not authorised by the Complainant.

The Domain Name formerly bore material copied from the Complainant's web site, but is currently being used to link to third party commercial competing web sites so there is no *bona fide* offering of goods or services or legitimate noncommercial or fair use, but registration in bad faith causing confusion on the Internet.

B. Respondent

The Respondent did not provide a formal Response or provide evidence to counter the Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Domain Name consists of the Complainant's BIEN AIR mark (registered, *inter alia*, as an International trademark BIEN AIR No. 433700, registered on November 4, 1977 for surgical, medical, dental and veterinary instruments and appliances) and the gTLD ".org".

The gTLD ".org" is a necessary and functional part of a domain name, which does not prevent the Domain Name being identical to the Complainant's BIEN AIR mark.

Accordingly, the Panel holds that the Domain Name is identical for the purposes of the Policy to a mark in which the Complainant has rights.

As such the Panel holds that paragraph 4(a)(i) of the Policy has been satisfied.

B. Rights or Legitimate Interests

The Complainant has not authorised the use of its BIEN AIR mark. There is no evidence to suggest the Respondent is commonly known by the Domain Name. Despite unsupported assertions on the Respondent's web site that it is a not for profit business, the Domain Name has been used to link to commercial third party competing businesses and so cannot be legitimate noncommercial or fair use.

The Respondent has not answered the allegations in the Complaint or put forward any evidence to counteract the *prima facie* case put forward by the Complainant as set out herein.

As such, the Panel finds that the Respondent does not have rights or a legitimate interest in the Domain Name and that the Complainant has satisfied the second limb of the Policy.

C. Registered and Used in Bad Faith

In the opinion of the Panel, the use made of the Domain Name to link to third party commercial competing sites is confusing and disruptive in that visitors to the site might reasonably believe it is connected to or approved by the Complainant's mark, which is distinctive for dental products and services because of the use for competing activity.

Accordingly, the Panel holds that the Respondent has intentionally attempted to attract Internet users to its website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the website and commercial services offered on it likely to disrupt the business of the Complainant.

As such, the Panel holds that the Complainant has made out its case that the Domain Name was registered and used in bad faith and has satisfied the third limb of the Policy.

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 <bienair.org> be transferred to the Complainant.

/Dawn Osborne/

Dawn Osborne

Sole Panelist

Date: December 2, 2022