

## **ADMINISTRATIVE PANEL DECISION**

The BAYADA WAY Institute v. Alfred Michael  
Case No. D2022-4305

### **1. The Parties**

Complainant is The BAYADA WAY Institute, United States of America (“United States”), represented by CSC Digital Brand Services Group AB, Sweden.

Respondent is Alfred Michael, United States.

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

The Disputed Domain Name <bayadahealth.com> is registered with Porkbun LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 11, 2022. On November 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On November 14, 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 (Whois Privacy, Private by Design, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on November 15, 2022, 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 23, 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 Respondent of the Complaint, and the proceedings commenced on November 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 15, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on January 10, 2023.

The Center appointed Richard W. Page as the sole panelist in this matter on January 24, 2023. 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**

Complainant is the owner of trademark registrations across various jurisdictions, including without limitation: United States Registration No. 1297195 for BAYADA, registered on September 18, 1984 in class 42, and International Registration No. 1588734 for BAYADA, registered on January 29, 2021 in classes 41 and 44 (the "BAYADA Marks").

Complainant's organization was founded by Mark Baiada in 1975. Complainant has become a trusted leader in providing a full range of clinical care and support services at home for children and adults of all ages. With more than 350 offices in 22 states and 8 countries, Complainant cares for an average of 36,000 people weekly, a total of approximately 150,000 last year.

Complainant has been the recipient of numerous industry accolades and recognitions. Among others, it has been accredited with CHAP's Standard of Excellence, CART's ASPIRE to Excellence, and certified as Trusted Provider by Home Care Pulse. Indeed, Complainant has also been recognized as the provider with the Best Home Health Patient Satisfaction by SHP, and one of the Best Places to Work by Glassdoor and Forbes.

The Disputed Domain Name was registered on October 12, 2022, and does not resolve to an active website.

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

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

Complainant contends that the Disputed Domain Name is confusingly similar to the BAYADA Marks in which it has rights, pursuant to paragraph 4(a)(i) of the Policy.

Complainant further contends that it is the owner of the BAYADA Marks and that the Disputed Domain Name is confusingly similar. Complainant further contends that the Disputed Domain Name includes the entirety of the principal element in the BAYADA Marks with only the addition of the word "health" which is closely linked and associated with Complainant's business, only increasing confusion. Complainant further contends that the general Top-Level Domain ("gTLD") ".com" does not count for an analysis of confusing similarity.

Complainant asserts that Respondent has no rights or legitimate interests in the Disputed Domain Name, pursuant to paragraph 4(a)(ii) of the Policy.

Complainant further asserts that BAYADA is not a dictionary term and does not have a generic meaning. The name is a reference to its founder, Mark Baiada, who opted for the phonetic spelling, which would be easier to spell and pronounce. Complainant further asserts that the company name and trademark are, therefore, a direct reference to the company's origins and history. Complainant further asserts that it has spent substantial time, effort, and money in prompting the company name and trademark.

Complainant further asserts that it maintains a strong Internet presence, communicating with its customers and healthcare professionals predominantly through its primary domain name <bayada.com>, registered since August 20, 1996, and through its website. SimilarWeb.com has rated Complainant's website as the 198,070th most popular website worldwide, and 36,398th in the United States, having received 247,500 individual visits in April 2022 alone.

Complainant further asserts that Respondent was well aware of the BAYADA Marks at the time that Respondent registered the Disputed Domain Name. Therefore, Respondent can have no *bona fide* or rights or legitimate interests in the Disputed Domain Name.

Complainant further asserts that Respondent is not commonly known by the Disputed Domain Name. There is no evidence that Respondent is known by anything other than “Alfred Michael”.

Complainant alleges that Respondent has registered and used the Disputed Domain Name in bad faith, pursuant to paragraph 4(a)(iii) of the Policy.

Complainant further alleges that Respondent is not sponsored or in any way affiliated with Complainant and has no permission to use the BAYADA Marks.

Complainant further alleges that, prior to the takedown of the website to which the Disputed Domain Name resolved, Respondent’s website copied the content of Complainant’s own website. Respondent’s website now resolves to a blank landing page without content.

## **B. Respondent**

Respondent did not reply to Complainant’s contentions.

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable.”

Even though Respondent has failed to file a Response or to contest Complainant’s assertions, the Panel will review the evidence proffered by Complainant to verify that the essential elements of the claims are met. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)).

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- i) that the Disputed Domain Name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and,
- ii) that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and,
- iii) that the Disputed Domain Name has been registered and is being used in bad faith.

### **A. Identical or Confusingly Similar**

Complainant contends that the Disputed Domain Name is confusingly similar to the BAYADA Marks in which it has rights, pursuant to paragraph 4(a)(i) of the Policy.

Section 1.2.1 of the [WIPO Overview 3.0](#) states that registration of a trademark is *prima facie* evidence of Complainant having enforceable rights in the BAYADA Marks.

Respondent has not contested Complainant’s trademark rights in the BAYADA Marks.

The Panel finds that for purposes of this proceeding, Complainant has enforceable trademark rights in the BAYADA Marks.

Complainant further contends that the Disputed Domain Name is confusingly similar to the BAYADA Marks. Complainant contends that the Disputed Domain Name includes the entirety of the BAYADA Marks with only the addition of the word “health”. Complainant further contends that the gTLD “.com” does not count for an analysis of confusing similarity.

Section 1.7 of the [WIPO Overview 3.0](#), says that inclusion of the entire trademark in a domain name will be considered confusingly similar. Section 1.8 of the [WIPO Overview 3.0](#) states that the addition of other terms (whether descriptive, geographical, pejorative, meaningless or otherwise) does not prevent a finding of confusing similarity. Section 1.11.1 of the [WIPO Overview 3.0](#) instructs that gTLDs such as (.com) may be disregarded for purposes of assessing confusing similarity.

The Panel finds that the entirety of the BAYADA Marks is included in the Disputed Domain Name and that the addition of the word “health” does not prevent a finding of bad faith. The Panel further finds that the gTLD “.com” can be ignored for purposes of analyzing confusing similarity.

Therefore, Complainant has met the requirements of paragraph 4(a)(i) of the Policy.

## **B. Rights or Legitimate Interests**

Complainant contends that Respondent has no rights or legitimate interest in the Disputed Domain Name pursuant to paragraph 4(a)(ii) of the Policy.

Section 2.1 of the [WIPO Overview 3.0](#) states that once complainant makes a *prima facie* case in respect of the lack of rights or legitimate interests of respondent, respondent carries the burden of demonstrating it has rights or legitimate interests in the disputed domain name. Where respondent fails to do so, complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

Paragraph 4(c) of the Policy allows three nonexclusive methods for the Panel to conclude that Respondent has rights or a legitimate interest in the Disputed Domain Name:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Disputed Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are making a legitimate noncommercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the BAYADA Marks at issue.

Complainant asserts that BAYADA is not a dictionary term and does not have a generic meaning. The name is a reference to its founder, Mark Baiada, who opted for the phonetic spelling which would be easier to spell and pronounce. Complainant further asserts that the company name and trademark are, therefore, a direct reference to the company’s origins and history. Complainant further asserts that it has spent substantial time, effort, and money in prompting the company name and trademark.

Complainant further asserts that it maintains a strong Internet presence, communicating with its customers and healthcare professionals predominantly through its primary domain name <bayada.com>, registered since August 20, 1996, and through its website. SimilarWeb.com has rated Complainant’s website as the 198,070th most popular website worldwide, and 36,398th in the United States, having received 247,500 individual visits in April 2022 alone.

Complainant further asserts that Respondent was well aware of the BAYADA Marks at the time that Respondent registered the Disputed Domain Name. Therefore, Respondent can have no *bona fide* or rights or legitimate interests in the Disputed Domain Name. Moreover, the Panel notes that neither Respondent's prior copycat website mimicking Complainant's own website, nor the current inactive website, would constitute either a *bona fide* offering of goods or services or a legitimate noncommercial or fair use.

Complainant further asserts that Respondent is not commonly known by the Disputed Domain Name. There is no evidence that Respondent is known by anything other than "Alfred Michael".

The Panel finds that Complainant has made a *prima facie* showing that Respondent lacks rights and legitimate interests in the Disputed Domain Name and that Respondent has not countered this showing.

Moreover, the composition of the disputed domain name, incorporating the Complainant's distinctive trademark and a term related to Complainant's area of business, carries a risk of implied affiliation and cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by Complainant (section 2.5.1 of the [WIPO Overview 3.0](#)).

Therefore, Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

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

Complainant contends that Respondent registered and is using the Disputed Domain Name in bad faith in violation of paragraph 4(a)(iii) of the Policy.

Paragraph 4(b) of the Policy sets forth four nonexclusive criteria for Complainant to show bad faith registration and use of domain names:

(i) circumstances indicating that you [Respondent] have registered or you have acquired the Disputed Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Disputed Domain Name registration to Complainant who is the owner of the BAYADA Marks or to a competitor of Complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the Disputed Domain Name; or

(ii) you [Respondent] have registered the Disputed Domain Name in order to prevent Complainant from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you [Respondent] have registered the Disputed Domain Name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you [Respondent] have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the BAYADA Marks as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product on your website or location.

The four criteria set forth in paragraph 4(b) of the Policy are nonexclusive. See, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). In addition to these criteria, other factors alone or in combination can support a finding of bad faith. These additional factors include actual or constructive knowledge of Complainant's trademark rights (section 3.2.2 of [WIPO Overview 3.0](#)) and passive holding (section 3.3 of [WIPO Overview 3.0](#)).

Complainant alleges that, prior to the takedown of the website to which the Disputed Domain Name resolved, Respondent's website copied the content of Complainant's own website. Respondent's website now resolves to a blank landing page without content.

The Panel finds that Respondent's use of a website that copied the content of Complainant's own website satisfies the requirements of paragraph 4(b)(iv) of the Policy and establishes that Respondent had actual knowledge of Complainant's trademark rights.

The Panel further finds that after taking down the website, Respondent engaged in passive holding (section 3.3 of [WIPO Overview 3.0](#)) which does not prevent a finding of bad faith.

Therefore, the Panel finds that Complainant has met the requirements of paragraph 4(a)(iii) 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 Disputed Domain Name <bayadahealth.com> be transferred to the Complainant.

*/Richard W. Page/*

**Richard W. Page**

Sole Panelist

Date: February 7, 2023