

ADMINISTRATIVE PANEL DECISION

The BAYADA WAY Institute v. dolunay kesen
Case No. D2022-4606

1. The Parties

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

The Respondent is dolunay kesen, Türkiye.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 2, 2022. On December 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 5, 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 December 8, 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 December 8, 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 December 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 8, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 10, 2023.

The Center appointed Peter Burgstaller as the sole panelist in this matter on January 25, 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

The Complainant is the owner of various trademark registrations containing the mark BAYADA, *inter alia*:

- United States of America trademark registration (word) BAYADA, Registration No. 1297195, registered on September 18, 1984;
- International registration (word) BAYADA, Registration No. 1588734, registered on January 29, 2021, designating, e.g., Australia, Brazil, Canada, India, and Mexico;
- International registration (word) BAYADA, Registration No. 1588914, registered on February 1, 2021, designating, e.g., China and Russian Federation (Annex 1 to the Complaint).

The Complainant owns the domain name <bayada.com>, registered August 20, 1996, (Annex 4 to the Complaint) as the primary domain name to access its main website containing the Complainant's services (Annex 5 and 6 of the Complaint); through its primary domain name the Complainant has a strong Internet presence (Annex 7 to the Complaint).

Cease and desist letters sent by the Complainant on October 11 and 21, 2022, were ignored by the Respondent (Annex 9 to the Complaint).

The disputed domain name was registered on August 27, 2021 (Annex 2 to the Complaint).

The disputed domain name was actively used at the time of filing the Complaint (Annex 3 to the Complaint) and is still in use – it redirects users to the Registrar's website where the disputed domain name is being offered for sale.

5. Parties' Contentions

A. Complainant

The Complainant's organization was founded by Mark Baiada in 1975, on the principle that people deserve a safe home life with comfort, independence, and dignity. Today, more than 26,000 like-hearted employees call upon their natural sense of caring, commitment to purpose, and personal responsibility to help the Complainant's clients. The Complainant's organization 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.

The Complainant is the owner of trademark registrations containing the mark BAYADA across various jurisdictions, especially United States trademark registrations and International registrations.

The trademark 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. The company name and trademark is therefore a direct reference to the company's origins and history. Additionally, the Complainant has spent substantial time, effort, and money in marketing and promoting its BAYADA brand.

The Complainant 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 its website.

The disputed domain name is confusingly similar to the Complainant's registered trademark BAYADA since it only has added the term "directly home" to the Complainant's BAYADA trademark as prefix.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not sponsored by or affiliated with the Complainant in any way. The Complainant has not given the Respondent license, authorization, or permission to use the Complainant's trademarks in any manner, including in domain names. Furthermore, the Respondent is not commonly known by the disputed domain name, which evinces a lack of rights or legitimate interests.

The Respondent registered the disputed domain name on August 27, 2021, which is significantly after the Complainant's registration of its BAYADA trademarks in the United States of America and internationally, the Complainant's first use in commerce of its BAYADA trademark in 1982, and the Complainant's registration of its domain name <bayada.com> on August 20, 1996.

Moreover, the Respondent has been using the disputed domain name to redirect Internet users to the Registrar's website; the Respondent has failed to make any legitimate use of the disputed domain name. Rather, the current offer to sell the disputed domain name for USD 5,000 serves as additional evidence of the Respondent's lack of rights or legitimate interests.

The disputed domain name was registered and is being used in bad faith. The Complainant and its BAYADA trademark are known internationally, with trademark registrations in the United States of America dating back to 1984. The Complainant has marketed and sold its goods and services using this trademark since 1982. The Respondent must have been aware of the Complainant and its trademarks when registering the disputed domain name. Further, the Respondent should be considered to have known of the existence of the Complainant's trademarks due to the timing and circumstances surrounding the Respondent's registrations of the disputed domain name; here, the Respondent registered the disputed domain name three days after the Complainant filed its trademark application for its DIRECTLYHOME BAYADA trademark in the United States of America – this strongly suggests that the Respondent knew of the Complainant and its trademarks.

At present, the Respondent is using the disputed domain name to redirect users to its registrar's web page where the disputed domain name is being offered for sale in the amount of USD 5,000, which constitutes bad faith use under the Policy. The disputed domain name can only be taken as intending to cause confusion among Internet users as to the source of the disputed domain name, and thus, the disputed domain name must be considered as having been registered and used in bad faith pursuant to the Policy with no good faith use possible.

Finally, the Respondent ignored the Complainant's attempts to resolve this dispute outside of this administrative proceeding – the Respondent ignored a cease and desist letter from the Complainant and decided to offer the disputed domain name for sale on its website.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove that

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests with respect to the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

To make out a successful Complaint under the Policy all three conditions must be demonstrated by the Complainant.

A. Identical or Confusingly Similar

The Complainant submitted evidence of various trademark registrations, which clearly establishes rights in the mark BAYADA.

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:

The disputed domain name is confusingly similar to the Complainant's registered trademark BAYADA since it only adds the words "directlyhome" as prefix to the BAYADA mark. It has long been established under UDRP decisions that where the relevant trademark is recognizable within the disputed domain name the mere addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) will not prevent a finding of confusing similarity under the first element of the Policy (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). This is the case at present. The mark BAYADA is distinctive and easily recognizable within the disputed domain name.

Finally, it has also long been held that generic or country-code Top-Level Domains are generally disregarded when evaluating the confusing similarity of a disputed domain name.

Hence, the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

While 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 often impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element (see section 2.1 of the [WIPO Overview 3.0](#)). Here, the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent.

Furthermore, the nature of the disputed domain name, comprising the Complainant's distinctive mark in its entirety and only adding the words "directlyhome" as prefix cannot be considered fair as these falsely suggest an affiliation with the Complainant that does not exist (see section 2.5 of the [WIPO Overview 3.0](#)).

Noting the above and all of the evidence put forward by the Complainant in the Complaint, as well as the Complainant's contentions that the Respondent has no rights or legitimate interests in the disputed domain name, that the Respondent has no connection or affiliation with the Complainant, and the Respondent has not received any license or consent, express or implied, to use the Complainant's trademark BAYADA in a domain name or in any other manner, as well as the fact that the Respondent has not rebutted these allegations, it is undeniable for this Panel that the conditions set out in paragraph 4(a)(ii) of the Policy have been met by the Complainant.

C. Registered and Used in Bad Faith

As stated in many decisions rendered under the Policy (e.g. *Robert Ellenbogen v. Mike Pearson*, WIPO Case No. [D2000-0001](#)) both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain name was registered by the Respondent in bad faith, and
- the disputed domain name is being used by the Respondent in bad faith.

In the present case, the Complainant has registered trademark rights in the distinctive mark BAYADA since 1984, long before the registration of the disputed domain name in 2021. Moreover, the Complainant has a strong Internet presence through its primary domain name <bayada.com>, registered in 1996, for accessing its main website on which it offers its services.

It is inconceivable for this Panel that the Respondent registered the disputed domain name without knowledge of the Complainant's rights, which leads to the necessary inference of bad faith. This finding is supported by the fact that the disputed domain name consists of the Complainant's trademark and the words "directlyhome" as prefix which in fact rather strengthens the impression that the disputed domain name is in some way connected to the Complainant since it addresses the Complainant's services providing a full range of clinical care and support services at home.

Therefore, the Panel is convinced that the disputed domain name was registered in bad faith by the Respondent.

The disputed domain name was used at the time the Complainant filed the Complaint and is still in use. It redirects users to the Registrar's website where the disputed domain name is being offered for sale.

The Panel notes it is well established under UDRP decisions that where a registrant has an independent right to or legitimate interest in a domain name, an offer to sell that domain name would not be *per se* evidence of bad faith. However, in the present case, the Respondent has no independent right to or legitimate interest in the disputed domain name – the opposite is the case. The Complainant established rights in the mark BAYADA and put forward evidence that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent did not rebut these evidences.

Moreover, there is no possibility in the future for a good faith use of the disputed domain name by the Respondent without consent from the Complainant.

Hence, the Panel finds that the Complainant has also proven that the Respondent registered and is using the disputed domain name in bad faith according to 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 <directlyhomebayada.com> be transferred to the Complainant.

/Peter Burgstaller/

Peter Burgstaller

Sole Panelist

Date: February 8, 2023