

ADMINISTRATIVE PANEL DECISION

BeReal v. مجیدی صلا “Sala Majidi”

Case No. D2022-4752

1. The Parties

The Complainant is BeReal, France, represented by Mr. Louis Jestaz, France.

The Respondent is صلا مجیدی “Sala Majidi”, Hungary.

2. The Domain Name and Registrar

The disputed domain name <berealapp.net> is registered with CSL Computer Service Langenbach GmbH dba Joker.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 12, 2022. On December 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 13, 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 (privacy service) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 16, 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 27, 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 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 24, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 27, 2023.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on February 2, 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 the BeReal social network accessible on “www.bereal.com”, which offers its users to take a photo of themselves (double camera front and back) and of their environment upon receiving a notification, and then share it with friends or publicly.

The BeReal mobile app is publicly available on the Apple Store and the Google Play Store since end of 2019/beginning of 2020, and has reached in July 2022 over 10 million users worldwide.

The Complainant is the owner of various BEREAL trademarks:

- French wordmark BEREAL” No 4778040 filed on June 18, 2021.
- International wordmark BEREAL No 1647102 filed on November 26, 2021 under priority of the above French trademark No 4778040 covering the European Union and 19 countries outside the European Union.

The Complainant states that the notoriety of the BeReal app is relayed more than 1,800 press articles worldwide, including major newspapers such as The Guardian, The New York Times, the Daily Mail or The Washington Post. The Complainant is also the owner of a wide domain names portfolio, among which <bereal.com> and <bere.al>.

The disputed domain name was registered on April 19, 2022, and it is used for a website that contains references to the Complainant.

5. Parties’ Contentions

A. Complainant

The Complainant requests that the disputed domain name be transferred to the Complainant.

According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the disputed domain name is identical or confusingly similar to the BEREAL trademark registrations of the Complainant.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the disputed domain name.

Third, the Complainant submits that the disputed domain name was registered and is being used in bad faith.

The Complainant based the existence of bad faith in the following:

- the disputed domain name reproduces the earlier trademarks, corporate, trade names and domain names listed above;
- the disputed domain name reproduces entirely the well-known and highly distinctive BEREAL trademark, and the “BeReal” name is associated with the term “APP”. The addition of the term “APP”

deliberately reinforces the link with the genuine BeReal's well-known social network application and shows the Respondent's willingness to free-ride the Complainant's rights and interests.

- the disputed domain name has always been used and is currently used with a website that impersonates the Complainant, and creates the illusion of a website from the genuine Complainant.
- The Complainant's social network was already well-known by the public at the date of the registration of the disputed domain name, *i.e.* more than 1 year later after the release of the social network. The fact that the website operated under the disputed domain name relates to the Complainant's social network and that the disputed domain name comprises the word "app" is a clear confirmation of the Respondent's awareness of the Complainant's area of business. Therefore, the registration and use of the disputed domain name is marked by a clear bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements, which a complainant must satisfy in order to succeed. The Complainant must satisfy 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 in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical or confusingly similar to the Complainant's trademark.

The Complainant holds several valid BEREAL trademark registrations.

The disputed domain name is confusingly similar to the Complainant's trademarks since it merely reproduces the BEREAL trademark with the addition of the term "app".

The disputed domain name incorporates the Complainant's BEREAL trademark in its entirety. As numerous UDRP panels have held, where a domain name incorporates the entirety of a trademark, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.

The Panel finds the first element of the Policy has therefore been met.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that the Respondent has rights or legitimate interests in the disputed domain name:

- (i) "before any notice to you of the dispute, your use 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

There is no evidence of the existence of any of those rights or legitimate interests.

The Complainant has not authorized, licensed, or permitted the Respondent to register or use the disputed domain name or its trademarks. The Complainant has prior rights in the trademarks, which precede the Respondent’s registration of the disputed domain name. The Respondent’s evidenced use of the Complainant’s trademark to a website impersonating the Complainant cannot constitute a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use. Moreover, the Respondent is not currently using the disputed domain name, which cannot constitute a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use. The Complainant has therefore established a *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name and thereby shifted the burden to the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to rebut the Complainant’s *prima facie* case.

Furthermore, the Panel notes the composition of the disputed domain name, wholly incorporating the Complainant’s BEREAL trademark with a term directly related to the Complainant’s business, along its use to show content connected to the Complainant creates a risk of implied affiliation. The fact that the content displayed on the website at the disputed domain name seems to be mainly of an informative nature does not alter the Panel’s conclusion that the disputed domain name (with such composition) being used as abovementioned cannot give rise to rights or legitimate interests for the Respondent in the disputed domain name.

Therefore, the Panel finds that the Complainant has satisfied the second requirement of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Complainant must prove both that the disputed domain name was registered in bad faith and that it is being used in bad faith.

The Complainant’s allegations with regard to the Respondent’s registration and use of the disputed domain name in bad faith have been considered by the Panel. These allegations have not been contested by the Respondent.

The Complainant’s rights in the BEREAL trademark predate the registration of the disputed domain name. This Panel finds that the Respondent was or should have been aware of the Complainant’s trademark at the time of registration of the disputed domain name, as the Respondent included in the disputed domain name the Complainant’s BEREAL trademark with the term “app” that is related to the Complainant’s business.

The Respondent in all likelihood registered the disputed domain name with the expectation of taking unfair advantage of the reputation of the Complainant’s trademark.

The disputed domain name previously resolved to a website that contained several references to the Complainant and its app, including tutorials, tricks and news without any disclaimer of its true origin. The Panel finds such use indicates an intent to attract, for commercial gain, Internet users to the Respondent’s website by creating a likelihood of confusion with the Complainant’s trademark.

Furthermore, the disputed domain name is currently not being used by the Respondent. UDRP panels have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding (see *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)). The well-known character of the trademark BEREAL has been confirmed in previous UDRP cases (see, e.g., *Yggdrasil Malta Limited v. Privacy Service Provided by Withheld for Privacy ehf / Sophon Srey, Sary Sophot*, WIPO Case No. [D2022-1812](#)).

The failure of the Respondent to answer the Complaint also supports a finding, in combination with other factors, of bad faith on the part of the Respondent (*Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#)).

Therefore, taking all the circumstances into account and for all the above reasons, the Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith.

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, <berealapp.net> be transferred to the Complainant.

/Pablo A. Palazzi/

Pablo A. Palazzi

Sole Panelist

Date: February 16, 2023