

ADMINISTRATIVE PANEL DECISION

Body Contour Centers, LLC d/b/a Sono Bello v. Maxwell Lee
Case No. D2022-4788

1. The Parties

Complainant is Body Contour Centers, LLC d/b/a Sono Bello, United States of America (“United States”), represented by Karr Tuttle Campbell, United States.

Respondent is Maxwell Lee, United States.

2. The Domain Name and Registrar

The disputed domain name <sonobello.net> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 13, 2022. On December 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On December 14, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email to Complainant on December 15, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed the first amended Complaint on December 16, 2022, and filed the second amended Complaint on December 20, 2022. Respondent sent several emails to the Center on December 20 and 21, 2022.

The Center verified that the Complaint together with the first amended Complaint and the second 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 December 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 10, 2023. Respondent did not submit any formal response. Accordingly, the Center notified the commencement of panel appointment process on January 11, 2023. The Center appointed Robert A. Badgley as the sole panelist in this matter on January 18, 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 has offered plastic surgery and related services for 14 years.

Complainant holds the registered trademark SONO BELLO with the United States Patent and Trademark Office, Reg. No. 3,622,233, registered on March 19, 2009 in connection with “cosmetic and plastic surgery, namely, liposuction, laser body sculpting, and removal of fat cells, surgical procedures to tighten loose skin”, and so forth. Complainant’s first use of the mark was June 15, 2008.

Complainant also owns the domain name <sonobello.com>, which domain name is used to host Complainant’s commercial website.

The Domain Name was registered on March 18, 2019. The Domain Name currently resolves to a web page which features the headline, “What is the value of a Domain Name?” The page goes on as follows:

“That is like saying what is the value of an acre of land.
Is the acre of land on the Beach, on a Mountain Top, or in the middle of a swamp?
What is the buyer expecting to do with the acre of land?”

Now – let’s take the Domain Name SonoBello.net for example.

For most people that are on the InterNet each day – the Domain Name is not worth very much. However – the value would expected to be [*sic*] much more for the following:

- 1) The Company named SonoBello that has registered the .com and .org, but failed to register .net.
- 2) An ex-employee of SonoBello.
- 3) A business competitor of SonoBello.
- 4) An unhappy customer of SonoBello.

Summary

GoDaddy Broker Service Representative tried to buy this Domain Name Registration with a low ball offer thinking the registered owner did not realize the value. When the registered owner countered with a high ball offer – GoDaddy decided to take other action (using their position as a High Technology Company to Bully the little man out of his Domain Name).

Shame on GoDaddy.”

As of December 8, 2022, however, according to a screenshot annexed to the Complaint, the Domain Name resolved to a website which closely resembles Complainant’s own website, in layout, colors, and content, with a few revisions. Specifically, Respondent’s site contains disparaging comments about Complainant’s services, such as, “WARNING: SOME PATIENTS HAVE BEEN VERY DISSATISFIED WITH THESE SERVICES” and “SONOBELLO WAS NOT WILLING TO CORRECT THEIR SCREW UPS”.

As is alluded to in Respondent’s December 21, 2022 email to the Center (quoted below), Respondent’s wife apparently was a client of Complainant’s, and she was dissatisfied with Complainant’s services.

Respondent’s December 21, 2022 email also refers to an offer to buy the Domain Name, apparently made through the Registrar’s domain broking service, for USD 100, described by Respondent as a “low ball” offer. Complainant makes no reference to any attempt to buy the Domain Name from Respondent. Accordingly, it

is not clear whether it was Complainant, as opposed to someone else, that approached Respondent (via the broker) to buy the Domain Name. In any event, Respondent states that he replied with a “high ball” offer (in an unspecified amount), to which the prospective purchaser gave no response.

5. Parties’ Contentions

A. Complainant

Complainant contends that it has established all three elements required under the Policy for a transfer of the Domain Name.

B. Respondent

Respondent did not submit a formal Response. In a December 21, 2022 email to the Center, however, Respondent wrote in relevant part:

“On the world-wide-web there are three main extensions here in the United States. .net, .com, .org. Those are the ones most sought after – hands down, and I think in that order. A reputable business will register their website with all three extensions, if possible, to avoid this type of conflict.

Executives at Body Contour Centers “Sono Bello” dropped the ball. As counsel stated in V. 19 [of the Complaint], they had been in business for a full eleven years when I registered my Domain Name. Apparently, they were not interested in it until I had it for three years.

With the exception of the two additional comments, my web site was an exact duplicate which gave them extra exposure for free. The two comments were merely statements of fact. [Complainant’s employee] is on the TV Show ‘The Dr’s’ – so he is in fact a highly paid actor, and the statement about dissatisfied customers – yeah – that was my wife – we don’t want to go there. I did not use the site for profit, and I did not redirect the viewer somewhere else on the net. I simply added two comments in an attempt to ‘bury the hatchet’ – now they have grabbed the handle and started swinging it around again.

The attorneys quoted a lot of case law, but I don’t recall them mentioning anything about ‘Freedom of Speech’ other than the fact of how they are trying to squelch mine.

I went to Namecheap.com and briefly searched around for big name businesses that only had one of the three suffixes to see what kind of price it would cost to get one of those. It appears that smart executives register all three suffixes. The only thing that I came up with was ‘abcdefg.com’ for [USD] 349,000.00. I suppose this is why the attorney stated the Mark and the domain name were ‘extremely valuable’ to Sono Bello. I would think with the growth of Sono Bello, Registration of the .net domain would be considerably higher today than it was over three years ago.

On Friday, November 4, 2022 I received an email from [a] GoDaddy Domain Broker Service stating she has a buyer interested in purchasing SonoBello.net. She said she had an initial offer of [USD] 100.00. Now I am no rocket scientist, but I figured her buyer was Sono Bello, and I knew the Domain was worth way more than [USD] 100.00. Now when you have a buyer and a seller discussing the sale of an item, everyone knows that the buyer can’t go lower and the seller can’t go higher. Since they ‘Low Balled’ the initial offer – I figured I would go high and see where we land.

By the way – her email was misleading when she said ‘initial offer’ because that implies there will be follow up offer(s), but there was not any additional offer(s). After a few days of not hearing further from her, I sent her another email, and she advised me they ended up going in a different direction.

So, here we are today. A sixty-two year old woman gets a faulty Lipo-Suction procedure that the company refuses to correct. Her husband figures a way to comment via the internet, the company gets their feelings

hurt, tries to buy out the husband with an insulting offer. When that doesn't work, they get their attorneys together with a bunch of case law cases in an attempt to use the World Intellectual Property Organization to squelch the 'Freedom of Speech' of the husband by punishing him and taking away his Legally Acquired Domain Name Registration."

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

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

A. Identical or Confusingly Similar

The Panel concludes that Complainant has rights in the trademark SONO BELLO through registration and use demonstrated in the record. The Panel also concludes that the Domain Name is identical to that mark.

Complainant has established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] 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 [Respondent] (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 [Respondent] 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.

The Panel concludes that Respondent lacks rights or legitimate interests in connection with the Domain Name. What emerges from the record here is that Respondent's wife used Complainant's liposuction services and was displeased with the outcome. Respondent evidently was not satisfied with Complainant's alleged lack of an adequate attempt to rectify the problem, whereupon Complainant registered the Domain Name in order to disparage Complainant and gain some form of leverage over Complainant in his further dealings with Complainant. The foregoing conduct and motivations do not give rise to a legitimate interest in the Domain Name.

Respondent makes a flimsy "free speech" argument to justify his conduct vis-à-vis the Domain Name, but it is unavailing. Someone making a genuine "free speech" or "gripe" website has no need to create a website that appears almost identical to the website of the targeted trademark owner. Moreover, the pretextual nature of Respondent's "free speech" claim is belied by the content at the web page currently accessible via the Domain Name. That page, quoted above in full, makes it fairly clear that Respondent registered the Domain Name in an attempt to extract some financial concession from Complainant.

Complainant has established Policy paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, “in particular but without limitation,” are evidence of the registration and use of the Domain Name in “bad faith”:

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent’s website or other online location, by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of Respondent’s website or location or of a product or service on Respondent’s website or location.

The Panel concludes that Respondent registered and used the Domain Name in bad faith under the Policy. The Panel incorporates its discussion above in the “Rights or Legitimate Interests” section.

As discussed above, it is obvious and undisputed that Respondent had Complainant’s SONO BELLO trademark in mind when he registered the Domain Name. It is also clear to the Panel, based on the record presented, that Respondent’s chief motivation here was to use the Domain Name to gain leverage over Complainant and extract some type of financial concession from Complainant, as perceived recompense for the allegedly flawed liposuction his wife underwent.

On this record, the Panel finds that Respondent has registered and used the Domain Name in bad faith within the meaning of the above-quoted Policy paragraph 4(b)(i).

Complainant has established Policy paragraph 4(a)(iii).

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 <sonobello.net> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: February 1, 2023