

ADMINISTRATIVE PANEL DECISION

Jafer Enterprises R&D, S.L.U. v. Art Wine
Case No. D2023-1204

1. The Parties

The Complainant is Jafer Enterprises R&D, S.L.U., Spain, represented by Giró Martínez, Spain.

The Respondent is Art Wine, France.

2. The Domain Name and Registrar

The disputed domain name <yanbel.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 17, 2023. On March 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 21, 2023, 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 (GDPR Masked Status) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 21, 2023, 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 March 31, 2023.

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 April 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 23, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 25, 2023.

The Center appointed Marilena Comanescu as the sole panelist in this matter on April 27, 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, founded in Lima, Peru in 1967 and registered in the Mercantile Registry of Barcelona, Spain, is a global direct selling company employing 3,000 people, and having more than 600,000 independent beauty consultants in 9 markets in Latin America, United States of America, and Europe. The Complainant manufactures and sells cosmetic products, fragrances, and jewelry and has four production plants and three research and innovation centers.

The trademark YANBAL is promoted on various social media platforms such Facebook, Instagram, TikTok, LinkedIn and is present in the important international media. The founder of the Complainant has long been included in the Forbes list of billionaires, while the company “Yanbal International”, has been several years included in the Direct Selling News Global 100 list of top direct selling companies in the world, with revenues of USD 536M in 2020.

The Complainant holds trademark registrations for YANBAL since 1967, such as the following:

- the European Union Trademark Registration No. 12163606 for YANBAL stylized, filed on September 23, 2013, and registered on February 24, 2014, covering goods and services in the International Classes 1, 3, 5, 14, 16, 18, 25, 35, 38,41, 44; and
- the Spanish Trademark Registration No. M3093868 for YANBAL with device, filed on October 11, 2013, and covering goods and services in the International Classes 1, 3, 4, 14, 16, 18, 25, 35, 38, 41 and 44.

Since 2003 the Complainant owns the domain name <yanbal.com> and, with over 1 million visitors per month, it is using the corresponding website as a main channel to advertise its products under the YANBAL trademark.

The disputed domain name <yanbel.com> was registered on January 26, 2023, and, at the time of filing the Complaint, it resolved to an error page.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is almost identical or confusingly similar to its well-known trademark and domain name; the Respondent has no rights or legitimate interests in the disputed domain name; and the Respondent registered and is using the disputed domain name in bad faith. The Complainant requests the transfer of the disputed domain name to it.

In its Amended Complaint, the Complainant claims that the disputed domain name is used in connection with four name servers, publicly listed by third parties for malware hosting sites used for fraudulent activities. Furthermore, Annex 10 to the Amended Complaint submits evidence of MX records associated with the disputed domain name, indicating that the Respondent has set up an email account using the disputed domain name.

B. Respondent

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

6. Discussion and Findings

In view of the absence of a Response, the discussion and findings will be based upon the contentions in the

Complaint and any reasonable position that can be attributable to the Respondent. Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

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

The Panel will further analyze the potential concurrence of the above circumstances.

A. Identical or Confusingly Similar

The Panel finds that the Complainant holds rights in the YANBAL trademark.

The disputed domain name <yanbel.com> reproduces the Complainant's trademark, with the second letter "a" replaced by the letter "e".

However, numerous UDRP panels have considered that a domain name consisting of a misspelling of the complainant's trademark (*i.e.*, typosquatting) does not prevent a finding of confusing similarity. See section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Further, it is well established in decisions under the UDRP that the generic Top-Level Domain ("gTLD") (*e.g.*, ".com", ".info", ".org") may typically be disregarded for the purposes of consideration of confusing similarity between a trademark and a domain name. See section 1.11 of the [WIPO Overview 3.0](#).

Given the above, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark YANBAL, pursuant to the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Complainant asserts that it has given no license or other right to use its trademark to the Respondent, that the Respondent is not commonly known by the disputed domain name, and that the Respondent has not used the disputed domain name in connection with a legitimate noncommercial or fair use or a *bona fide* offering of goods and services.

In line with the case law, "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](#).

The Complainant has put forward a *prima facie* case that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Respondent has not replied to the Complainant's contentions and has not come forward with relevant evidence to rebut the Complainant's *prima facie* case. There is nothing in the record suggesting that the Respondent has ever been commonly known by the disputed domain name or that the Respondent made a *bona fide* offering of goods or services or a legitimate noncommercial use under the disputed domain name.

In fact, the disputed domain name is not actively used and this, along with the other circumstances in this case, does not amount to a *bona fide* or legitimate use.

Further, according to the Amended Complaint, the disputed domain name is associated with available MX records and servers publicly known for malware distribution. In this regard, previous panels have categorically held that the use of a domain name for illegal activity (such as swindle, fraud, identity theft, phishing and impersonation) can never confer rights or legitimate interests in a respondent. See section 2.13 of the of the [WIPO Overview 3.0](#).

For all these reasons, the Panel finds that the second element of the Policy is established, and the Respondent has no rights or legitimate interests in respect of the disputed domain name, pursuant to the Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

The Complainant holds trademark rights since 1967, owns numerous trademarks worldwide, has a significant presence on the Internet, and therefore its YANBAL trademark has acquired substantial reputation worldwide.

The disputed domain name was registered in January 2023, and incorporates the Complainant's trademark with an obvious misspelling.

For the above, the Panel finds that the disputed domain name was registered in bad faith, with knowledge of the Complainant, its business, and particularly targeting its trademark.

Further, the disputed domain name was connected to an error page and this amounts to inactive use.

From the inception of the UDRP, panels have found that the non-use of a domain name (including a blank or "coming soon" or other similar inactive page) would not prevent a finding of bad faith under the doctrine of passive holding. The Panel must examine all the circumstances of the case to determine whether the Respondent is acting in bad faith. Examples of what may be relevant circumstances found to be indicative of bad faith include (i) the degree of distinctiveness or reputation of the complainant's mark; (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good faith use; (iii) the respondent's concealing its identity or use of false contacted details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. See section 3.3 of the [WIPO Overview 3.0](#).

In the present proceeding, (i) the disputed domain name incorporates the Complainant's well-known trademark with a minor alteration; (ii) although properly notified, the Respondent failed to participate in this proceeding and to put forward any argument in its favor; and (iii) the Complainant holds trademarks which predate more than 50 years the registration of the disputed domain name.

Furthermore, according to evidence on the record, the disputed domain name has active MX records and associated with servers publicly known for malware distribution. This entails that the Respondent can send emails through the email address "@yanbel.com". The Respondent can therefore use (or may already have used) the disputed domain name to send fraudulent emails such as messages containing spam, phishing attempts, etc. See also *Confédération Nationale du Crédit Mutuel, Crédit Industriel et Commercial v. Khodor Dimassi*, WIPO Case No. [D2016-1980](#); or *Statoil ASA v. Registration Private, Domains By Proxy, LLC / Eldar Saetre*, WIPO Case No. [D2018-0563](#).

Additionally, the Respondent's physical address listed in the Whois was inaccurate or incomplete. Prior panels have viewed the provision of false contact information as indicator of bad faith. See section 3.6 of the [WIPO Overview 3.0](#)

Moreover, it has been consistently found by previous UDRP panels that the mere registration of a domain name that is identical or confusingly similar to a third party's famous or widely-known trademark can create, by itself, a presumption of bad faith for the purpose of Policy. See section 3.1.4 of the [WIPO Overview 3.0](#).

For all the above reasons, the Panel finds that the Respondent registered and is using the disputed domain name in bad faith, pursuant to the 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 disputed domain name <yanbel.com> be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: May 11, 2023