

ADMINISTRATIVE PANEL DECISION

BetterUp, Inc. v. Rado Tavir
Case No. D2023-2006

1. The Parties

The Complainant is BetterUp, Inc., United States of America (“United States or US”), represented by Gilbride, Tusa, Last & Spellane LLC, United States.

The Respondent is Rado Tavir, Afghanistan.

2. The Domain Name and Registrar

The disputed domain name <geniusbetterup.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 4, 2023. On May 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 5, 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 (REDACTED FOR PRIVACY, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 15, 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 amendment to the Complaint on May 16, 2023.

The Center verified that the Complaint together with the amendment to the 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 May 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 12, 2023.

The Center appointed Geert Glas as the sole panelist in this matter on July 4, 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 a company based in the United States providing professional digital coaching services. The company was established in 2013 and, as claimed by the Complainant, has since grown to become a leader in mobile-based professional coaching, counselling and mentorship. It has been advertising its products and services in the United States since 2013 and internationally since 2021.

The Complainant is the owner of multiple trademarks containing the term BETTERUP, including:

The US word mark BETTERUP, registration no. 5788037, registered on June 25 2019;

The US word mark BETTERUP, registration no. 5059590, registered on October 11, 2016;

The European Union (“EU”) word mark BETTERUP, registration no. 018670951, registered on July 14, 2022;

The EU word mark BETTERUP CARE, registration no. 018670943, registered on July 14, 2022;

The EU word mark BETTERUP FOUNDATIONS, registration no. 018672151, registered on October 3, 2022;

The EU word mark BETTERUP LIVE, registration no. 018670944, registered July 14, 2022;

The EU word mark UPLIFT BY BETTERUP, registration no. 018672152, registered on July 14 2022.

The Complainant conducts its activities in connection with its BETTERUP trademarks. It claims that it has earned significant goodwill in connection with its mark, which is associated with high-quality products and services.

The disputed domain name was registered on April 5, 2023. The Complainant claims that it previously resolved to a page claiming affiliation with the Food Network. It also submitted evidence showing that the disputed domain name resolved to various other pages that were clones of the Complainant’s webpages on its “www.betterup.com” website. However, it currently resolves to an inactive page.

5. Parties’ Contentions

A. Complainant

The following is a summary of the Complainant’s contentions.

The Complainant requests that the disputed domain name be transferred to it on the following grounds:

The term “BetterUp” was coined by the corporation’s founders and is therefore not – at least in this specific combination – found in any dictionary, nor in common use. The Complainant is unaware of any other entity or business operating under the same name.

The Complainant asserts that the disputed domain name is essentially identical and certainly confusingly similar to the Complainant’s mark, regardless of the addition of the term “genius” and the generic Top-Level Domain (“TLD”) “.com”.

Subsequently, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name based on the following facts:

- (a) the Respondent has not been authorised by the Complainant to use the trademarks;
- (b) the Respondent uses the disputed domain name and cloned website for fraudulent purposes, which cannot be considered a *bona fide* offering of goods or services;

- (c) the Respondent is not commonly known by the disputed domain name; and
- (d) the use of the disputed domain name to maintain a clone of the Complainant's website for fraudulent purposes is not a legitimate noncommercial or fair use.

Finally, the Complainant argues that the disputed domain name was registered and is being used in bad faith. It argues that the cloning of its website constitutes in itself sufficient evidence of bad faith as it represents an impersonation of the Complainant. It maintains that the cloned website indicates that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood or confusion with the Complainant's mark.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The first element of paragraph 4(a) refers to the question whether the disputed domain name is identical or confusingly similar to the Complainant's trademark.

The Panel observes that the disputed domain name comprises the Complainant's BETTERUP word trademark in its entirety, with as only differences the addition of the term "genius" and the TLD ".com".

Section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") states that "in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing".

Where the relevant trademark is recognisable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements (section 1.8 of the [WIPO Overview 3.0](#)).

In the view of the Panel, the addition of the term "genius" does not dispel the confusing similarity between the disputed domain name and the Complainant's trademark (*Valero Energy Corporation and Valero Marketing and Supply Company v. Valero Energy*, WIPO Case No. [D2017-0075](#)).

Finally, it is a well-established principle that the use of a TLD is considered as a standard registration requirement and as such is to be disregarded in the confusing similarity test (section 1.11.1 of the [WIPO Overview 3.0](#)). As a result, the addition of the TLD ".com" in the disputed domain name <geniusbetterup.com> does not prevent a finding of confusing similarity with the BETTERUP trademark.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark and that the first element under paragraph 4(a)(i) of the Policy has been established in respect of the disputed domain name.

B. Rights or Legitimate Interests

The second element of paragraph 4(a) refers to the question whether the Respondent has rights or legitimate interests in respect of the disputed domain name.

Although the Complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, the consensus view is that, once the Complainant has made 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 disputed domain name. If the Respondent fails to come forward with such relevant evidence, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (section 2.1 of the [WIPO Overview 3.0](#), *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#); *Dow Jones & Company, Inc., (First Complainant) and Dow Jones LP (Second Complainant) v. The Hephzibah Intro-Net Project Limited (Respondent)*, WIPO Case No. [D2000-0704](#)).

Based on the evidence submitted by the Complainant, the Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

Such finding is based on the following observations:

- i. The Respondent has not received any authorisation, license, or permit from the Complainant to use its BETTERUP trademark.
- ii. There is no indication that the Respondent holds trademark rights on the word “betterup”, nor that the Respondent has been commonly known by the disputed domain name. The information available on the Respondent’s identity does not suggest any correlation with the word “betterup” (section 2.3 of the [WIPO Overview 3.0](#)).
- iii. There is no indication that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name or is using the disputed domain name in connection with a *bona fide* offering of goods or services. On the contrary, Annex C of the Complaint demonstrates that the disputed domain name was used to resolve to an active website which was largely a copycat of the Complainant’s website. The website even duplicated the Complainant’s usage of its trademarks and copyrighted images and collected user’s data. In addition, it is very likely that the Respondent registered the disputed domain name knowing that it would attract interest from Internet users who are searching for the Complainant and mislead them into thinking that the cloned website is in fact operated by the latter. The composition of the disputed domain name comprising the Complainant’s trademark in its entirety, preceded by the dictionary term “genius” and followed by the TLD “.com”, only contributes to the confusion as it carries a risk of implied affiliation (section 2.5.1 of the [WIPO Overview 3.0](#)). Such use of the disputed domain name cannot amount to a *bona fide* offering of goods or services or to a legitimate noncommercial or fair use of the disputed domain name (section 2.2 of the [WIPO Overview 3.0](#); *Verisure Sàrl v. Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf / Minh Choi*, WIPO Case No. [D2021-1363](#)).
- iv. The Respondent did not file a Response and by doing so failed to provide any evidence of any rights or legitimate interests it would claim to have in the disputed domain name.

Therefore, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the second element under paragraph 4(a)(ii) of the Policy has been established.

C. Registered and Used in Bad Faith

The third element of paragraph 4(a) refers to the question whether the disputed domain name has been registered and is being used in bad faith by the Respondent.

Paragraph 4(b) of the Policy describes some circumstances in which, if found to exist, there will be evidence of the registration and use of the domain name in bad faith. Among these circumstances is the use of a domain name to intentionally attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with the Complainant’s trademark as to the source, sponsorship, affiliation or endorsement of the website or location of a product or service on the website location (paragraph 4(b)(iv) of the Policy).

(a) Registered in bad faith

It appears from the trademark registrations provided by the Complainant that it has been benefitting from trademark protection for its BETTERUP trademarks from 2016 onwards. BETTERUP is an internationally known trademark, which has been used since 2013.

A simple search in any search engine would have informed the Respondent of the existence of the Complainant's offering of services under the corresponding BETTERUP trademark. Moreover, the disputed domain name resolved to a website that was almost entirely a copy of the Complainant's website, including the use of the Complainant's trademarks and copyrighted images. Therefore, the Respondent cannot reasonably dispute that it knew the Complainant's trademark when registering the disputed domain name in 2023 (section 3.2.2 of the [WIPO Overview 3.0](#)).

Furthermore, panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith; here the Panel notes the mark is a coined term combining two dictionary terms in an unordinary way. They have moreover found that seeking to cause confusion (including by technical means beyond the domain name itself) for the Respondent's commercial benefit constitutes evidence to support a finding of a registration in bad faith (section 3.1.4 of the [WIPO Overview 3.0](#)). The fact that the Respondent knew of the existence of the Complainant's trademark and decided to register the disputed domain name anyway, strongly suggest that the decision to register the disputed domain name was made in bad faith with the Complainant and its trademark in mind.

Finally, panels may take into account particular circumstances in assessing whether the respondent's registration of a domain name is in bad faith. Such circumstances include the nature of a domain name (e.g., a domain name incorporating the Complainant's marks plus an additional term such as a descriptive term) and the content of the website to which the domain name directs (section 3.2.1 of the [WIPO Overview 3.0](#)). The nature of the disputed domain name, which includes the entirety of the Complainant's trademark modified only by the addition of the term "genius" and the TLD ".com", and the largely cloned website it resolved to strongly indicate a registration of the disputed domain name in bad faith.

In light of the above, the Panel finds that the Respondent registered the disputed domain name in bad faith.

(b) Used in bad faith

The international reputation of the Complainant's trademark in combination with the nature of the disputed domain name, which includes the entirety of said trademark modified only by the addition of the term "genius" and the TLD ".com", strongly suggest the intention to confuse Internet users for the Respondent's commercial benefit.

Moreover, the disputed domain name used to resolve to a website that duplicated the appearance of the Complainant's official website. The recurrent display of the Complainant's trademark as well as the use of the Complainant's copyrighted images only contributed to the resemblance.

The foregoing makes it very likely that Internet users will assume that there is an association between the disputed domain name and the Complainant. This indicates a likelihood of confusion between the disputed domain name and the BETTERUP trademark. The present passive holding of the disputed domain name does not prevent a finding of bad faith registration and use.

Consequently, the Panel finds that the Respondent has also been using the disputed domain name in bad faith.

Therefore the Panel concludes that the disputed domain name was registered and is being used in bad faith by the Respondent and that the third element under paragraph 4(a)(iii) of the Policy is established.

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, <geniusbetterup.com>, be transferred to the Complainant.

/Geert Glas/

Geert Glas

Sole Panelist

Date: July 18, 2023