

## **ADMINISTRATIVE PANEL DECISION**

PJ Entertainment, Inc. v. Am Bar

Case No. D2023-2483

### **1. The Parties**

The Complainant is PJ Entertainment, Inc., United States of America (“United States”), represented by Gile Law Group, United States.

The Respondent is Am Bar, Viet Nam.

### **2. The Domain Name and Registrar**

The disputed domain name <888-korean-bbq.com> is registered with NameSilo, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 7, 2023. On June 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 8, 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, PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 12, 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 June 12, 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 June 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 11, 2023.

The Center appointed Edoardo Fano as the sole panelist in this matter on July 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.

The Panel has not received any requests from the Complainant or the Respondent regarding further submissions, waivers or extensions of deadlines, and the Panel has not found it necessary to request any further information from the Parties.

Having reviewed the communication records in the case file provided by the Center, the Panel finds that the Center has discharged its responsibility under the Rules, paragraph 2(a), "to employ reasonably available means calculated to achieve actual notice to [the] Respondent". Therefore, the Panel shall issue its Decision based upon the Complaint, the Policy, the Rules and the Supplemental Rules and without the benefit of a response from the Respondent.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

#### **4. Factual Background**

The Complainant is PJ Entertainment, Inc., a United States company owning and operating since 2018, under the name 888 KOREAN BBQ, a Korean BBQ restaurant located in Las Vegas.

The Complainant also operates on the Internet, maintaining a Facebook page and being listed on Yelp with over 3,000 reviews..

The Complainant provided evidence in support of the above.

According to the Whois records, the disputed domain name was registered on April 5, 2023, and it resolves to a website in which there is basic information, some of it inaccurate, about the Complainant's restaurant, 888 KOREAN BBQ, and photos taken from the Complainant's Facebook page are reproduced.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant states that the disputed domain name is identical to its common law trademark 888 KOREAN BBQ under which it has been serving thousands of customers per week; its Facebook page has several thousand likes and followers; according to its Facebook page, it also has obtained the domain name 888koreanbbq.com.

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name, since it has not been authorized by the Complainant to register the disputed domain name or to use its common law trademark within the disputed domain name, it is not commonly known by the disputed domain name, and it is not making either a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name.

The Complainant submits that the Respondent has registered the disputed domain name in bad faith, since the Complainant's common law trademark 888 KOREAN BBQ is known as the name of the Complainant's restaurant since 2018. Therefore, the Respondent targeted the Complainant's common law trademark at the time of registration of the disputed domain name and the Complainant contends that the use of the disputed domain name to attract, for commercial gain, Internet users to the Respondent's website, creating a likelihood of confusion with the Complainant's common law trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website, qualifies as bad faith registration and use.

## **B. Respondent**

The Respondent has made no reply to the Complainant's contentions and is in default. In reference to paragraphs 5(f) and 14 of the Rules, no exceptional circumstances explaining the default have been put forward or are apparent from the record.

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, reasonable facts asserted by a complainant may be taken as true, and appropriate inferences, in accordance with paragraph 14(b) of the Rules, may be drawn. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3.

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy lists three elements, which the Complainant must satisfy in order to succeed:

- (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 Panel finds that the Complainant has provided adequate evidence of unregistered (sometimes referred to as common law) trademark rights in its restaurant name 888 KOREAN BBQ. See [WIPO Overview 3.0](#), sections 1.1.1 and 1.3. The Panel also notes that the Respondent recognizes the source-identifying capacity in the claimed mark, stating on the website at the disputed domain name: "888 Korean BBQ is a restaurant in Las Vegas, NV that offers a unique dining experience...The restaurant is considered the best halal restaurant in Chinatown..." such that the Respondent's knowledge of and intention to target a mark of the Complainant is clear; see in this regard [WIPO Overview 3.0](#) section 1.15.

The Panel finds that the disputed domain name is identical to the unregistered trademark 888 KOREAN BBQ.

It is well accepted that a generic Top-Level Domain, in this case ".com", is typically ignored when assessing the similarity between a trademark and a domain name. See [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds that the Complainant has therefore met its burden of proving that the disputed domain name is identical to the Complainant's trademark, pursuant to the Policy, paragraph 4(a)(i).

### **B. Rights or Legitimate Interests**

Paragraph 4(a)(ii) of the Policy requires the Complainant to prove that the Respondent has no rights or legitimate interests in the disputed domain name.

The Respondent may establish rights or legitimate interests in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following circumstances, in particular but without limitation:

"(i) before any notice to you [the respondent] of the dispute, [the respondent's ] 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) [the respondent] 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) [the respondent] 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.”

According to paragraph 4(a) of the Policy, the Complainant has the burden of proving the three elements of the Policy. However, satisfying the burden of proving a lack of the Respondent’s rights or legitimate interests in respect of the disputed domain name according to paragraph 4(a)(ii) of the Policy is potentially quite difficult, since proving a negative circumstance is generally more complicated than establishing a positive one. As such, it is well accepted that it is sufficient for the Complainant to make a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name in order to shift the burden of production of evidence to the Respondent. If the Respondent fails to demonstrate rights or legitimate interests in the disputed domain name in accordance with paragraph 4(c) of the Policy or on any other basis, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant in its Complaint, and as set out above, has established a *prima facie* case. The disputed domain name is used by the Respondent to direct Internet users to a website in which there is basic information, some of it inaccurate, about the Complainant’s restaurant 888 KOREAN BBQ, and photos taken from the Complainant’s Facebook page are reproduced.

The *prima facie* case presented by the Complainant is enough to shift the burden of production to the Respondent to demonstrate that it has rights or legitimate interests in the disputed domain name. However, the Respondent has not presented any evidence of any rights or legitimate interests it may have in the disputed domain name.

The Panel therefore concludes that the disputed domain name is not being used in connection with a *bona fide* offering of goods or services.

Above all, the Panel finds that the composition of the disputed domain name carries a risk of implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See [WIPO Overview 3.0](#), section 2.5.1. The “disclaimer” (described below) on the related webpage does not cure this.

Based on the facts of this case, the Panel finds that the paragraph 4(a)(ii) of the Policy has been satisfied.

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy provides that “[f]or the purposes of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that [the respondent has] registered or [has] acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of the complainant, for valuable consideration in excess of [its] documented out-of-pocket costs directly related to the domain name; or

(ii) [the 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 [the respondent has] engaged in a pattern of such conduct; or

(iii) [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] web site or location or of a product or service on [the respondent's] web site or location".

Regarding the registration in bad faith of the disputed domain name, the reputation of the Complainant's unregistered trademark 888 KOREAN BBQ as the name of the Complainant's restaurant in Las Vegas since 2018 is clearly established, and the Panel finds that the Respondent must have known of the Complainant, and deliberately registered the disputed domain name in bad faith, especially because the disputed domain name resolves to a website in which there is information, some of it inaccurate, about the Complainant's restaurant, and photos taken from the Complainant's Facebook page are reproduced. This is affirmed by the statement on the website that "Unofficial Page. Content is updated by the community. If you are the [restaurant] owner, please Email us so we can edit the content."

The Panel further notes that the disputed domain name is also being used in bad faith since the Respondent is trying to attract Internet users to its website by creating likelihood of confusion with the Complainant's unregistered trademark as to the disputed domain name's source, sponsorship, affiliation or endorsement, an activity clearly detrimental to the Complainant's business.

The above suggests to the Panel that the Respondent intentionally registered and is using the disputed domain name in order both to disrupt the Complainant's business, and to attract Internet users to its website in accordance with paragraph 4(b)(iv) of the Policy.

Furthermore, the Panel considers that the nature of the inherently misleading disputed domain name, which is identical to the Complainant's unregistered trademark, further supports a finding of bad faith. See, [WIPO Overview 3.0](#), section 3.2.1.

The Panel therefore finds that paragraph 4(a)(iii) of the Policy has been satisfied.

## **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, <888-korean-bbq.com>, be transferred to the Complainant.

*/Edoardo Fano/*

**Edoardo Fano**

Sole Panelist

Date: August 1, 2023