

ADMINISTRATIVE PANEL DECISION

BIVA Shipping B.V. v. astanapromneft llp and Biva Shipping B.V.
Case No. D2024-1706

1. The Parties

The Complainant is BIVA Shipping B.V., Netherlands (Kingdom of the), represented by Ploum, the Netherlands (Kingdom of the).

The Respondents are astanapromneft llp, Kazakhstan, and Biva Shipping B.V., the Netherlands (Kingdom of the).

2. The Domain Name and Registrar

The disputed domain names <bivashipping.com> and <bivalogistics.com> are registered with Registrar of Domain Names REG.RU LLC (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on April 23, 2024, considering the disputed domain name <bivashipping.com>. On April 23, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 24, 2024, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 29, 2024, 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 April 30, 2024.

On April 29, 2024, the Center informed the Parties in Russian and English, that the language of the registration agreement for the disputed domain name is Russian. On April 30, 2024, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

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 in both English and Russian, and the proceedings commenced on May 8, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 28, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 29, 2024.

The Center appointed Taras Kyslyy as the sole panelist in this matter on June 14, 2024. 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.

On June 25, 2024, the Panel has issued Procedural Order No.1 inviting the Complainant to submit additional evidence in respect of substantial and consistent use in commerce of its mark. The due date of the response for the Complainant was June 30, 2024. The Complainant provided its response on June 28, 2024. The Respondent was requested to provide its response by July 5, 2024. The Respondent did not submit any response.

On June 28, 2024, the Complainant also requested the addition of the disputed domain name <bivalogistics.com> (the "additional disputed domain name") to the Complaint. The Panel agreed that it was fair and practicable to consider the additional domain name and that it was not prejudicial to the Respondent for it to be considered as part of the original Complaint. On July 15, 2024, the Center transmitted by email to the Registrar a Request for Registrar Verification in connection with the additional disputed domain name. On July 16, 2024, the Registrar transmitted by email to the Center its verification response confirming the lock of the additional disputed domain name and disclosing registrant and contact information for the additional disputed domain name.

On July 24, 2024, the Panel issued Procedural Order No. 2 and invited the Complainant provide an amended Complaint including further consolidation arguments (if any), invited the Respondent to make any submissions regarding the consolidation of the proceedings, invited the registrant of the additional disputed domain name (i) to make any submissions regarding the consolidation of the proceedings, and (ii) to file a Response in respect of the additional disputed domain name, as it may deem appropriate. The Complainant and the Respondent were requested to provide their submissions by July 29, 2024. The Complainant provided its submission on July 29, 2024. The Respondent did not provide any submission.

The Respondent of the additional disputed domain name was requested to provide its submission by August 13, 2024. The Respondent did not provide any submissions.

4. Factual Background

The Complainant was founded on August 30, 2016, as a part of the Royal Peterson Control Union Group ("Control Union") and is headquartered in Rotterdam, the Netherlands (Kingdom of the). The Complainant focuses on transport and logistics for cargo, mainly on ships. Control Union is a private international company that has been serving the commodity market since 1920. With presence in over 80 countries, its international network of offices, operations, and laboratories enables Control Union to offer its customers a range of services including logistics, inspections, certifications and collateral management. In 2024, Control Union has over 6,000 employees and more than 274 offices and labs worldwide.

The Complainant broadly uses its BIVA SHIPPING mark since 2016 as a part of its trade name and also at the website of its parent company, and as a part of respective domain name at "www.biva.peterson.nl" for several years. The Complainant owns trademark Benelux registration No. 1501429 for its trademark BIVA SHIPPING, registered on March 25, 2024.

The disputed domain name <bivashipping.com> was registered on November 12, 2023, and resolved to a website in English falsely pretending to be of the Complainant, prominently featuring the Complainant's mark, and providing the Complainant's address details. One of the Complainant's customers had purchased a considerable amount of oil (storage) on the website at the disputed domain name as confirmed by the fake

invoice for USD 1,495,000 falsely pretending to be issued by the Complainant and referring to the disputed domain name and the Complainant's actual contact details. At the time of the decision on this matter the disputed domain name does not resolve to any active website.

The additional disputed domain name <bivalogistics.com> was registered on May 21, 2024, and resolved to a website designed in the same way as the website hosted on the <bivashipping.com> disputed domain name. At the time of the Decision on this matter, the additional disputed domain name does not resolve to any active website.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

Notably, the Complainant contends that the disputed domain names are identical or confusingly similar to the Complainant's trademark. The entirety of the Complainant's mark BIVA SHIPPING is reproduced within the disputed domain name <bivashipping.com>. The disputed domain name <bivalogistics.com> incorporates the most dominant and distinctive element of the Complainant's trademark, i.e., BIVA. To which the Respondents have solely added the descriptive term "logistics", which would not prevent a finding of confusing similarity under the first element. The addition of the generic Top Level Domain ("gTLD") ".com" is not to be taken into consideration when examining the identical nature or similarity between the Complainant's mark and the disputed domain names, as it is viewed as standard registration requirement. The content of the websites associated with the disputed domain names confirm the Respondents target the Complainant.

The Complainant also contends that the Respondents have no rights or legitimate interests in the disputed domain names. The Respondents only makes use of the disputed domain names for fraudulent activities, i.e., scamming customers. The Complainant has not licensed or otherwise permitted the Respondents to use the Complainant's mark or to register a domain name incorporating the Complainant's mark. The Complainant is also not in any way affiliated with the Respondents. The Respondents are not commonly known by the disputed domain names. The Respondents have copy-pasted other websites for the disputed domain names use, including text, photos and look-and-feel of another, third party, website. The Respondents did not make demonstrable preparations to use the disputed domain names in connection with a bona fide offering of goods and services. To the contrary, the Respondents are impersonating the Complainant and scamming consumers into thinking they are buying actual goods and services while this is not the case. The Respondents are not making any legitimate noncommercial or fair use of the disputed domain names. Instead, the Respondents are using the disputed domain name and the associated websites for fraudulent purposes, while using the company name and address details of the Complainant and the texts of third parties. Following the submission of the Complaint, the Respondents registered the additional disputed domain name <bivalogistics.com> and redirected the Respondents' website to the disputed domain name. Thus, the additional disputed domain name was solely registered so that the Respondents could continue its illegal activities, i.e., scamming potential customers, as carried out on the website behind the first disputed domain name <bivashipping.com>. The Respondents are not actually offering the goods at issue but rather scamming customers. Moreover, it is not disclosed on the website at the disputed domain names that the Respondents are not in any way affiliated to the Complainant. On the contrary, even the Complainant's contact details are used without the consent of the Complainant. The Respondents' registration and use of the disputed domain names cannot be considered fair use as it falsely suggests affiliation with the Complainant and its mark. Composition of the disputed domain names alone can create a risk of implied affiliation with the Complainant. The registration of the disputed domain names, incorporating the Complainant's mark, cannot be reasonably used for any fair use that would grant the Respondents rights or legitimate interests given the inescapable affiliation with the Complainant. Furthermore, the Respondents have effectively masked their identity by using contact details of the Complainant on the associated

websites, this can also in no event constitute fair use of the disputed domain names. From the fact that the Respondents are trying to impersonate the Complainant, it is clear that the Respondents' registrations of the disputed domain names were not accidental or coincidental. The disputed domain names intended to benefit from the brand recognition gained by the Complainant.

Finally, the Complainant contends that the disputed domain names were registered and are being used in bad faith. Due to the fact that the Respondents have used the company structure, contact details, trademark and the trade name of the Complainant and focused its fraudulent actions on the same area of business as the Complainant, the Respondents must have been aware of the Complainant, and its goodwill associated with it, when they registered the disputed domain names, which indicates a registration in bad faith. The Respondents have used the disputed domain names for fraudulent activities, amongst others by attracting Internet users to the associated websites, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement on the upcoming website behind the disputed domain names. The customers are harmed by the fraudulent practices of the Respondents, as brought forward in the fraudulent invoice from the Respondents. The Respondents have expanded its fraudulent activities, e.g., by also using the connected e-mail servers to deceive consumers. The disputed domain names could be directly associated with the Complainant's mark, which is likely to be confusing to the public as suggesting either an operation of the Complainant or one associated with or endorsed by it. The use of a privacy service by the Respondents to mask the information in the Whois databases is an indication of bad faith. The Respondents have registered the disputed domain names on November 12, 2023, and on May 21, 2024, and linked them to scam websites clearly referring to address details of the Complainant. The Respondents have unlawfully and fraudulently capitalized on (1) the trade name and trademark rights as referred above; and (2) has anticipated on the Complainant's nascent trademark rights in BIVA SHIPPING, for which it later on obtained a Benelux trademark registration. The Respondents intended to anticipate the registration of the Complainant mark to unfairly benefit from the Complainant's reputation and information. The Respondents would never have registered the disputed domain names in the instance that the Respondents were not aware that BIVA SHIPPING was in use or was about to be used as a trademark by the Complainant.

B. Respondent

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

6. Discussion and Findings

A. Language of the Proceeding

The language of the Registration Agreements for the disputed domain names is Russian. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that (i) the disputed domain names entirely incorporate a brand which consists solely of Latin characters, (ii) to proceed in Russian would cause unwarranted delay, (iii) a procedure in Russian would cause potential unfairness due to the costs of translating.

The Respondents did not make any specific submissions with respect to the language of the proceeding.

The Panel also notes that the websites associated with the disputed domain names were in English. Further, neither Respondent is located in a country where Russian is the dominant language.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all

relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see [WIPO Overview 3.0](#), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

B. Consolidation of Respondents

Section 4.11.2 of the [WIPO Overview 3.0](#) summarizes the consensus view of UDRP panels on the consolidation of multiple respondents, in part, as follows: "Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario."

The Complainant asserts, among other things, that the Respondents should be treated as one respondent in this proceeding, as the Respondents appear to be the same person controlling connected websites with identical design. Further, it is clear that the Respondent has used false contact information for purposes of registering the disputed domain names given that one Respondent's name is clearly fake, combined with a nonexistent postal code, and the other is impersonating the Complainant. The use of nominally different, but fake, contact details can be seen as an attempt to frustrate the efficiency of these proceedings, particularly consolidation. The Panel accepts the arguments in favor of consolidation and grants the request to consolidate.

C. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademark (service mark) for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name <bivashipping.com>. Accordingly, the disputed domain name <bivashipping.com> is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the mark is recognizable within the additional disputed domain name <bivalogistics.com>. Accordingly, the additional disputed domain name <bivalogistics.com> is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the first element of the Policy has been established.

D. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant

evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondents lack rights or legitimate interests in the disputed domain names. The Respondents have not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

The available evidence does not confirm that the Respondents are commonly known by the disputed domain names, which could demonstrate their rights or legitimate interests (see, e.g., *World Natural Bodybuilding Federation, Inc. v. Daniel Jones, TheDotCafe*, WIPO Case No. [D2008-0642](#)).

Furthermore, the Panel notes the composition of the disputed domain name <bivashipping.com>, which carries a high risk of implied affiliation with the Complainant, while the composition of the additional disputed domain name <bivalogistics.com> carries a risk of implied affiliation with the Complainant given the descriptive relevance of "logistics" to the services offered under the Complainant's BIVA SHIPPING trademark. [WIPO Overview 3.0](#), section 2.5.1. Both disputed domain names resolved to a website in English falsely pretending to be of the Complainant, prominently featuring the Complainant's mark and providing the Complainant's address details.

Previous UPRP panels have held that the use of a domain name for illegal activity here, claimed impersonation/passing off, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. The Panel finds that in the present case the disputed domain names resolved to Respondents' websites designed to make an impression these are of the Complainant or authorized by the Complainant and were further used to defraud the Complainant's customers. Such illegal activity does not confer rights or legitimate interests on the Respondents.

The Panel finds the second element of the Policy has been established.

E. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In certain limited circumstances where the facts of the case establish that the respondent's intent in registering the domain name was to unfairly capitalize on the complainant's nascent (typically as yet unregistered) trademark rights, panels have been prepared to find that the respondent has acted in bad faith. [WIPO Overview 3.0](#), section 3.8.2. In the present case the Complainant intensively used its trademark well before the disputed domain names were registered. The nature of the trademark consisting of a words "biva" and "shipping" used in the disputed domain name <bivashipping.com>, and its further use to impersonate the Complainant and to defraud its customers confirm the Respondent had an intent in registering the disputed domain name <bivashipping.com> was to unfairly capitalize on the Complainant's nascent trademark rights. Further registration of the additional disputed domain name <bivalogistics.com> after the current Complaint was filed and immediate placement of the same website impersonating the Complainant confirms the Respondents were aware of the Complainant's trademark rights and targeted the Complainant when registering the disputed domain name <bivalogistics.com>. The Panel find the above confirms the disputed domain names were registered in bad faith.

Panels have held that the use of a domain name for illegal activity here, claimed impersonation/passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain names constitutes bad faith under the Policy.

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 names <bivashipping.com> and <bivalogistics.com> be transferred to the Complainant.

/Taras Kyslyy/

Taras Kyslyy

Sole Panelist

Date: August 27, 2024