

## **ADMINISTRATIVE PANEL DECISION**

**Batalá New York, Inc. v. Ihar Tsybulkin, Bulbastic Inc**  
**Case No. D2024-2288**

### **1. The Parties**

The Complainant is Batalá New York, Inc., United States of America (“United States”), represented by Frankfurt Kurnit Klein & Selz, PC, United States.

The Respondent is Ihar Tsybulkin, Bulbastic Inc, United States.

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

The disputed domain name <batalanyc.com> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 4, 2024. On June 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 12, 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 June 14, 2024.

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 June 20, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 10, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 11, 2024.

The Center appointed Evan D. Brown as the sole panelist in this matter on July 23, 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 September 16, 2024, the Panel issued a Procedural Order, requesting that the Complainant provide further details regarding the use of the disputed domain name since 2011, including presenting compelling evidence of a change of website content between December 7, 2011 and September 26, 2023. The Complainant was given until September 20, 2024, to provide a reply to the Procedural Order. The Respondent was granted until September 25, 2024, to provide a reply to the Complainant. The Complainant submitted their reply on September 20, 2024. The Respondent did not submit any response.

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

The Complainant is a percussion ensemble providing services that include live performances, workshops and community events. It owns the trademark BATALÁ NEW YORK and enjoys the benefits of registration of that mark in the United States (Reg. No. 6,955,001, registered on January 17, 2023). According to the Whois information, the disputed domain name was registered on December 7, 2011. The Complainant asserts that the Respondent acquired the disputed domain name on September 21, 2023, and that the Respondent set up a website at the disputed domain name that copies content of the Complainant's website, including by using trademarks identical or confusingly similar to the BATALÁ NEW YORK mark and trade dress and imagery confusingly similar to that used by the Complainant.

In response to the Procedural Order, the Complainant asserts (and provides screenshots from the Wayback Machine) that the disputed domain name was initially owned by an individual named Stacy Kovacs. The Complainant further asserts that sometime around August 10, 2023, the previous owner of the disputed domain name abandoned it. This is supported by a screenshot from the Wayback Machine showing the disputed domain name for sale on that date.

The Complainant also argues (and has provided evidence) that the disputed domain name was acquired by the Respondent on or around September 26, 2023. In the first available Wayback Machine capture after that date (captured November 21, 2023), one sees a newly designed website which the Complainant asserts clearly mimics prior content to maximize SEO traffic. But the new website differs in key ways from the website available at the disputed domain name prior to August 10, 2023. In particular, the new website incorporates completely unrelated SEO-farm style links.

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

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

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's trademark; that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (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 respect of the disputed domain name, and (iii) the disputed domain name has been registered and is being used in bad faith. The Panel finds that all three of these elements have been met in this case.

## **A. Identical or Confusingly Similar**

This first element functions primarily as a standing requirement. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7. 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. This element requires the Panel to consider two issues: first, whether the Complainant has rights in a relevant mark; and second, whether the disputed domain name is identical or confusingly similar to that mark.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#). The Complainant has demonstrated its rights in the BATALÁ NEW YORK mark by providing evidence of its trademark registration.

This test for confusing similarity under this element typically involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. [WIPO Overview 3.0](#), section 1.7. In some cases, such assessment may also entail a more holistic aural or phonetic comparison of the complainant’s trademark and the disputed domain name to ascertain confusing similarity.

Guided by these principles, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s BATALÁ NEW YORK mark. The disputed domain name incorporates the dominant portion of the Complainant’s mark, i.e. BATALÁ. See *La Quinta Worldwide, L.L.C. v. PrivacyProtect.org / Pantages, Inc.*, WIPO Case No. [D2011-1530](#) (the disputed domain name <quintainns.com> was found to be confusingly similar to the Complainant’s mark LA QUINTA because it incorporated the dominant portion of the Complainant’s mark). The letters “NYC” in the disputed domain name can reasonably be interpreted to refer to “New York City” which is for purposes of the present comparison, correspond to the words “New York” within the Complainant’s Mark.

The Panel finds that the Complainant has established this first element under the Policy

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

The Panel evaluates this element of the Policy by first looking to see whether the Complainant has made a prima facie showing that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. If the Complainant makes that showing, the burden of production of demonstrating rights or legitimate interests shifts to the Respondent (with the burden of proof always remaining with the Complainant). See [WIPO Overview 3.0](#), section 2.1; *AXA SA v. Huade Wang*, WIPO Case No. [D2022-1289](#).

On this point, the Complainant asserts, among other things, that: (1) the Respondent has not made any demonstrable preparations to use the disputed domain name in connection with a good faith offering of any good or services, but instead the Respondent has posted content at the disputed domain name that mimics the content on the Complainant’s website in an effort to divert potential consumers, (2) the Respondent does not have the permission of the Complainant to use the BATALÁ NEW YORK mark, (3) the Respondent is not affiliated with the Complainant or its parent organization, and (4) the Respondent is not commonly known by the disputed domain name.

The Panel finds that the Complainant has made the required prima facie showing. The Respondent has not presented evidence to overcome this prima facie showing. And nothing in the record otherwise tilts the balance in the Respondent’s favor.

Accordingly, the Panel finds that the Complainant has established this second element under the Policy.

## C. Registered and Used in Bad Faith

### Date for Assessing Bad Faith

The date on which the Respondent acquired the disputed domain name is the date the Panel will consider in assessing bad faith. [WIPO Overview 3.0](#), section 3.9; *Cantarella Bros Pty Limited v. Petar Karanovic, Syrah Corporation*, WIPO Case No. [D2016-2552](#). Though the Whois information shows that the disputed domain name was first registered in 2011, the Complainant asserts that the Respondent purchased or received by transfer the disputed domain name on or around September 26, 2023. The Complainant's assertion of the Respondent's 2023 acquisition of the disputed domain name is made "on information and belief," but the Whois information supports that assertion, showing that the Whois information was updated on September 26, 2023.

Facts or circumstances supporting an inference that a change in registrant has occurred may include a change in the content of the website to which a domain name directs to take advantage of the complainant's mark. [WIPO Overview 3.0](#), section 3.9; *McGraw Hill LLC v. Nanci Nette, Name Management Group*, WIPO Case No. [D2023-0260](#) (change in website content was found to support an assertion that the disputed domain name had changed ownership). The Panel's use of "The Wayback Machine" site<sup>1</sup> shows that the content in the screenshot of the Respondent's website that the Complainant submitted was first published between August 10, 2023 and November 21, 2023. Information that the Complainant provided in response to the Procedural Order further supports the assertion that the Respondent acquired the disputed domain name in 2023.

On the current record, with no Response from the Respondent to argue in favor of an unbroken chain of ownership going back to 2011, the Panel finds it more likely than not that the Respondent acquired the disputed domain name on September 26, 2023. Accordingly, the Panel will use that date in assessing the Respondent's bad faith registration.

### Bad Faith Registration

The Panel finds that it is likely that the Respondent was aware of the Complainant and its reputation in the BATALÁ NEW YORK mark at the time the Respondent acquired the disputed domain name. The Respondent's website promoted services that directly compete with the Complainant. The acquisition of the disputed domain name in awareness of the BATALÁ NEW YORK mark and in the absence of rights or legitimate interests amounts to registration in bad faith. *Web Entertainment, LLC v. Wholsguard Protected, Inc./Tom Howe*, WIPO Case No. [D2014-0159](#).

### Bad Faith Use

The Panel finds that the Respondent was using the disputed domain name to intentionally attempt to attract, for commercial gain, Internet users to a website, by creating a likelihood of confusion with the BATALÁ NEW YORK mark as to the source, sponsorship, affiliation or endorsement of its website. The Respondent's website promoted services that compete with the Complainant, makes references to the Complainant and is of a similar design to the Complainant's website (including the style of images, which show material that the Complainant claims as its trade dress). The Respondent's website also contains material suggesting that it is used for some ulterior commercial purpose, perhaps search engine optimization. For example, the Complainant's evidence showed a non-sequitur link to payday loan information within the website content, and entire sections of the website dedicated to content unrelated to the Complainant. It appears both from the disputed domain name itself and from the Respondent's website that it is more likely than not that the Respondent intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the BATALÁ NEW YORK as to source, sponsorship,

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<sup>1</sup> Noting in particular the general powers of a panel articulated inter alia in paragraphs 10 and 12 of the UDRP Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. [WIPO Overview 3.0](#), section 4.8.

affiliation, or endorsement of the Respondent's website. The Panel finds that such use amounts to use in bad faith.

Accordingly, the Panel finds that the Complainant has established this third element 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 name <batalanyc.com> be transferred to the Complainant.

*/Evan D. Brown/*

**Evan D. Brown**

Sole Panelist

Date: September 30, 2024