

ADMINISTRATIVE PANEL DECISION

Berggruen Holdings Inc. v. Ezechukwu Emmanuel
Case No. D2024-2821

1. The Parties

The Complainant is Berggruen Holdings Inc., United States of America (“United States”), represented by Sheppard, Mullin, Richter & Hampton LLP, United States.

The Respondent is Ezechukwu Emmanuel, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <berggruenholding.com> is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 10, 2024. On July 11, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 11, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 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 amendment to the Complaint on July 12, 2024.

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 July 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 5, 2024.

The Center appointed Knud Wallberg as the sole panelist in this matter on August 8, 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.

4. Factual Background

The Complainant was founded in 2004 as the investment vehicle of the Nicolas Berggruen Charitable Trust. It has continuously and exclusively used BERGGRUEN HOLDINGS as a service mark to advertise investment services since 2004. The Complainant currently has a physical presence in Los Angeles, United States, Berlin, Germany, Paris, France, Mumbai, India, and Istanbul, Türkiye, and the Complainant's primary online presence is at "www.berggruenholdings.com".

The disputed domain name was registered on December 5, 2023, and resolves to a website that purports to originate from the Complainant. Further, the Complainant has provided evidence that email addresses associated with the disputed domain name have been included in fraudulent emails that also purport to originate from the Complainant.

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 name.

Notably, the Complainant contends that the disputed domain name is nearly identical and is confusingly similar to the BERGGRUEN HOLDINGS mark under Paragraph 4(a)(i) of the Policy because the disputed domain name wholly incorporates the BERGGRUEN HOLDINGS mark, merely omitting the letter "s" from the end of the word "holdings" and adding the generic Top-Level Domain ("gTLD") ".com."

The Complainant further contends that the Respondent is not a representative of the Complainant, nor does it have a license to use the BERGGRUEN HOLDINGS mark or is otherwise authorized by the Complainant to register any domain name incorporating the BERGGRUEN HOLDINGS mark. The Complainant is not aware of any evidence demonstrating that the Respondent is commonly known by the disputed domain name and the Complainant asserts that the Respondent has not used or made demonstrable preparations to use the disputed domain name in connection with a bona fide offering of services – on the contrary, as the Respondent has been using the disputed domain name to perpetrate fraud by contacting employees and affiliates of the Complainant to extract monetary payment under false pretenses.

The Complainant finally asserts that the Respondent registered and has been using the disputed domain name in bad faith. The Respondent has thus intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or of a product or service on the Respondent's website, which constitutes evidence of the registration and use of a domain name in bad faith, cf. paragraph 4(b)(iv) of the Policy. Additionally, the Respondent has intentionally used the disputed domain name to obtain information from employees and affiliates of the Complainant and has then contacted those individuals to extract monetary payment under false pretenses.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following:

- (i) that the domain name registered by the respondent is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) that the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) that the domain name has been registered and is being used in bad faith.

Paragraph 4(a) of the Policy states that the burden of proving that all these elements are present lies with the Complainant. At the same time, in accordance with paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules, or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

A. 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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the evidence filed the Panel finds the Complainant has sufficiently established unregistered trademark rights to BERGGRUEN HOLDINGS for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3.

In this regard, the Panel notes:

- (a) BERGGRUEN HOLDINGS is distinctive, due to the distinct combination of the personal name "berggruen" (which has no dictionary meaning) with the additional term "holdings",
- (b) the prominent use of BERGGRUEN HOLDINGS since 2004 in the Complainant's commercial communications, including the use of BERGGRUEN HOLDINGS on the Complainant's website located at "www.berggruenholdings.com", and,
- (c) the publicity and third-party news coverage associated with the Complainant's substantial investments since 2004.

The Complainant has put forward evidence that BERGGRUEN HOLDINGS has been used in a trademark sense to identify the Complainant's investment services. The Respondent has not disputed, and moreover could not be in a position to dispute, the source identifying nature of BERGGRUEN HOLDINGS noting the below-discussed targeting in an attempt to commit fraud by creating confusion and/or an association with BERGGRUEN HOLDINGS in the disputed domain name. See [WIPO Overview 3.0](#), section 1.3, see also *Greenspring Associates, Inc. v. Lisa Knowles, Victoria capital pty*, WIPO Case No. [D2019-0265](#).

The Panel finds that the disputed domain name is confusingly similar (in the sense of the Policy) to BERGGRUEN HOLDINGS. The omission of the letter "s" does not prevent a finding of confusing similarity. See section 1.8 of the [WIPO Overview 3.0](#).

The gTLD ".com" is a standard registration requirement and as such is disregarded under the first element confusing similarity test. See section 1.11.1 of the [WIPO Overview 3.0](#).

The Panel finds that the conditions in paragraph 4(a)(i) of the Policy are therefore fulfilled in relation to the disputed domain name.

B. 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 records the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has 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 name such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity here, claimed impersonation, phishing, or other types of fraud, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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

C. 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 the present case, the Panel notes that the Respondent has used the disputed domain name both for a website that is a nearly identical copy of the Complainant’s website, and in fraudulent emails impersonating the Complainant sent to employees and customers of the Complainant, most likely with the purpose to solicit personal information and money from the recipients. Panels have held that the use of a domain name for this type of illegal activity constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Based on the available record the Panel finds the Respondent’s registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel finds that the Complainant has established the third element of 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 <berggruenholding.com> be transferred to the Complainant.

/Knud Wallberg/

Knud Wallberg

Sole Panelist

Date: August 28, 2024