

## **ADMINISTRATIVE PANEL DECISION**

Sourcis, Inc. v. Jenn Christine, Brand Lift 360  
Case No. D2024-3087

### **1. The Parties**

The Complainant is Sourcis, Inc., United States of America (“United States”), represented by Burgoyne Law Group, United States.

The Respondent is Jenn Christine, Brand Lift 360, United States.

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

The disputed domain name <mexicobariatricsolutions.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 July 27, 2024. On July 29, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 29, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 August 9, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 29, 2024. The Respondent sent a number of email communications to the Center between August 9, 2024, August 24, 2024, September 3, 2024, and September 5, 2024. On September 5, 2024, the Respondent submitted a document containing a number of arguments that the Panel will consider to be the Response.

The Center appointed Evan D. Brown as the sole panelist in this matter on September 20, 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 is in the business of medical tourism, specifically offering bariatric procedures. It owns the trademark MEXICO BARIATRIC CENTER, and it enjoys the benefit of registrations for that mark in the United States (Reg. No. 5,610,986, registered on November 20, 2018, and Reg. No. 4,512,884, registered on April 8, 2014). The trademark MEXICO BARIATRIC CENTER has a disclaimer for the terms “BARIATRIC CENTER” as used apart from the full mark.

According to the Whois records, the disputed domain name was registered on December 7, 2023. The Respondent has used the disputed domain name to market bariatric-related medical tourism services that the Complainant asserts are nearly identical to those offered by the Complainant, creating a likelihood of consumer confusion.

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

##### **A. The 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.

The Complainant asserts that since 2012, it has marketed and operated its medical tourism business through the domain name <mexicobariatriccenter.com>. Over the years, the Complainant has solidified its brand presence by applying for and obtaining two United States trademark registrations for its MEXICO BARIATRIC CENTER mark.

The Complainant asserts that the Respondent is a former employee of the Complainant, holding the position of Marketing Manager before resigning without notice in 2018 with two other employees to launch a competing business. In February 2024, the Complainant asserts, the Respondent reached out to the Complainant seeking financial support, suggesting her company was on the brink of failure. Unbeknownst to the Complainant, the Respondent had already taken steps to re-launch her business under a new name, “Mexico Bariatric Solutions.” These efforts included registering the disputed domain name and setting up a website there to display content that closely resembles the Complainant's marketing materials, thereby, creating a likelihood of consumer confusion.

The Complainant further alleges that the Respondent made no legitimate use of the “Mexico Bariatric Solutions” name or the disputed domain name prior to the launch of her “reincarnated” business in 2024, which is purely commercial in nature. Given the Respondent's intimate knowledge of the Complainant's business and rights in the mark from her time as an employee, according to the Complainant, the Respondent's actions reflect a clear intent to compete unfairly and profit from the Complainant's established reputation and goodwill.

As for bad faith, the Complainant contends that the Respondent's familiarity with the Complainant's mark and subsequent adoption of the confusingly similar “Mexico Bariatric Solutions” branding was a calculated move to exploit the Complainant's market presence and consumer recognition.

## **B. The Respondent**

The Respondent tells a different version of the story. She asserts that she was terminated by the Complainant without just cause, rather than resigning as the Complainant claims. She states that she stood up for her managed employees over perceived unfair practices, which she believes led to her termination. The Respondent claims that after being let go, she did not immediately start a competing business but instead took time off to care for her father, who had been diagnosed with cancer. During this period, she became involved with another provider of bariatric related services, not as a founder but as a favor to the owner, which eventually led to a marketing position. When her father passed away, the Respondent took on an additional role in another company because the bariatric services provider was not paying enough. She claims that she later parted ways with that bariatric services provider due to differences in core values and management style and eventually started her own business, "Be Slim Bariatrics", three years after her termination from the Complainant.

The Respondent asserts that she had no intent to confuse patients or compete unfairly with the Complainant. She explains that if patients were ever confused about her business identity, they were directed to the intended website, including those of competitors. According to the Respondent, confusion is common in the bariatric industry regardless of company names. Moreover, her website has not been indexed by Google to prevent active promotion and to facilitate a potential closure of the business. The Respondent asserts that this means only individuals with the direct URL can access the site. The Respondent also claimed that when there was any potential for customer confusion between her business and the Complainant's, she actively tried to redirect the confused customers to the correct websites. The Respondent plans to close the business and emphasizes that there was never any intention to solicit patients from the Complainant.

Maintaining that her branding is distinct, the Respondent argues that the color scheme is the exact color scheme that she had with "Be Slim Bariatrics" and that she kept it because she "wanted patients to see the clear distinction that they were on the right website with the previous Be Slim Bariatric management team". She chose colors commonly used in health-related branding and created content to reflect her own values. In addition, the Respondent claims that many competitors have a person in their logo, and they chose "a person with wings like they are transforming into their new body. Also the leaf like flowers embody freshness". She contends that these differences do not warrant any changes and do not imply unfair competition. For customer information, the Respondent offered to transfer all assets, including the patient database, to the Complainant when considering closing her business. She emphasizes that any potential overlap in patient databases would simply reflect individuals shopping around for services, and she is willing to compare records to demonstrate that no information was taken improperly.

The Respondent claims that she legally had to close "Be Slim Bariatrics" to serve her patients and that if the Complainant had agreed with the transfer of such company, the Respondent would have closed her business, instead of creating a new one. When it came to the name of her business, "Mexico Bariatric Solutions", the Respondent explains that she chose it so that she could continue serving patients after closing "Be Slim Bariatrics". The name was intended to differentiate her business model, and there was no intent to harm or unfairly compete with the Complainant. Furthermore, the content on her website was independently created to align with her values, not derived from any competing sources. She notes that many competing websites share similar basic marketing content, but hers remains distinct.

Lastly, the Respondent claims that the Complainant had the opportunity to acquire the disputed domain name but chose not to. She is currently keeping the website active until the business formally closes, which was expected by October 3, 2024, as the last scheduled patient is booked for that date.

## **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. *Id.* 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 MEXICO BARIATRIC CENTER mark by providing evidence of its trademark registrations. See [WIPO Overview 3.0](#), section 1.2.1.

This test 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. *Id.*

Guided by these principles, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s MEXICO BARIATRIC CENTER mark. The disputed domain name differs from the Complainant’s mark only inasmuch as the word “solutions” replaces the word “center”. The Complainant’s mark remains sufficiently recognizable for a showing of confusing similarity under the Policy.

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 made no use of the “Mexico Bariatric Solutions” name or the disputed domain name prior to the launch of the Respondent’s “reincarnated” business in 2024, and the sole purpose of that use of the name was to solicit customers for a competing business in the same industry; (2) the Respondent was not previously known by the name “Mexico Bariatric Solutions”, indicating no legitimate connection to the name; (3) the disputed domain name was registered over a decade after the Complainant’s use of the MEXICO BARIATRIC CENTER mark, making the Respondent’s claim to any rights in the name untimely; and (4) the website at the disputed domain name is purely commercial, not used in a fair manner, and closely resembles the Complainant’s branding, indicating an intention to imitate and compete with the Complainant unfairly. Instead, the Respondent has used the disputed domain name to market nearly identical bariatric-related medical tourism services, leveraging the goodwill associated with the Complainant’s mark and confusing consumers.

The Panel finds that the Complainant has made the required prima facie showing. The Panel does not find the Respondent’s contentions, including the contentions relating to the color scheme, selection of the name, and other assertions overcome the prima facie showing. These actions by the Respondent in particular do not establish her rights in the disputed domain name or in any mark resembling the disputed domain name.

Instead, the Respondent's registration and use of the disputed domain name appears to have been conducted without any legitimate rights or interests, and in a manner that capitalizes on the Complainant's established mark and reputation for commercial gain. 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. Bad Faith Registration and Use**

The Policy requires a complainant to establish that the disputed domain name was registered and is being used in bad faith. The Policy describes several non-exhaustive circumstances demonstrating a respondent's bad faith registration and use. Under paragraph 4(b)(iv) of the Policy, a panel may find bad faith when a respondent "[uses] the domain name to intentionally attempt to attract, for commercial gain, Internet users to [respondent's] website or other online location, by creating a likelihood of confusion with complainant's mark as to the source, sponsorship, affiliation, or endorsement of [respondent's] website or location or a product or service on [the respondent's] website or location".

Applying this standard, the Panel finds that the Respondent registered and used the disputed domain name in bad faith. The evidence indicates that the Respondent was fully aware of the Complainant's mark and its associated goodwill at the time of registering the disputed domain name in December 2023.

By using a name that is confusingly similar to the Complainant's MEXICO BARIATRIC CENTER mark, and operating in the same medical tourism sector, the Respondent intentionally sought to attract Internet users to its website for commercial gain. The similarity in branding, services, and even the visual design of the Respondent's website strongly suggests an attempt to exploit the reputation and customer base of the Complainant. This is further supported by the timing of the registration, which coincided with the Respondent's rebranding and launch of a competing business.

Moreover, the Respondent's assertion that the business is not actively promoted because the website is not indexed by search engines does not negate a finding of bad faith. The use of the disputed domain name for commercial purposes, even if restricted to users with the direct URL, still constitutes an attempt to benefit from the Complainant's trademark and attract customers familiar with the Complainant's brand. The Respondent's claim of an intent to close the business and transfer its assets, while presented as evidence of good faith, also does not change the fact that the disputed domain name was registered and used in a manner that sought to create an undue association with the Complainant's established mark. The Respondent's actions, including soliciting financial assistance while concealing plans to rebrand under a similar name, further demonstrate a pattern of bad faith use of the domain name. Accordingly, the Panel concludes that the Complainant has met its burden under 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 <mexicobariatricsolutions.com> be transferred to the Complainant.

*/Evan D. Brown/*

**Evan D. Brown**

Sole Panelist

Date: October 4, 2024