

PANEL DECISION

Matteo Bertazzoni v. bertazzoni matteo
Case No. DEU2024-0016

1. The Parties

The Complainant is Matteo Bertazzoni, Italy, represented by Studio Barbero S.p.A., Italy.

The Respondent is bertazzoni matteo, Italy.

2. The Domain Name, Registry and Registrar

The Registry of the disputed domain name <bertazzonimatteo.eu> is the European Registry for Internet Domains (“EURid” or the “Registry”). The Registrar of the disputed domain name is eNom, Inc.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 29, 2024. On May 30, 2024, the Center transmitted by email to the Registry a request for registrar verification in connection with the disputed domain name. On May 31, 2024, the Registry 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 .eu Alternative Dispute Resolution Rules (the “ADR Rules”) and the World Intellectual Property Organization Supplemental Rules for .eu Alternative Dispute Resolution Rules (the “Supplemental Rules”).

In accordance with the ADR Rules, Paragraph B(2), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 3, 2024. In accordance with the ADR Rules, Paragraph B(3), the due date for Response was June 23, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 24, 2024.

The Center appointed Edoardo Fano as the sole panelist in this matter on June 25, 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 ADR Rules, Paragraph B(5).

The language of the proceeding is English, being the language of the Registration Agreement, as per Paragraph A(3)(a) of the ADR Rules.

4. Factual Background

The Complainant is Matteo Bertazzoni, an Italian financial advisor (acting under Chapter IV of Italian Legislative Decree No. 58 - February 24, 1998 as a financial and insurance broker), collaborating with the Italian bank Banca Patrimoni Sella & C. S.p.A..

The disputed domain name was registered by the Respondent on April 15, 2024, and it is currently inactive. However, before being suspended as explained below, the disputed domain name redirected to a website purportedly promoting insurance contracts, that is services very similar to the ones provided by the Complainant.

As a consequence of the unauthorized activities conducted by the Respondent via the website at the disputed domain name, Banca Patrimoni Sella & C. S.p.A. received a formal communication from the Italian insurance supervision organization (IVASS) notifying that the use made on the website "www.bertazzonimatteo.eu" was infringing the applicable policies concerning the provision of insurance services.

On May 13, 2024, the Complainant, as requested by IVASS and in order to protect his personal rights, filed a criminal report with the police headquarters ("Questura") of Padua, Italy, against the unknown person operating the website, for the crime of impersonation.

On May 14, 2024, the Complainant's representative sent an email to the Registry, reporting the infringing use of the disputed domain name and providing copy of the criminal report and of the Complainant's identity card, requesting the suspension of the disputed domain name. On May 17, 2024, the disputed domain name was suspended.

On May 22, 2024, the Complainant's representative received a message from the Respondent, stating the following:

"Hello Good morning, Regarding your request, we apologize for the untimely reply. We are writing to you to request the infringement we have carried out. In addition I kindly ask you what documentation you need in order to forward it to us and solve this problem. Thank you"

On May 22, 2024, the Complainant's representative sent a cease-and-desist letter to the Respondent, followed by a reminder on May 27, 2024, without receiving any reply.

The Complainant provided evidence in support of the above.

5. Parties' Contentions

A. Complainant

The Complainant states that the disputed domain name is identical to his name and surname "Matteo Bertazzoni".

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 his name and surname 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 disputed domain name was used for the

purpose of impersonating the Complainant and defrauding consumers.

The Complainant submits that the Respondent has registered the disputed domain name in bad faith, since the Complainant is a financial advisor. Therefore, the Respondent targeted the Complainant's name and surname at the time of registration of the disputed domain name and it was using it to redirect to a website purportedly promoting insurance contracts, namely services roughly comparable to the ones offered by the Complainant, and reproducing the Complainant's residence and fiscal address on the website at the disputed domain name, in order to attract Internet users, for commercial gain, to its website, by creating a likelihood of confusion with the Complainant's name and surname (in respect of which a right is recognized or established by Italian national law), as to the source, sponsorship, affiliation or endorsement of the website and the service promoted on the Respondent's website, a behavior that qualifies as bad faith registration and use.

Moreover, the registrant's postal address and the phone number provided in the Registry's Whois records for the disputed domain name do not correspond to the Respondent.

B. Respondent

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

6. Discussion and Findings

As stated in paragraph A(1) of the ADR Rules "[the] ADR Rules are applicable to domain name disputes where the domain name has been registered under the .eu Top Level Domain".

In order to succeed in its Complaint, the Complainant is required under Paragraph B(11)(d)(1) of the ADR Rules to demonstrate the following:

- (i) that the disputed domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by national law of a Member State and/or European Union law; and either
- (ii) that the disputed domain name has been registered by the Respondent without rights or legitimate interests in the name; or
- (iii) that the disputed domain name has been registered or is being used in bad faith.

(i) Identical or Confusingly Similar to a name in respect of which a right or rights are recognized or established by national law of a Member State and/or European Union law

The Panel finds that the Complainant's name and surname is "Matteo Bertazzoni" and that the disputed domain name is identical to the Complainant's name and surname.

Article 9 of REGULATION (EU) 2020/857 states "[t]he Registry shall take into consideration [...], in as far as they are protected under national law in the Member States where they are held: unregistered trademarks, trade names, business identifiers, company names, family names, and distinctive titles of protected literary and artistic works." According to Article 6 of the Italian Civil Code, "Each person has the right to the name attributed by the law. The name includes the first name and the surname".

It is well established in decisions under the ADR Rules that the country code Top-Level Domain ("ccTLD") ".eu" is typically ignored when assessing the similarity between a trademark and a domain name.

The Panel finds that the Complainant has therefore met its burden of proving that the disputed domain name is identical to the Complainant's name and surname "Matteo Bertazzoni", pursuant to Paragraph B(11)(d)(1)(i) of the ADR Rules.

(ii) Rights or Legitimate Interests

Paragraph B(11)(e) of the ADR Rules provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name:

- (i) prior to commencing this proceeding the Respondent has used the disputed domain name in connection with the offering of goods or services or has made demonstrable preparations to do so; or that
- (ii) the Respondent as an undertaking, organization or natural person has been commonly known by the disputed domain name; or that
- (iii) the Respondent is making a legitimate and noncommercial or fair use of the disputed domain name, without intent to mislead consumers or harm the reputation of a name in which a right is recognized or established by national law and/or European Union law.

While the overall burden of proof in 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 often impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 2.1.¹

Having reviewed the record, 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 ADR Rules or otherwise.

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

The Panel therefore finds that Paragraph B(11)(d)(1)(ii) of the ADR Rules has been satisfied.

(iii) Registered or Used in Bad Faith

According to Paragraph B(11)(d)(1) of the ADR Rules (ii) lack of rights or legitimate interests and (iii) registration or use in bad faith are alternative requirements. The Panel finds that the Respondent lacks rights or legitimate interests in the disputed domain name and therefore there is no need to consider also the bad faith element.

However, in any case, the Panel finds that the use of the disputed domain name as described above is an evidence of bad faith registration and use, pursuant to Paragraph B(11)(d)(1)(iii) of the ADR Rules.

In fact, regarding the registration in bad faith of the disputed domain name, the Complainant is a financial advisor, 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 on the website at the disputed domain name services very similar to the Complainant’s ones, namely insurance contracts, were purportedly promoted, and the Complainant’s residence and fiscal address was reproduced.

¹Considering the substantive similarities between the ADR Rules and the Uniform Domain Name Dispute Resolution Policy (“UDRP”), the Panel also refers to UDRP cases, where appropriate.

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

Panels have held that the use of a domain name for illegal activity, here 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 name constitutes bad faith under the ADR Rules.

The above suggests to the Panel that the Respondent intentionally registered and was using the disputed domain name, identical to a personal name for which no demonstrable link exists between the Respondent and 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 B(11)(f)(3)(4) and (5) of the ADR Rules.

As regards the current use of the disputed domain name, being inactive as a consequence of its suspension, panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the record, the Panel notes that the previous use of the disputed domain name, the false contact details used by the Respondent when registering the disputed domain name, and the failure of the Respondent to submit a response and finds that in the circumstances of this case the current passive holding of the disputed domain name does not prevent a finding of bad faith under the ADR Rules.

7. Decision

For the foregoing reasons, in accordance with Paragraph B(11) of the ADR Rules, the Panel orders that the disputed domain name <bertazzonimatteo.eu> be transferred to the Complainant. ²

/Edoardo Fano/

Edoardo Fano

Sole Panelist

Date: July 3, 2024

²As the Complainant is located in Italy, a Member State of the European Union, it satisfies the general eligibility criteria for registration of the disputed domain name set out in Article 3 of Regulation (EU) 2019/517. Therefore, the Complainant is entitled to request the transfer of the disputed domain name.

The decision shall be implemented by the Registry within thirty (30) days after the notification of the decision to the Parties, unless the Respondent initiates court proceedings in a Mutual Jurisdiction, as defined in Paragraph A(1) of the ADR Rules.