

## **ADMINISTRATIVE PANEL DECISION**

BeReal v. osama abotamim  
Case No. D2023-1189

### **1. The Parties**

The Complainant is BeReal, France, represented by Blanche Avocats, France.

The Respondent is osama abotamim, Saudi Arabia.

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

The disputed domain name <bereal.fans> is registered with Name.com, Inc. (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 16, 2023. On March 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 20, 2023, 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 (Domain Protection Services, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 21, 2023 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 March 22, 2023.

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 March 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 19, 2023. A formal Response was not filed with the Center, but the Respondent sent informal email communications, dated March 22, and 23, 2023.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on May 8, 2023. 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 incorporated in 2021 and since then has been operating the BeReal social network for which mobile applications can be downloaded for Apple and Android products via a website at “bereal.com”. According to the Complaint, the mobile applications have been available since late 2019 / early 2020. A feature of the Complainant’s social network is that subscribers may join for free. There are over 20 million users worldwide.

The Complainant or its BeReal app have been the subject of more than 3,000 media articles around the world including publications like the Guardian, the New York Times, Medium, Forbes, Buzzfeed and numerous publications in French, German, Spanish, and other languages.

The Complainant owns Registered French Trademark No. 4778040, BEREAL, which was filed and registered on June 18, 2021 in relation to a range of goods and services in International Classes 9, 18, 25, 35, 38, 41, 42, and 45.

The Complainant is also the owner of International Trademark Registration No. 1647102, BEREAL, which was registered on November 26, 2021 in relation to a range of goods and services in International Classes 9, 18, 25, 35, 38, 41, 42, and 45 and designating the European Union and numerous countries outside the European Union. The countries do not include Saudi Arabia. In a number of the countries designated, the application has not matured into a registered trademark yet.

The disputed domain name was registered on May 12, 2022.

It resolves to a website, which appears to operate a social network. The website is available in French to users located in France and English to users located in English speaking countries such as Australia. On the landing or login page, the Respondent depicts “BeRealFans” in the same stylized way as the Complainant represents its trademark. According to the Complaint and not disputed by the Respondent, users must pay a subscription fee to participate in the Respondent’s social network.

The Respondent does not offer its service through a mobile app downloadable from either the Apple App Store or the Google Play store.

#### **5. Discussion and Findings**

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

The language of the registration agreement is English and the informal Respondent communications, like the Complaint, has been submitted in English.

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

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

The Complainant has proven ownership of the registered trademarks identified in Section 4 above. Having regard to the number of users and the volume of media coverage, the Panel considers the Complainant has also generated sufficient reputation to claims rights in its trademark as an unregistered trademark at least in relation to social networking.

The second stage of this inquiry simply requires a visual and/or aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of "likelihood of confusion" under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See e.g., WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([WIPO Overview 3.0](#)), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the Top-Level Domain ("TLD") component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

Disregarding the ".fans" TLD, therefore, the disputed domain name is identical to the Complainant's trademark.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is the Complainant's trademark and the requirement under the first limb of the Policy is satisfied.

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

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The *onus* of proving this requirement, like each element, falls on the Complainant. Panels have recognized

the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See e.g., [WIPO Overview 3.0](#), section 2.1.

The Respondent registered the disputed domain name after the Complainant began using its trademark and also after the Complainant registered its trademark.

The Respondent's service is a paid service and so, in the circumstances does not qualify as a legitimate noncommercial or fair use.

The disputed domain name is not derived from the Respondent's name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived. From the available record, the Respondent does not appear to hold any trademarks for the disputed domain name.

The Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it. The Respondent does not dispute these matters but claims he does not require consent or authorisation.

The Respondent contends that his service is not competing with the Complainant's social networking service as his service is available through a website only and not available through a mobile app.

While this appears to be factually true, nonetheless the Respondent is offering a social networking service, which appears to be available all around the world and so is in competition with the Complainant's service. The use of the disputed domain name, which is effectively identical to the Complainant's trademark, to provide a competing, albeit paid, service does not qualify as a good faith offering of goods or services. It plainly has a tendency to lead to confusion amongst person looking for the Complainant's service.

The Respondent also contends that there is a Tik Tok service and other sites which also offer some sort of social networking service by reference to "BeReal". In addition, the Respondent contends that "BeReal" is available for registration in many other domains.

The Respondent's evidence falls well short of what is required to show that third party use of "Be Real" in connection with social networking is so extensive as to render the Complainant's trademark non-distinctive or generic. In addition, while the name may be available for registration in other domains, each of those domains is subject to prohibitions on registrations in breach of a trademark owner's prior rights. Accordingly, these further arguments do not assist the Respondent.

These matters, taken together, are sufficient to establish a *prima facie* case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain name. Accordingly, the Panel finds the established the second requirement under the Policy also.

### **C. Registered and Used in Bad Faith**

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g., *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd*, WIPO Case No. [D2010-0470](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

While the expression “be real” can be seen as an ordinary colloquial expression in some contexts, the Panel considers it is highly likely the Respondent was very well aware of the Complainant’s trademark when registering the disputed domain name given the extent of the Complainant’s reputation including the media coverage, the Respondent’s apparent lack of any connection with the expression and use of the disputed domain name with what is effectively a competing social networking service.

It is also noticeable that the Respondent does not deny knowledge of the Complainant’s trademark and service.

In these circumstances, the Panel infers that the Respondent registered the disputed domain name to take advantage of its resemblance to the Complainant’s trademark. That kind of targeting of the Complainant’s trademark constitutes registration in bad faith under the Policy.

In addition, the use of the disputed domain name to target users around the world by offering a competing social networking service by reference to what is effectively the Complainant’s trademark is likely to mislead and confuse users and so constitutes use in bad faith under the Policy.

Accordingly, the established all three requirements under the Policy.

## **6. 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, <bereal.fans>, be transferred to the Complainant.

*/Warwick A. Rothnie/*

**Warwick A. Rothnie**

Sole Panelist

Date: May 24, 2023