

ADMINISTRATIVE PANEL DECISION

BeReal v. Racks Apps

Case No. D2023-1597

1. The Parties

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

The Respondent is Racks Apps, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <berealbabes.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 12, 2023. On April 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 13, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 18, 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 April 21, 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 April 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 11, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 15, 2023.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on May 19, 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 is a French company established in 2021 which provides a social network accessible from its official website available at the domain name <bereal.com>, as well as from applications ("apps") available on the Apple and Google Play stores.

The Complainant is the owner, amongst others, of the following trademark registrations:

- French Trademark registration No. 4778040 for the word mark BEREAL, registered on February 12, 2021, in classes 9, 18, 25, 35, 38, 41, 42 and 45; and
- International Trademark registration No. 1647102 for the word mark BEREAL, filed on November 26, 2021, in classes 9, 18, 25, 35, 38, 41, 42 and 45.

The disputed domain name was registered on March 29, 2023, and has been used to redirect Internet users to the website available at "<https://dateforyou.life/?u=59vwwwm&o=g8wpdqh>" and which purportedly offered "dating" services which rather appear to be sex or pornographic paid content. Presently such webpage is inactive.

5. Parties' Contentions

A. Complainant

The Complainant asserts to provide a social network that has been a revolution in the market given the introduction of a distinctive and original new feature, consisting in sending to the users of the social network a daily notification, at a random time of the day, inviting them to spontaneously share - with their friends or publicly - a photo captured with a double camera (front and back) of themselves and their immediate environment which aspires to be full of positive values such as friendship, truthfulness and authenticity.

Also according to the Complainant, its "BeReal" mobile app is available on the Apple and Google Play stores since the end of 2019/beginning of 2020 and has reached over 20 million users worldwide, having become a global phenomenon that tops the charts as one of the most downloaded social network applications at the moment on those stores.

The Complainant thus contends that the disputed domain name is confusingly similar with its BEREAL trademark only differing therefrom by the addition of the term "babes" what is not capable of preventing the disputed domain name from being found confusingly similar to the Complaint's trademark.

To make matters worse, on the Complainant's view, the disputed domain name has been in use in connection with a website broadcasting pornographic content which association could be very detrimental to the Complainant's image and business.

As to the Respondent's lack of rights or legitimate interests, the Complainant contends that:

- a) the Respondent has no rights or legitimate interest in the disputed domain name as the Respondent does not own any "BeReal" trademark or rights;
- b) no third party is licensed, contracted, or granted authorization to register and/or to use the BEREAL trademarks with respect to the disputed domain name, or in any other way; and

- c) the disputed domain name has been used in connection with a website that seeks to profit on the Complainant's trademark to offer sex or pornographic paid content, what cannot be considered a legitimate noncommercial or fair use of the disputed domain name nor a *bona fide* offer of goods or services under the Policy.

Lastly, the Complainant alleges that the disputed domain name was registered and is being used in bad faith given the well-known status of the Complainant's BEREAL trademark and the use of the disputed domain name in connection with a sex/pornographic website. In addition to that, the Respondent's choice to retain a privacy shield to conceal its true identity further corroborates the Respondent's bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

- (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.

The Complainant must prove in this administrative proceeding that each of the aforementioned three elements is present in order to obtain the transfer of the disputed domain name.

In accordance with paragraph 14(a) of the Rules, if the Respondent does not submit a Response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

A. Identical or Confusingly Similar

The Complainant has established rights in the BEREAL trademark.

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 available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the first element of the Policy has been established.

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.

While 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 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. [WIPO Overview 3.0](#), section 2.1.

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.

The Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made 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. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.
- the Respondent (as an individual, business, or other organization) has not been commonly known by the disputed domain name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.
- the Respondent is not 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. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

Based on the available record, 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.

The Panel considers that the record of this case reflects that:

The Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s web site or location or of a product or service on the Respondent’s web site or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Presently the disputed domain name does not resolve to an active webpage. 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 finds the current non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding.

While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. [WIPO Overview 3.0](#), section 3.3. Having reviewed the record, the Panel notes, 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 Policy.

In the present case, the Panel further notes two other factors that corroborate a finding of the Respondent's bad faith: the Respondent's choice to retain a privacy protection service to conceal its true identity; and the indication of what appears to be false contact details, not having the Center been capable of delivering the Written Notice to the Respondent.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 <berealbabes.com> be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: June 2, 2023