

## **ADMINISTRATIVE PANEL DECISION**

**Bette GmbH & Co. KG v. Perfect Privacy, LLC / Anthony Stewart**  
**Case No. D2022-0612**

### **1. The Parties**

The Complainant is Bette GmbH & Co. KG, Germany, represented by Krieger Mes & Graf v. der Groeben PartG mbB, Germany.

The Respondent is Perfect Privacy, LLC, United States of America / Anthony Stewart, United Kingdom, self-represented.

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

The disputed domain name <bette.com> (the “Domain Name”) is registered with Register.com, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 22, 2022. On February 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 28, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on March 3, 2022, 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 8, 2022.

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 9, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 29, 2022. The Response was filed with the Center on March 29, 2022.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on April 14, 2022. 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.

The Complainant submitted an unsolicited supplemental filing on May 4, 2022, as discussed below.

#### 4. Factual Background

The Complainant is a German company founded in 1952 and headquartered in Delbrück, Germany. It manufactures and sells high-quality and award-winning designer baths, shower trays, wash basins, and accessories internationally through retailers. The Complainant advertises its products on its website at “www.my-bette.com” (the domain name was registered on August 5, 2019). The Complainant’s website is presented in seven languages, with linked social media pages on Facebook, Instagram, LinkedIn, Pinterest, and YouTube.

The Complainant holds several BETTE trademark registrations, including the following:

MARK	JURISDICTION	REGISTRATION NUMBER	REGISTRATION DATE
BETTE (word)	Germany	DE30311814	June 5, 2003
BETTE (word)	International, multiple countries including United Kingdom	809071	August 14, 2003
BETTE (word)	International, multiple countries	1284604	October 27, 2015

The Registrar reports that the Domain Name was created on February 14, 1998. It was registered in the name of a domain privacy service, but after receiving notice of the Complaint in this proceeding, the Registrar identified the underlying registrant as the Respondent Mr. Stewart of the United Kingdom. The Respondent Mr. Stewart states that he is the original registrant of the Domain Name.

The Respondent states that a representative of the Complainant contacted him in 2015, threatening him with legal action and offering to purchase the Domain Name for EUR 1,000 (the Respondent declined).

The Complainant attaches screenshots of the website to which the Domain Name resolved in February 2022. They show a German-language landing page with pay-per-click (“PPC”) advertising links to third parties chiefly offering bathroom furnishings and products, including the Complainant’s competitors such as Bauhaus, Geberit, Otto, and Reuter. Text at the bottom of the page linked to the Sedo domain name auction site and stated that the Domain Name “may be for sale” by its owner for “35000 GBP”, notably stating the price in the currency of the Respondent’s country of residence. This notice linked to Sedo’s German web page, where the Domain Name was listed “by way of an auction for a sales price in the range between GBP [British pounds] 25,000 and 49,999”.

At the time of this Decision, the Domain Name does not resolve to an active website.

#### 5. Parties’ Contentions

##### A. Complainant

The Complainant points to its long history and its trademark registrations in many countries and asserts that “[s]nce it was founded, Complainant has consistently been using its main firm name and catchword ‘BETTE’ in isolation. It follows that the Complainant enjoys protection against the unlawful use of its firm name in

most jurisdictions of the world....". The Complainant argues that the Domain Name is identical or confusingly similar to its BETTE trademark and that the Respondent has no permission to use that mark, is not known by that name, and has no rights or legitimate interests in it. The PPC links from the web page linked to the Domain Name led to others, mostly German competitors in the same industry as the Complainant, indicating bad faith in creating a likelihood of confusion. The Sedo auction listing also showed that the Respondent sought to sell the Domain Name to the Respondent or a competitor for an amount in excess of the Respondent's out-of-pocket costs.

## **B. Respondent**

The Respondent does not challenge the Complainant's trademark registrations but points out that they date from 2003. The Respondent registered the Domain Name in 1998 and states that he registered the Domain Name for entirely different reasons than attacking the future trademark of German baths manufacturer:

"My plans when I registered the domain were to establish a female facing online betting site : Bette.com - 'for girls who fancy a flutter.' Further, as the name Bette is a common derivative of the name Elisabeth and as first name domain names are highly sought after, I have refused numerous offers from potential buyers over the years."

The Respondent has parked this Domain Name and others with Sedo, which automatically generates advertisements and offers the domain names for sale. The Respondent denies having control over this content, although the Respondent at one point "unparked" the Domain Name after being contacted by the Complainant.

The Respondent remarks that "Bette GmbH & Co.KG have clearly been lax when protecting their intellectual property, as the chronology clearly shows. The business was fifty-one years old before they sought their first Trademark for BETTE".

The Respondent concludes,

"I hope that when you examine the Chronology list you will see that my legitimate registration of the domain name Bette.com was done in good faith. My domain name was granted five years before Bette GmbH & Co. KG registered their name BETTE as a Trademark in Germany, and twenty-one years before they registered the name my-bette.com."

## **6. Discussion and Findings**

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

- (i) the 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 domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

Under paragraph 15(a) of the Rules, "[a] Panel shall decide a 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".

### **6.1 Preliminary Matter: Supplemental Filing**

The Complainant submitted a supplemental filing furnishing additional evidence and rebuttal argument

concerning an earlier German design trademark, now abandoned, and its historical sales volumes in the period 1996-98. The Complainant concludes, “One could even argue that these sales indicate that an unregistered service or common law trademark for ‘Bette’ had been established way before the registration of the domain *bette.com* in 1998. However, a decision on this aspect is not necessary since the available WIPO case law supports the position that an earlier trademark right need not be established in order to satisfy the requirement in Paragraph 4(a)(i) of the Policy”.

Neither the Rules nor the Supplemental Rules make provision for supplemental filings, except at the request of the panel (see Rules, paragraph 12). Paragraph 10 of the Rules enjoins the panel to conduct the proceeding “with due expedition”. Therefore, UDRP panels are typically reluctant to countenance delay through additional rounds of pleading and normally accept supplemental filings only to consider material new evidence or provide a fair opportunity to respond to arguments that could not reasonably have been anticipated. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”), section 4.6.

The Complainant’s filing does not include newly discovered evidence, and the Complainant should have anticipated that it would require proof of an unregistered mark at the time of the Domain Name registration, not to establish current standing to bring a UDRP complaint under Paragraph 4(a)(i) as the Complainant misapprehends, but to establish that the Respondent was targeting a trademark held by the Respondent at the time of the registration of the Domain Name, as is required under Paragraph 4(b) to show bad faith. The Panel will take the supplemental filing into account for the limited purpose of addressing that issue.

## **6.2 Substantive Issues**

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

The first element of a UDRP complaint “functions primarily as a standing requirement” and entails “a straightforward comparison between the complainant’s trademark and the domain name”. See WIPO Overview 3.0, section 1.7.

The Complainant holds trademark registrations for BETTE, which the Domain Name incorporates in its entirety. As usual, the Top-Level Domain “.com” is disregarded as a standard registration requirement. See *id.* section 1.11.2. The Panel concludes, therefore, that the Complainant has established the first element of the Complaint.

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

Paragraph 4(c) of the Policy gives non-exclusive examples of instances in which a respondent may establish rights or legitimate interests in a domain name, by demonstrating any of the following:

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

Because a respondent in a UDRP proceeding is in the best position to assert rights or legitimate interests in a domain name, it is well established that after a complainant makes a *prima facie* case, the burden of production on this element shifts to the respondent to come forward with relevant evidence of its rights or legitimate interests in the domain name. See [WIPO Overview 3.0](#), section 2.1.

The Complainant have established trademark rights, a lack of permissive use, and the Respondent's use of the Domain Name only for PPC advertising and offers to sell the Domain Name. This does not amount to a *bona fide* offering of goods or services by the Respondent (see *id.*, section 2.9), and the Respondent offers no evidence of demonstrable preparations to use the Domain Name in connection with his stated purpose, despite holding the Domain Name for some 24 years.

Thus, the Panel finds that the Respondent has not met the burden of establishing rights or legitimate interests and concludes that the Complainant prevails on the second element of the Complaint.

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

The Policy, paragraph 4(b), furnishes a non-exhaustive list of circumstances that "shall be evidence of the registration and use of a domain name in bad faith", including the following (in which "you" refers to the registrant of the domain name):

"(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your web site or location or of a product or service on your web site or location."

The Complainant cites these examples of bad faith. The problem is that the Policy requires evidence of bad faith both in the registration and use of the Domain Name, and the record here does not establish the likelihood that the Respondent was targeting the Complainant's trademark when he registered the Domain Name in 1998. Indeed, the Complainant has not made a sufficient record in this proceeding to establish that it had a protectible unregistered BETTE trademark in 1998, even with the unsupported statements of sales in the period 1996-98 mentioned in the Complainant's belated supplemental filing. Establishing acquired distinctiveness requires historical evidence of sales and advertising under the mark and public recognition of the brand. See [WIPO Overview 3.0](#), section 1.3. In any event, the Respondent's reasons for registering the Domain Name based on a common female name are plausible, and there is no compelling reason to conclude that the Respondent must have been aware of the Complainant in 1998 and meant to attack the unregistered mark of a German manufacturer of bathroom fixtures, or the former German design mark of that manufacturer. Notably, the Respondent did not contact the Complainant to offer the Domain Name for sale and held it for years without listing it for sale.

The Complainant has the burden of proof to establish bad faith at the time of registration, and the Panel finds that it has not done so on this record. The Panel concludes that the Complaint fails on the third element, bad faith.

## **7. Decision**

For the foregoing reasons, the Complaint is denied.

*/W. Scott Blackmer/*

**W. Scott Blackmer**

Sole Panelist

Date: May 5, 2022