

ADMINISTRATIVE PANEL DECISION

Dr. Frank Lipman, Be Well Health & Wellness, LLC v. Be Well by
Dr. Frank Lipman Company, Be Well by Dr. Frank Lipman Media,
Brett Sandman Sandman
Case No. D2022-0753

1. The Parties

Complainants are Dr. Frank Lipman and Be Well Health & Wellness, LLC, United States of America (“United States”), represented by Brennan, Manna & Diamond, LLC, United States.

Respondents are Be Well by Dr. Frank Lipman Company, Be Well by Dr. Frank Lipman Media, Brett Sandman Sandman, United States.

2. The Domain Name and Registrar

The disputed domain name <bewellbydrfranklipman.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 March 3, 2022. On March 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 7, 2022, 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 and contact information in the Complaint. The Center sent an email communication to Complainant on March 11, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on March 14, 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 Respondent of the Complaint, and the proceedings commenced on March 18, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 7, 2022. Respondent did not submit any response.

Accordingly, the Center notified Respondent's default on April 8, 2022.

The Center appointed Georges Nahitchevansky as the sole panelist in this matter on April 18, 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.

4. Factual Background

Complainant, Dr. Frank Lipman, is a medical doctor providing health and wellness goods and services. Dr. Lipman is the sole owner of Complainant Be Well Health & Wellness, LLC, a Delaware Limited Liability Company with an address in New York (collectively "Complainant"). Complainant has used the mark BE WELL BY DR. FRANK LIPMAN in connection with dietary supplements. Complainant owns a trademark registration for BE WELL BY DR. FRANK LIPMAN in the United States. The application for that mark was filed on May 24, 2011, claiming a first use date of May 25, 2011, and issued to registration on September 11, 2012. The BE WELL BY DR. FRANK LIPMAN mark was originally owned by another company, also owned by Dr. Lipman, and was assigned to Be Well Health & Fitness, LLC on November 8, 2016.

Respondent registered the disputed domain name on March 23, 2011. Respondent is currently using the disputed domain name in connection with a website that promotes the use of cannabis and CBD and includes references that suggest that Dr. Lipman is affiliated with the website.

5. Parties' Contentions

A. Complainant

Complainant maintains that it is the owner of the BE WELL BY DR. FRANK LIPMAN mark by virtue of its 2012 trademark registration for that mark.

Complainant contends that the disputed domain name is identical to its BE WELL BY DR. FRANK LIPMAN mark as it fully incorporates Complainant's mark.

Complainant asserts that Respondent has no rights or legitimate interests in the disputed domain name as Respondent has used the disputed domain name with a website that promotes the use of cannabis and CBD and has done so by creating a false impression that Dr. Lipman is somehow connected or associated with the website.

Lastly, Complainant argues that Respondent has registered and used the disputed domain name in bad faith as Respondent has (i) used the disputed with a website that promotes cannabis and CBD, and (ii) used Dr. Lipman's name, image and likeness to create a false association with Respondent's website. Complainant further argues that Respondent's actions have been undertaken to take advantage of Complainant's rights in the BE WELL BY DR. FRANK LIPMAN mark and to attract web users to Respondent's website.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

Here, although Respondent has failed to respond substantively to the Complaint, the default does not automatically result in a decision in favor of Complainant, nor is it an admission that Complainant's claims are true. The burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence. A panel, however, may draw appropriate inferences from a respondent's default in light of the particular facts and circumstances of the case, such as regarding factual allegations that are not inherently implausible as being true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"); see also *The Knot, Inc. v. In Knot We Trust LTD*, WIPO Case No. D2006 0340.

A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See WIPO Overview at section 1.2.1. Complainant has provided evidence that it owns a registration for the BE WELL BY DR. FRANK LIPMAN mark in connection with dietary supplements.

With Complainant's rights in the BE WELL BY DR. FRANK LIPMAN mark established, the remaining question under the first element of the Policy is whether the disputed domain name (typically disregarding the Top-Level Domain such as ".com") is identical or confusingly similar with Complainant's mark. See *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#). The threshold for satisfying this first element is low and generally panels have found that fully incorporating the identical mark in a disputed domain name is sufficient to meet this initial standing requirement.

In the instant proceeding, the disputed domain name is identical to Complainant's BE WELL BY DR. FRANK LIPMAN mark as it fully and solely incorporates the mark. As such, the Panel finds that Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in Complainant's BE WELL BY DR. FRANK LIPMAN mark and in showing that the disputed domain name is identical to that trademark.

B. Rights or Legitimate Interests

Given that Complainant has not established the third element of bad faith registration and use, as discussed below, the Panel does not need to address the issue of whether Respondent has rights or a legitimate interest in the disputed domain name. The Panel notes, however, that the use of Complainant's trademark for purposes of attracting web traffic to a website that promotes cannabis and CBD and which uses the name and mark BE WELL BY DR. FRANK LIPMAN does not, on its face, appear to be legitimate.

C. Registered and Used in Bad Faith

Under Paragraph 4(a)(iii) of the Policy, a complainant must establish the conjunctive requirement that the respondent registered *and* used the disputed domain name in bad faith. The assessment of whether a disputed domain name was registered in bad faith has to be assessed at the time of the registration of the disputed domain name. WIPO Overview at section 3.8.1.

In the instant case, Complainant solely relies on its 2012 United States trademark registration for BE WELL BY DR. FRANK LIPMAN. That underlying application, though, was filed on May 24, 2011, almost two months after Respondent registered the disputed domain name on March 23, 2011. The BE WELL BY DR. FRANK LIPMAN application matured to registration on September 11, 2012 with a claimed first use date

of May 25, 2011. Thus, based on the registration alone, Respondent registered the disputed domain name before Complainant had any trademark rights in the BE WELL BY DR. FRANK LIPMAN mark. As such, Complainant has failed to meet its burden of proving bad faith registration by Respondent.

Nevertheless, it does not seem coincidental that Respondent registered the disputed domain name using the identical wording and name that appeared in Complainant's BE WELL BY DR. FRANK LIPMAN trademark some two months before Complainant or its predecessor in interest began use of the mark. It thus appears to the Panel that there may be more to the story here than what limited evidence Complainant has provided. Notably, the Panel notes that Complainant (i) did not produce any evidence showing any actual use of the BE WELL BY DR. FRANK LIPMAN mark since May 25, 2011 (the date of claimed first use of the mark), (ii) provided no explanation regarding the registration or past use of the disputed domain name, (iii) submitted no evidence tending to show that Complainant might have established common law rights in the BE WELL BY DR. FRANK LIPMAN mark or DR. FRANK LIPMAN name prior to the registration date of the disputed domain name, and (iv) made no proffer regarding the original registration of the disputed domain name or anything that might have happened with the disputed domain after its registration in March 2011.

What is not clear here is whether Respondent may have in fact registered the disputed domain name with the permission or knowledge of Complainant (or its predecessor) or whether Respondent perhaps acted in bad faith and acquired the disputed domain name at some later date after Complainant secured rights in the BE WELL BY DR. FRANK LIPMAN mark or the DR. FRANK LIPMAN name.

To be sure, the failure of Respondent to appear and defend its registration and use of the disputed domain name does create a question in the Panel's view. But on this sparse record, the Panel is faced with a registration of the disputed domain name some two months prior to the date when Complainant secured rights in the BE WELL BY FRANK LIPMAN mark. Given that the disputed domain consists of the actual name of a specific individual, who provided consent to the use of his name in Complainant's application for the BE WELL BY FRANK LIPMAN mark for dietary supplements, it is possible that Dr. Frank Lipman might have held common law trademarks rights in his name prior to the March 23, 2011 registration of the disputed domain name. Of course these should have been proven, if they existed, pursuant to accepted UDRP jurisprudence (see WIPO Overview at sections 1.3 and 1.5 and cases cited therein). Here, however, Complainant simply relied on its 2012 trademark registration in the BE WELL BY DR. FRANK LIPMAN mark, making it questionable whether such common law rights indeed existed.

That being said, in reviewing Respondent's "informational" website at the disputed domain name, the Panel notes that it has a copyright notice for 2021 and includes a number of biographies and photographs for alleged female team members along with links to a website at "<https://shopgiejo.com>", a fitness and health online magazine, and email addresses to contact such female "team members". The website also contains a general biography for Dr. Frank Lipman, but no contact information whatsoever for the alleged "Be Well By Dr. Frank Lipman Company". The website appears suspicious to the Panel, particularly in view of Respondent's failure to appear in the matter. As Complainant produced no evidence tending to show or establishing that the ownership of the disputed domain name might have changed since March 23, 2011, thereby creating a potential new registration date (see WIPO Overview at section 3.9), the Panel is constrained to accept that the registration date for the disputed domain name was on March 23, 2011 and that Complainant has, as already noted, failed to prove bad faith registration.

The Panel, however, suspects that there is more to this story than what has been submitted, as it looks like there may have been an update in the disputed domain name information in 2021. So while the Panel denies the Complaint, based on the evidence provided, it does so without prejudice and with a limited leave to refile should Complainant be able to provide genuine evidence of prior common law rights in the Dr. Frank Lipman name and mark or proof of a change in the ownership in the disputed domain name since its original registration on March 23, 2011. Such leave to refile is only being granted to address the open questions that have been raised by the Panel herein, given the suspicious nature of Respondent's website. Complainant should keep in mind that this limited right to refile is only for the purpose of providing such *bona fide* evidence, if it indeed exists, and not to essentially resubmit the same case for another bite at the apple.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Georges Nahitchevansky/

Georges Nahitchevansky

Sole Panelist

Date: April 30, 2022