

## **ADMINISTRATIVE PANEL DECISION**

### **Law and Business Enterprises Worldwide S.L. v. Ann Labe Case No. D2022-1040**

#### **1. The Parties**

The Complainant is Law and Business Enterprises Worldwide S.L., Spain, represented by Labe Abogados, Spain.

The Respondent is Ann Labe, United States of America (“United States”), represented by John Berryhill, Ph.d., Esq., United States.

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

The disputed domain name <labe.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 25, 2022. On March 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 28, 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 the Complainant on March 30, 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 30, 2022. In response to a notification by the Center that the Complaint was administratively deficient, the Complainant filed a further amended Complaint on April 4, 2022.

The Center verified that the Complaint together with the amended Complaints 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 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 26, 2022. The Response was filed with the Center on April 21, 2022.

The Center appointed Antony Gold as the sole panelist in this matter on May 3, 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

The Complainant is a company, based in Madrid, Spain, established in 2009, which provides legal, accountancy, securities assets management, and tax services for a variety of entities. Its income in 2021 was approximately EUR 15 million.

The Complainant trades as LABE and is the owner of a figurative Spanish trade mark, registration number M2931156(X) for LABE, in classes 16, 35, 36, 38, 39, 41, and 45, registered on September 23, 2010. It is also the owner of a number of domain names comprising or including the word LABE. These include <labe.es>, which resolves to a website providing information about its services, as well as <labeabogados.com> and <labeabogados.net>.

The Respondent, Rada Ann Labé,<sup>1</sup> is a real estate agent who has practiced in the states of California, Arizona, and Washington in the United States. She registered the disputed domain name on June 9, 1998, and it has previously resolved to a website containing information about her real estate practice. A cached copy of her website dating from October 2014, which is accessible on the Internet archive known as the Wayback Machine, shows that the website content at that time featured a biography about the Respondent, which contained her contact details.<sup>2</sup> More recently, the Respondent's website has been inactive, although she continues to use email addresses associated with the disputed domain name.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant says that the disputed domain name is identical or confusingly similar to a trade mark in which it has rights. It has worldwide rights in the trade mark LABE and has spent approximately EUR 10 million promoting, marketing and advertising its LABE brand, ensuring its presence in a wide range of different media. Its LABE trade mark and associated domain names are well-known among Internet users all over the world.

The Complainant says also that the Respondent has no rights or legitimate interests in respect of the disputed domain name, as evidenced by the fact that it has been inactive since the date of registration. Nor does the Respondent own any trade mark or trade designation that has any connection with the disputed domain name, nor has she made any serious preparations to use the disputed domain name in connection with a *bona fide* offering of goods and services. The Respondent's registration of the disputed domain name does not reflect a desire to use it in connection with her own activities but rather to take advantage of the notoriety of the Complainant's LABE mark and its <labe.es> domain name.

Lastly, the Complainant says that the disputed domain name was registered and is being used in bad faith. There is ample evidence that the Respondent registered the disputed domain name primarily for the purpose of making a profit by selling, renting or otherwise transferring it to the Complainant, who owns prior rights, or to a competitor of it. Alternatively, the Respondent's intention has been to intentionally attempt to attract, for

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<sup>1</sup> The acute accent on the last letter of the Respondent's surname cannot be represented in the Domain Name System and is therefore not referred to further in the remainder of this Decision.

<sup>2</sup> As explained at section 4.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. The Panel has accordingly visited the archived records for the disputed domain name and established that similar content has been retained for several other years of the website's operation.

commercial gain, Internet users to her website, by creating a likelihood of confusion as to the identity of the Complainant as to the source, sponsorship, affiliation or endorsement of her website. The Complainant and users of its <labe.es> website may be harmed as a result of the confusion that may be caused to those of its users in Spain who seek to access the Complainant's management system and instead access a web page over which the Complainant has no control, with consequent economic and reputational damage to the Complainant. The registration of the disputed domain name constitutes an act of unfair competition under Spanish law. Moreover, the Respondent has not tried to obtain any trade mark rights over it, which is a further indication that her registration was made in bad faith. Finally, her lack of use of the disputed domain name comprises bad faith use under the doctrine of passive holding.

## **B. Respondent**

The Respondent says that the disputed domain name has been registered to her since 1998 and has been used to resolve to a website promoting her real estate business and for her email addresses. Her website was taken down very recently as she no longer has any need to use it for the promotion of her business.

The Complainant's trade mark rights post-date the Respondent's registration of the disputed domain name. This would, or should, have been apparent to the Complainant by means of a Google search for "labe.com". Such a search would have revealed the Respondent's connection with the disputed domain name as well as evidence that she has been licensed as a broker, under the name "Ann K Labe" in the state of California, United States, since 1986. Moreover, the Wayback Machine has cached records showing the Respondent's use of the website to which the disputed domain name has previously resolved. Furthermore, as and when the Center disclosed the Respondent's name and address details to the Complainant, her right to use the disputed domain name should have been even more evident.

The Respondent's rights pre-date those of the Complainant and the Complainant's rights did not accrue until long after the disputed domain name was registered. The Respondent is entitled to use her surname as a domain name and her use of it for the purposes of a professional website and associated email addresses have been legitimate and in good faith. Additionally, whilst the disputed domain name does not presently resolve to an active website, the Respondent is not obligated to use it for this purpose and she continues to use the related email addresses. Accordingly, the Complainant's assertion that the disputed domain name is inactive is incorrect.

For the above reasons, the Complaint should be denied and the Panel should make a finding of Reverse Domain Name Hijacking ("RDNH") pursuant to paragraph 15(e) of the Rules.

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following three elements in order to succeed in its Complaint:

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

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

The Complainant has provided evidence of its trade mark registration for LABE, details of which are set out above. Whilst this is a figurative mark, trade mark registrations with design elements would generally be considered to satisfy the requirement that a complainant show "rights in a mark"; see sections 1.2.3 and

1.10 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

The generic Top-Level Domain (“gTLD”), that is “.com” in the case of the disputed domain name, is typically disregarded for the purposes of the comparison made under the first element, as it is a technical requirement of registration. The Panel accordingly finds that the disputed domain name is identical to a trade mark in which the Complainant has rights.

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

Paragraph 4(c) of the Policy provides, without limitation, examples of circumstances whereby a respondent might demonstrate that it has rights or legitimate interests in a domain name. In summary, these are if a respondent has used or prepared to use the domain name in connection with a *bona fide* offering of goods and services, if a respondent has been commonly known by the domain name, or if a respondent has made a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark in issue.

The Respondent has produced evidence that she is commonly known as “Ann Labe” or “Rada Ann Labe”, including screen prints of her Twitter Account, her entry in an online directory of real estate agents, her Arizona and California Real Estate licenses, and her biography on the website to which the disputed domain name has previously resolved, each of which records her name as “Ann Labe” or “Rada Ann Labe”. The Respondent has met the standard usually applied by UDRP panels (see section 2.3 of the [WIPO Overview 3.0](#)) for the purpose of demonstrating that her surname is Labe and that she is commonly known by this name. As explained by the panel in *Shakespeare Company LLC v. Bob Pflueger*, WIPO Case No. D2010-1126: “The use of one’s own surname in a domain name is in accordance with a legitimate customary practice and is, as a rule, sufficient evidence of a right or legitimate interest in the domain name. The scope of the Policy is limited to cybersquatting. Trademark owners shall not be allowed to use the Policy to dispossess summarily a third party of a domain name reflecting his or her surname”.

As the Respondent has shown that she is commonly known by her surname, Labe, which corresponds to the disputed domain name, the Panel finds that the Complainant has not established that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

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

The requirements of paragraph 4(a) of the Policy are cumulative and the Complainant has therefore not succeeded in these proceedings. However, as the Respondent has requested that the Panel consider making a finding of Reverse Domain Name Hijacking, the Panel also considers the Parties’ submissions in respect of the third element of the Policy.

As is evident from the factual background to the Complaint, the Respondent registered the disputed domain name over ten years before the Complainant was established and approximately twelve years prior to the registration of the Complainant’s LABE mark. Accordingly, the Respondent could not have had the Complainant and its eventual use of LABE in contemplation as at the date of her registration, as it did not come into existence until over a decade later. Save in certain specified circumstances, none of which apply here, bad faith will not be found where the domain name in issue was registered prior to the complainant’s registration of its mark; see *WithU Holdings Limited v. Qian Jin*, WIPO Case No. [D2020-2344](#).

The Respondent has used the disputed domain name for the purpose of a website promoting her business and for its associated email addresses. These lawful uses of the disputed domain name could not have been impugned by the Complainant, even if the Respondent had subsequently become aware of the Complainant’s eventual use of its LABE mark, as to which no evidence has been submitted by the Complainant. Moreover, none of the circumstances indicating bad faith registration and use which, without limitation, are set out at paragraph 4(b) of the Policy are present in the facts of these proceedings; see *Societe des Produits Nestle S.A. v. Pro Fiducia Treuhand AG*, WIPO Case No. [D2001-0916](#).

The Respondent's use of the disputed domain name is therefore not in bad faith.

The Complainant has alleged that the fact that the disputed domain name does not currently resolve to an active website can comprise bad faith use under the doctrine of passive holding. However, as explained at section 3.3 of the [WIPO Overview 3.0](#), the factors which are typically considered relevant when applying this doctrine include the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, as well as the implausibility of any good faith use to which the domain name may be put. Both these factors are noticeably absent in the current circumstances and, in any event, the Respondent has continued to use the disputed domain name for the purposes of its associated email addresses. See also *WithU Holdings Limited v. Qian Jin*, *supra*.

Accordingly, the Complainant has therefore not established bad faith registration and use by the Respondent.

#### **D. Reverse Domain Name Hijacking**

Reverse Domain Name Hijacking is defined under the Rules as "using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name". Paragraph 15(e) of the Rules provides that, if "after considering the submissions the panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding".

Section 4.16 of the [WIPO Overview 3.0](#) sets out reasons which have been articulated by panels for finding Reverse Domain Name Hijacking. These include: (i) facts which demonstrate that the complainant clearly ought to have known it could not succeed under any fair interpretation of facts reasonably available prior to the filing of the complaint, including relevant facts on the website at the disputed domain name or readily available public sources such as the Whois database, (ii) unreasonably ignoring established Policy precedent, except in circumstances which justify advancing an alternative legal argument, (iii) the provision of false evidence, or otherwise attempting to mislead the panel, (iv) the provision of intentionally incomplete material evidence, (v) basing a complaint on only the barest of allegations without any supporting evidence.

In circumstances where (as is the case in these proceedings) a complainant is professionally represented, some panels have held that it should be held to a higher standard. See, by way of example, *Patricks Universal Export Pty Ltd. v. David Greenblatt*, WIPO Case No. [D2016-0653](#): "Professional representatives of parties in UDRP proceedings are expected to be aware of or at least familiarize themselves with the Policy and Policy precedent, and to abide by the Policy and Rules". See also *Adopts Pick Enterprises, Inc. v. Domains by Proxy, LLC, DomainsByProxy.com / Woman to Woman Healthcare / Just Us Women Health Center f/k/a Woman to Woman Health Center*, WIPO Case No. [D2012-1555](#): "The fact that Complainant is represented by counsel makes the filing of this Complaint all the more inexcusable. The matters identified in the preceding paragraph are not Policy arcana; each is a precedent of long standing and derived from scores of cases, and each addresses a fundamental Policy requirement".

Some of the shortcomings in the Complaint appear to arise from a lack of understanding by the Complainant of the Policy. By way of example, the Complainant evidently has not understood the distinction between a registrant and a registrar. As a result, it believed the Registrar to be associated with the Respondent in some manner and consequently made a series of misconceived and irrelevant allegations against the Registrar and its claimed involvement in a number of unconnected domain name disputes.

However, it is difficult to understand how the Complainant could have been unaware that a number of assertions by it were factually incorrect. By way of example, as evidence of the longevity of its rights, the Complainant asserted that a number of domain names incorporating its LABE mark had been registered "for more than 20 years". In point of fact, to take two examples, the relevant Whois records show that <labeabogados.org> was registered on August 25, 2009, and <grupolabe.org> was registered on April 21, 2012. Similarly, a document which the Complainant produced to substantiate its claim that it is "the

owner of the trademark “labe” on a worldwide and global level”, through a registration at the European Union Intellectual Property Office, was actually a filing receipt for a European Union Trade Mark application for a figurative mark for “LaBE ABOGADOS”.

Lastly, the Panel considers the evidence available to the Complainant. First, the Whois record shows that the Respondent’s registration of the disputed domain name pre-dated the Complainant’s registration of its Labe mark by over ten years. This should have made it apparent to the Complainant that it was likely to encounter substantial, and likely insuperable, difficulties, in establishing, bad faith registration by the Respondent. Second, the Respondent has provided the results of a Google search against “labe.com” which shows, on the first page of the results, a result headed “Five Star award winner Rada Ann Labe” followed by the Respondent’s email and website addresses associated with the disputed domain name. Had the Complainant made a similar search, it should have been evident that the Respondent was, most likely, the registrant of the disputed domain name and that she had a right to register and use it. That would have been still more evident after the Center provided the Respondent’s name and address details to the Complainant, which amended the Complaint to make “Ann Labe” the Respondent. Finally, the cached pages of the Respondent’s website, available on the Wayback Machine, show that the Respondent had been using the disputed domain name for many years to resolve to a *bona fide* website connected with her real estate business.

The Complainant therefore had no basis for many of its assertions, including that the Respondent “has no intention of exploiting the domain name (as evidenced by the fact that it has been inactive since the date of registration” or that the Respondent registered the disputed domain name “to take advantage of the notoriety of the domain name “labe” under “.es” owned by the Complainant” or that “There is ample evidence that the Respondents registered the domain name “labe” under “.com” primarily for the purpose of making a profit by selling, renting or otherwise transferring the domain name registration to the Complainant who owns the Prior Rights [...]”.

The consequence of the Complainant’s decision to proceed with its Complaint, notwithstanding its complete lack of merit, has been put the Respondent in a position in which her only choice (other than acceding to the Complaint) was to file a Response. The Policy should not be misused in this manner. See, in broadly similar circumstances, *Normann Copenhagen ApS v. Peter Normann*, WIPO Case No. [D2017-0829](#); and also *Societe des Produits Nestle S.A. v. Pro Fiducia Treuhand AG*, *supra*.

In these circumstances, the Panel finds that the Complaint was brought in bad faith and that it is appropriate to make a declaration of Reverse Domain Name Hijacking.

## 7. Decision

For the foregoing reasons, the Complaint is denied.

*/Antony Gold/*

**Antony Gold**

Sole Panelist

Date: May 27, 2022