

ADMINISTRATIVE PANEL DECISION

Barnebys Group AB v. Registration Private, Domains by Proxy, LLC / Sherry McGuire

Case No. D2022-1515

1. The Parties

The Complainant is Barnebys Group AB, Sweden, represented by Ports Group AB, Sweden.

The Respondent is Registration Private, Domains by Proxy, LLC / Sherry McGuire, United States of America ("United States").

2. The Domain Name and Registrar

The disputed domain name <bamebys.com> is registered with Wild West Domains, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 27, 2022. On April 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 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 May 4, 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 amendment to the Complaint on May 9, 2022.

The Center verified that the Complaint together with the amendment to the 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 May 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 31, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 1, 2022.

The Center appointed Leon Trakman as the sole panelist in this matter on June 9, 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 Swedish internet-based auction house holding art, rarities, design, and collectable items, operating in the European Union and internationally, including the United States.

The Complainant was founded in the very beginning of 2011 and launched its official website “www.barnebys.com” in 2011.

The Complainant’s trademarks include the marks BARNEBYS and BARNEBYS.COM.

The Complainant is the owner of trademark registration in the European Union, China, the United Kingdom, and the United States. For example, United States Registration No. 4725639 for BARNEBYS, registered on April 21, 2015.

All Complainant’s trademarks predate the registration of the disputed domain name.

The Complainant is also owner of the domain name <barnebys.com> registered on January 20, 2010.

The disputed domain name was registered on March 2, 2022, and the Complainant has provided evidence that the disputed domain name has been used in connection with a fraudulent email scheme.

5. Parties’ Contentions

A. Complainant

The Complainant alleges that the Respondent has acted contrary to the Policy, paragraphs 4(a), (b), (c); Rules, paragraph 3.

The Complaint alleges, in particular, that the Respondent is engaging in “abusive registration and use” of the disputed domain name.

The Complainant contends that the Complaint should be determined in accordance with the Policy and Rules; and that the disputed domain name be transferred to it.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel determines that the disputed domain name is confusingly similar, and almost identical, to the Complainant’s trademark, contrary to the requirements specified in the Policy, paragraph 4(a)(i); Rules, paragraph 3(b)(viii), (b)(ix)(1).

The disputed domain name replicates the Complainant’s trademark, other than by replacing the letters “r” and “n” with an “m”. Eliminating the letter “m” and replacing it with the letters “r” and “n”, does not prevent the determination that the disputed domain name is confusingly similar to the Complainant’s trademark.

Section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)).

The disputed domain name is therefore confusingly similar to the Complainant’s trademark.

B. Rights or Legitimate Interests

The Panel determines that the Respondent has no rights or legitimate interests in the disputed domain name, as required by the Policy, paragraph 4(a)(ii); Rules, paragraph 3(b)(ix)(2)).

There is no evidence on the record that the Respondent is commonly known by the disputed domain name, such as in having a surname that is identical or similar to that name.

The Respondent is also not acting as an agent, affiliate, or licensee of the Complainant. The Complainant has not given the Respondent express, implied, or ostensible authority to register and use the disputed domain name. Nor has the Complainant ratified the Respondent’s registration and use of that name.

Moreover, the Respondent is not making a *bona fide* offering of goods or services, or legitimate noncommercial or fair use of the disputed domain name, but rather is using the disputed domain name in connection to fraudulent activities.

C. Registered and Used in Bad Faith

The Panel determines that the disputed domain name was registered and is being used in bad faith, contrary to the requirements of the Policy, paragraphs 4(a)(iii), 4(b); Rules, paragraph 3(b)(ix)(3).

It is most unlikely on the facts that, prior to registering the disputed domain name, the Respondent was unaware of the Complainant’s trademark registered in 2011. The trademark is widely visible commercially. That visibility is accentuated by its marketing by the Complainant and its affiliates, commencing in 2011. The Respondent’s bad faith use of the disputed domain name further affirms bad faith registration for the purpose of that use.

The Respondent has used the disputed domain name in bad faith in various respects. The Respondent has engaged in typo squatting and phishing. It has impersonated the Complainant in so doing. It has also attempted to extort payments, fraudulently, from the Complainant’s customers.

The Complainant provides evidence of such bad faith use, notably by adducing evidence of an invoice sent to one of its customers on March 2, 2022. The email emanated from the email associated with the disputed domain name. It included a reminder that the invoice was due for payment on March 3, 2022.

The Panel acknowledges that the disputed domain name itself is not currently resolving to an active website. However, section 3.1.4 of the [WIPO Overview 3.0](#) clearly states: “the use of a domain name for *per se* illegitimate activity such as [...] phishing can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith”.

Accordingly, the Respondent is using the disputed name in bad faith. It has deliberately attempted to create confusion among the Complainant’s customers over the ownership of the disputed domain name. It has relied on that confusion to deceive those consumers into believing that it is or is acting for the Complainant. It has done so based on an invoice sent to them for the purpose of, illegally and fraudulently, extracting payments from them. Such conduct provides clear and convincing evidence of the Respondent’s use of the disputed domain name in bad faith.

7. Decision

For the foregoing reasons and in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <bamebys.com> be transferred to the Complainant.

/Leon Trakman/

Leon Trakman

Sole Panelist

Date: June 23, 2022