

ADMINISTRATIVE PANEL DECISION

beIN Media Group LLC v. Ahmed Khattab
Case No. D2022-2300

1. The Parties

The Complainant is beIN Media Group LLC, Qatar, represented by Tmark Conseils, France.

The Respondent is Ahmed Khattab, Egypt.

2. The Domain Name and Registrar

The disputed domain name <bein2020.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 24, 2022. On June 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 28, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 June 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 19, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 26, 2022.

The Center appointed Antony Gold as the sole panelist in this matter on August 5, 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 media group registered under the law of Qatar. It was established in 2003, and changed its name to “BeIN Sport” in 2012. The Complainant offers subscriptions to over 60 television channels, websites, and mobile apps in 43 countries, located in the Middle East, Europe, North America, and elsewhere.

The Complainant owns many trade marks in multiple countries for both BEIN SPORT and BEIN. Its BEIN trade marks include, by way of example only, Egyptian trade mark, registration number 270616, for BEIN, in class 9, registered on June 11, 2014. The Complainant also owns many domain names which comprise or include its marks, including <beinsports.com>, <beinmediagroup.com>, and <bein.com>, each of which resolves to websites related to its business or is used to provide services to its customers.

The disputed domain name was registered on March 16, 2020. It resolves to a web page stating that it can be used to test the correct operation of an Apache 2 server.

On April 12, 2022, the Complainant’s representatives sent a claim letter to the Respondent. On May 12, 2022, the Respondent sent a reply by email which stated; “i respect your brand and i use my domain it sell and buy goods from china and i didn’t use it in any illegal action thanx for your interest”.

5. Parties’ Contentions

A. Complainant

The Complainant says that the disputed domain name is confusingly similar to trade marks or service marks in which it has rights. The disputed domain name contains the Complainant’s BEIN mark in full and the added number “2020” only serves to exacerbate, rather than diminish, the confusion between the disputed domain name and the Complainant’s trade marks, not least because the Complainant has routinely used, and continues to use, its BEIN mark juxtaposed with other terms.

The Complainant says also that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The disputed domain name has not been used in connection with a *bona fide* offering of goods and services. Whilst the Respondent has claimed that he uses the disputed domain name for selling and buying goods from China, this assertion is not convincing, particularly as the disputed domain name simply resolves to a web page which is related to the correct operation of an Apache server. As at the date of registration of the disputed domain name, the Respondent was not known as “BEIN” and has no trade mark to justify his registration. Nor does there appear to be any legitimate reason which might justify the registration of the disputed domain name, nor has the Complainant given permission to the Respondent to use its BEIN mark in the disputed domain name. In the light of the above, it is obvious that the Respondent is trying to take advantage of the well-known character of the Complainant’s BEIN marks, which supports a finding that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant says also that that the disputed domain name was registered and is being used in bad faith. The circumstances of the Respondent’s registration suggest that it was well aware of the Complainant’s marks as at the date of his registration of the disputed domain name. A simple Internet check would have revealed the Complainant’s mark and the Complainant’s mark appears as the first results of a search on Google for the word BEIN. Moreover, the Complainant’s mark is very well-known worldwide.

The Respondent has not attempted to put the disputed domain name to any legitimate use and has evidently been intending to seek an unjust benefit from the Complainant’s mark. The fact that the disputed domain name does not currently resolve to an active website does not preclude a finding of use in bad faith under the doctrine of passive holding.

B. Respondent

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

6. Discussion and Findings

Dealing, first, with the Respondent's failure to file a substantive response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under these Rules, the Panel shall be entitled to draw such inferences from this omission as it considers appropriate.

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; 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.

A. Identical or Confusingly Similar

The Complainant has provided details of its trade mark registrations for BEIN, an example having been provided above. It has thereby established its rights in this mark.

The generic Top-Level Domain ("gTLD"), in the disputed domain name, that is the ".com" component, is typically disregarded for the purposes of the comparison made under the first element, as it is a technical requirement of registration. The disputed domain name features the Complainant's BEIN trade mark followed by the number "2020".

This added term does not prevent the disputed domain name from being found confusingly similar to the Complainant's marks. As explained at section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"); "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element".

The Complainant's BEIN mark is recognizable within the disputed domain name and the Panel therefore finds that it is confusingly similar 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 made demonstrable preparations 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 a name corresponding to 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.

Whilst the Respondent has not served a Response to the Complaint, he has asserted in an email to the Complainant's representatives dated May 12, 2022, that he has been using the disputed domain name to buy and sell goods from China. Section 2.2 of the [WIPO Overview 3.0](#) considers the question of what might qualify as prior use, or demonstrable preparations to use a domain name, in connection with a *bona fide*

offering of goods or services and explains that “non-exhaustive examples of prior use, or demonstrable preparations to use the domain name, in connection with a *bona fide* offering of goods or services may include: (i) evidence of business formation-related due diligence/legal advice/correspondence, (ii) evidence of credible investment in website development or promotional materials such as advertising, letterhead, or business cards (iii) proof of a genuine (*i.e.*, not pretextual) business plan utilizing the domain name, and credible signs of pursuit of the business plan”. Nothing of this nature has been produced by the Respondent; he has simply made a bald assertion and – even if it any claimed use was independent from a meaning ascribed to the Complainant’s mark – there is no evidence before the Panel which suggests it might be true. Having regard to the fact that the only known use of the disputed domain name has been to resolve to a webpage which is intended to check the correct operation of an Internet server, the Panel does not find that the Respondent has used the disputed domain name in connection with a *bona fide* offering of goods and services, nor that he has made demonstrable preparations to do so; see, by way of example, *ZipRecruiter Inc. v. Mark Barrows*, WIPO Case No. [D2020-2735](#).

There is no evidence to indicate that the Respondent has been commonly known by the disputed domain name and the second circumstance set out at paragraph 4(c) of the Policy is therefore inapplicable. Nor is the third circumstance applicable; non-use of the disputed domain name or use of it simply to point to a webpage of the type described above does not equate to a legitimate noncommercial use of it. Furthermore, the characteristics of the disputed domain name, are apt to suggest an affiliation or connection with the Complainant, which prevents its use from being considered fair. In this respect, see section 2.5.1 of the [WIPO Overview 3.0](#); “[W]here a domain name consists of a trademark plus an additional term (at the second- or Top-Level), UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner”.

The Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name and the burden of production shifts to the Respondent to show that he does have such rights or legitimate interests. In the absence of any response from the Respondent to the Complaint, it has failed to satisfy that burden. The Panel accordingly finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

As at the date of registration of the disputed domain name in March 2020, the Complainant had been trading as BEIN for approximately 8 years and the evidence it has submitted establishes that its mark was very well-known internationally. The composition of the disputed domain name, coupled with the failure of the Respondent to provide any explanation which might provide a good faith justification for his registration of it, provide persuasive evidence that the Respondent was aware of the Complainant’s BEIN mark as at the date of registration of the disputed domain name and that it was registered in order to take unfair advantage of it in some manner. The fact that the disputed domain name comprises the Complainant’s mark in full followed by the number “2020” would have made the disputed domain name particularly apposite and valuable for use by the Complainant in connection with the coverage of sports event or events during the year 2020. This might explain the reason why the Respondent chose to register the disputed domain name. As the panel found in *Herbalife International, Inc. v. Surinder S. Farmaha*, WIPO Case No. [D2005-0765](#), “the registration of a domain name with the knowledge of the complainant’s trade mark registration amounts to bad faith”. The Panel therefore finds the Respondent’s registration of the disputed domain name to have been in bad faith.

The current use of the disputed domain name to resolve to a holding web page which, apparently, can be used to test the correct operation of web server software, does not prevent a finding of bad faith under the doctrine of passive holding. In this respect, see section 3.3 of the [WIPO Overview 3.0](#), which explains that; “[f]rom the inception of the UDRP, panelists 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”. The factors that are typically considered when 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 concealment of its identity or its use of false contact details and (iv) the implausibility of any good faith use to which the domain name may be put. See also *VOLKSWAGEN AG v. Danny de graaf*, WIPO Case No. [D2020-1940](#).

Applying these factors to the current circumstances: (i) the Complainant has established that its BEIN trade mark is widely used worldwide and the evidence suggests that it is distinctive in the context of the services for which it is used; (ii) the Respondent's claimed use of the disputed domain name, as set out in his email to the Complainant's representative, is not supported by any evidence and is not accepted (and in any event it is not clear why such claimed use would use a domain name corresponding to the Complainant's mark). Nor is there any other evidence of actual or contemplated good faith use of the disputed domain name; (iii) the Respondent has not sought to conceal his name on the Whois record. However, the Panel also notes that the Respondent's contact details, which will have been provided by the Respondent to the Registrar, were incomplete in that they did not include a street number and that the suburb code did not match the city, with the consequence that it was not possible to serve a hard copy of the proceedings on the Respondent. Contact details which are materially incomplete or inaccurate are essentially false in that they do not provide a means of contacting a respondent; and (iv) there is no plausible good faith use to which the disputed domain name could be put by the Respondent. Accordingly, the circumstances of the Respondent's holding of the disputed domain name support a finding of bad faith under the doctrine of passive holding.

The Panel therefore finds that the Respondent has registered and is using the disputed domain name in bad faith.

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, <bein2020.com> be transferred to the Complainant

/Antony Gold/

Antony Gold

Sole Panelist

Date: August 19, 2022