

ADMINISTRATIVE PANEL DECISION

Sleep Country Canada Holdings Inc. v. Name Redacted Case No. D2022-4428

1. The Parties

The Complainant is Sleep Country Canada Holdings Inc., Canada, represented by Gowling WLG (Canada) LLP, Canada.

The Respondent is Name Redacted.¹

2. The Domain Name and Registrar

The disputed domain name <sleep.country> (“the Disputed Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 19, 2022. On November 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On November 21, 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 (Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 22, 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 amended Complaints on November 25 and 28, 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 November 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was initially December 19, 2022.

¹ See section 4 of this decision; in this decision, “the Respondent” refers to the individual whose identity is not disclosed and who has submitted the Response in the proceedings.

On December 9, 2022, the Center received an email from the Respondent, requesting for the due date of the Response to be extended to January 15, 2023. On December 13, 2022, the Center sent a communication to the Parties, inviting the Complainant to comment on the Respondent's extension request. On December 13, 2022, the Center received communications from the Complainant and the Respondent, arguing respectively, why the extension should not be granted and why the extension should be granted. On December 14, 2022, the Center sent an email to the Parties, communicating that in accordance with paragraph 5(e) of the Rules exceptionally grants the extension to file a Response until January 5, 2023.

On January 3, 2023, the Center received an email from the Respondent, requesting for the due date of the Response to be further extended to January 15, 2023. On January 4, 2023, the Center sent an email to the Parties reconfirming that the due date for Response is January 5, 2023, and that it will bring the Respondent's request to the Panel's attention (when appointed). The Response was filed with the Center on January 5, 2023. Based on the filing of the Response and on the submissions respectively made by the Parties, the Panel does not consider it necessary to order further procedural steps, even if the Respondent has referred to cybersecurity-related issues in his submissions for which he was waiting for clearance from Canadian governmental agencies because the Panel considers that these issues are outside the scope of these proceedings (as explained below under sections 7 and 8).

The Center appointed Jacques de Werra as the sole panelist in this matter on January 12, 2023. 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. Redaction of the name of the Respondent

In his response, the Respondent has made the request "that any identifying information relating to the Respondent be redacted before publication of the Panel's determination of this matter" given the sensitive nature of this matter and the alleged libelous nature of the Complainant and their counsel.

Paragraph 4(j) of the Policy provides (among others) that "[a]ll decisions under this Policy will be published in full over the Internet, except when an Administrative Panel determines in an exceptional case to redact portions of its decision". Paragraph 16(b) of the Rules provides that "[e]xcept if the Panel determines otherwise (see paragraph 4(j) of the Policy), the Provider shall publish the full decision and the date of its implementation on a publicly accessible web site. In any event, the portion of any decision determining a complaint to have been brought in bad faith (see paragraph 15(e) of these Rules) shall be published".

In light of the specific circumstances of the case in which sensitive interests are concerned (alleged national security interests and alleged claims of libel between an ex-employee and his ex-employer) and in view of the fact that "no purpose is to be served by including the named Respondent in this decision" (as expressed in *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#); which was followed by other UDRP panels, e.g. *Alstom v. Name redacted*, WIPO Case No. [D2021-2584](#)), the Panel decides (i) to issue this Decision with the name of the Respondent redacted from it; (ii) to list the name of the Respondent in the Annex to this Decision; (iii) to direct the Center to not publish the Annex to this Decision; and (iv) to direct the Center to provide to the Registrar, solely for the purpose of implementing this Decision, the Annex to this Decision.

5. Factual Background

The Complainant is a Canadian mattress retailer with over 250 stores operating in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Prince Edward Island, and Nova Scotia. The Complainant operates a website associated to the domain name <sleepcountry.ca> for its business activities since 1999.

The Complainant owns registered trademarks in Canada (and in other countries: Australia and United Kingdom) incorporating the words SLEEP COUNTRY, including the Canadian (word and design) trademark containing the words SLEEP COUNTRY which was registered on October 21, 2008 (Reg. No. TMA726,409) for various products (*i.e.* mattresses; bedding accessories, namely pillows, linens, mattress pads and pillow protectors) and services (*i.e.* operation of a retail business specializing in mattresses, box springs, day beds, bed frames, and bedding accessories, and delivery and set up services).

The Disputed Domain Name was registered on June 15, 2021. The Disputed Domain Name was initially used to redirect to a page on the website of another Canadian company where mattresses were offered for sale.

Subsequently, a confidential forensic investigation report that was prepared by a cybersecurity and investigation firm for the Complainant ("the Report") was made available (in pdf format) on the website associated to the Disputed Domain Name, whereby the website had no other content.

The Respondent is a former employee of the Complainant, whose employment with the Complainant was terminated by the Complainant effective June 4, 2020.

The Complainant issued a demand letter to the Respondent on April 29, 2022 about the Disputed Domain Name and about its use for disclosing the Report. The Complainant issued a further demand letter to the Respondent on July 25, 2022. The Respondent responded by email, and did not deny having registered the Disputed Domain Name. The Complainant and the Respondent subsequently engaged in some further without prejudice discussions regarding the potential transfer of the Disputed Domain Name from the Respondent to the Complainant at certain conditions. The Parties were however unable to agree on terms of a resolution regarding the Disputed Domain Name.

6. Parties' Contentions

A. Complainant

The Complainant claims that the Disputed Domain Name incorporates the whole of the Complainant's trademark and that the Respondent cannot avoid confusion, as it has misappropriated this trademark, including the entirety of the Complainant's trademark. Accordingly, the Disputed Domain Name is confusingly similar with the trademark in which the Complainant has rights, and continues to have rights.

There is no evidence to suggest that the Respondent has ever used, or that the Respondent has made any demonstrated preparations to use, the Disputed Domain Name, or a name corresponding to same, in connection with a *bona fide* offering of goods or services. There is no evidence either to suggest that the Respondent has been commonly known by the Disputed Domain Name, or that the Respondent is making, or intends to make, a legitimate noncommercial or fair use of the Disputed Domain Name. The Respondent is a former employee of the Complainant and has used the Disputed Domain Name to publicly disclose the Report and violate the Complainant's rights and confidential information. The Respondent is not licensed, or otherwise authorized, directly or indirectly, to register or use the Complainant's trademark in any manner whatsoever, including in, or as part of, a domain name. The Respondent registered the Disputed Domain Name as part of a scheme to attract unsuspecting third parties believing the Respondent to be associated with or authorized by the Complainant, in order to publicly display the Complainant's highly confidential information contained in the Report and to redirect traffic to a competitor's website. Under these circumstances, the Complainant claims to have established a *prima facie* case that the Respondent has no rights or legitimate interests in the Disputed Domain Name.

The Complainant submits that the Disputed Domain Name was registered and is being used in bad faith and relies on evidence demonstrating that the Respondent seeks to take unfair advantage of, abuse, or otherwise engage in behavior detrimental to the Complainant's trademark. In essence, the Complainant submits that the Respondent has used the Disputed Domain Name to impersonate the Complainant for an

unlawful purpose, that the Respondent has used the Disputed Domain Name for the purpose of disrupting the business of the Complainant (which is the Respondent's former employer), by disclosing sensitive and confidential information that belongs to the Complainant, and by redirecting Internet traffic to a competitor's website, and that the Respondent has also used the Disputed Domain Name to intentionally attempt to attract Internet users to its website by creating a likelihood of confusion with the Complainant's trademark as to source, sponsorship, affiliation, or endorsement.

The Respondent has used the Disputed Domain Name as an instrument to commit various torts including breach of confidence. Using the Disputed Domain Name, the Respondent has been masquerading as the Complainant to publicly display the highly confidential information of the Complainant and misrepresent itself as being associated with and authorized by the Complainant, including by reproducing a copy of the Report, and infringing the Complainant's trademark rights.

B. Respondent

The Respondent has made various arguments in his response that can be summarized as follows:

With respect to the trademark of the Complainant, the Respondent claims that the Complainant has a trademark for the words SLEEP COUNTRY CANADA, but that the Complainant does not have a trademark registered for SLEEP COUNTRY, and that the word mark for SLEEP COUNTRY (United States Registration No. 2924355, registered February 1, 2005) is owned by another company (Sleep Country USA, LLC). Consequently, the Respondent submits that the Complainant has no valid registration with regard to the word mark "SLEEP COUNTRY". This would demonstrate the Complainant's abuse of the administrative process in order to achieve a chilling effect, and to further make libelous claims against the Respondent.

The Respondent further claims that during the Respondent's employment with the Complainant, the Respondent informed management of many domain names that were available for registration, which could be done in order to prevent others from using the domain names and that the Disputed Domain Name was among the list presented, however the registration cost of the list was considered not to be worth the benefit. The Respondent also submits that the Disputed Domain Name was registered by another person in the past and that that person attempted to sell it to the Complainant for a large markup over registration costs and that at that time, the Complainant was not interested in the Disputed Domain Name, nor was interested in initiating UDRP proceedings in order to retrieve the Disputed Domain Name which would represent further the bad faith of the Complainant.

The Respondent submits that he has operated extremely carefully, and in a truthful and good faith manner, even if the Complainant objects to the content available on the website associated to the Disputed Domain Name, because no opinions have been posted on such website, nor could a reasonable person assume that the use of the Disputed Domain Name has attempted to be a misrepresentation of the Complainant's official website at the domain name <sleepcountry.ca>. The Respondent further submits that there exists no generation of revenue resulting from the use of the Disputed Domain Name and that no email can be sent with the "@sleep.country" extension.

The Respondent also submits that the Complainant did not raise the issue that the website associated to the Disputed Domain Name was redirected to a competitor until the website was changed, whereby the Respondent made this redirection intentionally with the assumption that the Complainant would only initiate administrative proceedings after the content of the website associated to the Disputed Domain Name was changed to the Report. This would show the true intentions of the Complainant not in protecting its trademark but to limit the Respondent's ability to defend himself against the libelous claims of the Complainant.

The Respondent submits in this respect that the website associated to the Disputed Domain Name (on which the Report was available) exists in order to demonstrate that the libelous claims of the Complainant are false and that the Report is currently the best available evidence that the Respondent has received from sympathetic previous colleagues and that it represents the Complainant's willingness to further spread

information of National Security significance to other organizations, expressly against the Royal Canadian Mounted Police (RCMP)'s directions. The Respondent believes that this is the true reason why the Complainant has initiated these administrative proceedings, which is a vain attempt to avoid the RCMP from learning of the transmission of documents to yet another origination, when the Complainant was instructed to destroy them.

In this respect, the Respondent also submits that he was employed by the Complainant as the sole individual responsible for information technology security throughout the Complainant's entire nationwide network and that he was responsible for making significant security improvements, and in identifying a critical issue on the Complainant's website before it was published. Had this critical issue not been discovered, it would have resulted in complete compromise of the Complainant's entire customer database. Detecting software development security issues was not even inside the job duties of the Respondent, yet the Respondent took on the responsibility of reviewing these matters. The Respondent fulfilled his duties in the most responsible and professional manner, going above and beyond job duties to insure information technology standards.

The Respondent further submits that on May 27, 2020, during the course of the Respondent duties, they discovered that Canadian government classified documents (detailing highly sensitive network configurations) were being shared through the Complainant's network by a contractor with direct ties to senior management which led to the termination of the contract of the persons at issue. Upon discovery that the Respondent was responsible for reporting these actions to the relevant Canadian authorities, the Complainant engaged in a slanderous smear campaign against the Respondent. The Report that the Complainant's claim resolves around is confirmation that the identified people conspired and exfiltrated documents of National Security significance through the Complainant's network. Unfortunately, the Respondent was dismissed illegally by the Complainant in a retaliatory nature, which is sanctioned under the Criminal Code of Canada. The Respondent complains about the fact that the Complainant along with members of the senior management team have embarked on an egregious libel and slander campaign against the Respondent which has caused significant damage to the Respondent's reputation and financial hardship for the Respondent. The Respondent further submits that the Complainant's counsel has engaged in a libel and defamation campaign against the Respondent, especially in regards to this matter by claiming that the Respondent had breached the Complainant's network to obtain the Report (whereby these claims are not made any more in the Complaint).

The Respondent submits that during the negotiations between the Parties before the start of the administrative proceeding, the Respondent had already offered to return the Disputed Domain Name in exchange for an apology letter for the defamation and libel and the Respondent's costs of domain registration and that this negotiation did not succeed because the Complainant was not willing to prepare an apology letter.

The Respondent further submits that the Complainant has an interest for the content of the information available (*i.e.*, the Report) and not for the Disputed Domain Name itself.

In its conclusion, the Respondent claims that his use of the Disputed Domain Name has only been in good faith, and that no attempt has been made to profit or otherwise interfere with the Complainant's trademark. It has been established that the Complainant is truly only interested with the content posted, not with the alleged interference with its trademark, so that the Respondent submits that the Complainant is acting in bad faith. The Respondent claims that the Complainant has never operated in good faith with respect to the Respondent and that deciding in the Complainant's favor would set a demonstrably unethical and immoral precedent, and would validate the bad faith efforts of the Complainant.

The Respondent claims that the Complainant has already applied to the Respondent's hosting provider, and the Registrar requesting to take down the Disputed Domain Name based on the Report being hosted and that these attempts have failed as this is not a matter of copyright, but rather of corporate responsibility and transparency. Regardless of the Disputed Domain Name used to host the Report, the Complainant would have abused this or similar administrative process in the same way, not with the intent to protect its trademark, but with the sole intent to silence and extinguish freedom of expression rights. The facts indicate

that the Complainant's application is in bad faith and should be dismissed on the grounds of abuse of process.

7. 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 a UDRP proceeding. Thus, for the complainant to succeed, it must prove all of the three elements under the Policy:

- (i) the Disputed 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 Disputed Domain Name; and
- (iii) the Disputed Domain Name has been registered and is being used in bad faith.

The Respondent claims that as a matter of principle the Complainant is not interested by the Disputed Domain Name but is rather concerned by the disclosure of the Report which was available on the website associated to the Disputed Domain Name and that this would demonstrate the bad faith behavior of the Complainant. The Panel will analyze this in its determination on the issue of the reverse domain name hijacking (see below, section 8).

The Panel notes that present case appears to arise in connection with an employment relationship between the Parties. While disputes arising in employment relationships may generally be considered to be outside the context of the UDRP, this case is different because the registration of the Disputed Domain Name by the Respondent was not made during the employment relationship (it took place more than one year after the termination) and was not alleged to have been done with the employer's instructions.

On this basis, for the reasons exposed below, this Panel considers that it can decide the dispute between the Parties by application of the UDRP, whereby this obviously does not exclude that the Parties may submit their dispute in other fora based on applicable laws (including with respect to the issue of alleged libel to which the Respondent refers in his response).

A. Identical or Confusingly Similar

The Complainant must establish that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Panel first notes that the Complainant is the owner of the trademark which consists of the word elements "SLEEP COUNTRY" (and in addition the Complainant is the owner of various trademarks containing these words to which certain geographic elements have been added – *e.g.*, "CANADA"). The Respondent submits in this respect that the Complainant only has a trademark for the words SLEEP COUNTRY CANADA but that the Complainant does not have a trademark registered for SLEEP COUNTRY. The Panel however notes that the Complainant is also the owner of the trademark (which is a design trademark) which consists of the word elements "SLEEP COUNTRY", as noted under Section 4 above.

The Respondent further submits that the word mark for "SLEEP COUNTRY" (United States Registration No. 2924355) is owned by another company. However, this United States trademark registered and owned by another company does not affect the registration and ownership of the trademark mentioned-above in Canada, which is owned by the Complainant.

A comparison between the Disputed Domain Name and the trademark shows that the Disputed Domain Name is clearly confusingly similar to the Complainant's trademark because words elements of the trademark (*i.e.*, "SLEEP COUNTRY") are the same as the one composing the Disputed Domain Name (*i.e.*,

<sleep.country>). It can be reminded that panel assessment of identity or confusing similarity involves comparing the (alpha-numeric) domain name and the textual components of the relevant mark. To the extent that design (or figurative/stylized) elements would be incapable of representation in domain names, these elements are largely disregarded for purposes of assessing identity or confusing similarity under the first element. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.10. Where the applicable Top-Level Domain and the second-level portion of the domain name in combination contain the relevant trademark, panels may consider the domain name in its entirety for purposes of assessing confusing similarity. See [WIPO Overview 3.0](#), section 1.11.3. Moreover, even looking at the trademark for SLEEP COUNTRY CANADA the Panel would find confusing similarity.

As a result, based on the rights of the Complainant on the trademark and on the identity or confusing similarity between the trademarks and the Disputed Domain Name, the Panel finds that the conditions of paragraph 4(a)(i) of the Policy are met.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish rights to or legitimate interests in the Disputed 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 Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) 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 Disputed Domain Name, without intent for commercial gain, to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Although a complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, previous UDRP panels have consistently ruled that paragraph 4(c) of the Policy shifts the burden to the respondent to come forward with evidence of a right or legitimate interest in the domain name, once the complainant has made a *prima facie* showing. See *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#).

Panels have categorically held that the use of a domain name for illegal activity can never confer rights or legitimate interests on a respondent. Panels have found that circumstantial evidence can support a complainant's otherwise credible claim of illegal respondent activity. [WIPO Overview 3.0](#), section 2.13.

The Complainant submits that the Respondent has used the Disputed Domain Name for an illegal activity, *i.e.*, for disclosing the Report which is a confidential document relating to the Complainant. The Complainant also submits that the Disputed Domain Name was used in the past to point to the website of a third-party company offering products that are directly competing with those commercialized by the Complainant. This previous use of the Disputed Domain Name does not create any right or legitimate interest of the Respondent in the Disputed Domain Name. See [WIPO Overview 3.0](#), section 2.5.3 ("[...] a respondent's use of a complainant's mark to redirect users (*e.g.*, to a competing site) would not support a claim to rights or legitimate interests").

The Panel further notes that the Complainant never authorized, licensed or permitted the Respondent to use the its trademark in any manner and that the Respondent is not commonly known by the Disputed Domain Name, whereby the Disputed Domain Name replicates the word elements of its trademark. Even though these words ("SLEEP" and "COUNTRY") are dictionary terms, their combination is clearly intended to, and does, play on the trademark of the Complainant (which is not disputed by the Respondent).

On this basis, the Panel finds that the Complainant has made a *prima facie* case showing that the Respondent lacks any rights or legitimate interest in the Disputed Domain Name.

The Respondent has submitted various arguments in order to justify its actions about the Disputed Domain Name including that he has operated extremely carefully, and in a truthful and good faith manner, because no opinions have been posted on the website associated with the Disputed Domain Name, nor could a reasonable person assume that the use of the Disputed Domain Name has attempted to be a misrepresentation of the Complainant's official website at the domain name <sleepcountry.ca>. The Respondent further submits that there exists no generation of revenue resulting from the use of the Disputed Domain Name and that no email can be sent with the "@sleep.country" extension. The Panel notes that the fact that the Respondent has not engaged in certain activities that would bar a finding of rights or legitimate interests in the Disputed Domain Name does not exclude that the Respondent has not engaged in other activities that would prevent him from claiming to have rights to or legitimate interests in the Disputed Domain Name.

The Respondent also submits that the Complainant has an interest for the content of the information available on the websites associated to the Disputed Domain Name (*i.e.*, the Report) and not for the Disputed Domain Name itself so that this would constitute bad faith of the Complainant. The Panel notes in this respect that the UDRP can be applied for the benefit of trademark owners in order to prevent the registration and use of conflicting domain names provided that the cumulative conditions of the Policy are met. If these conditions are met, a complainant can be successful in UDRP proceedings irrespective of the precise identification of the interests of that complainant (unless these interests do not deserve legal protection at all under the reverse domain name hijacking standard, see below, section 8). In this case, the fact that the Complainant's primary interest may be in preventing the disclosure of the Report on the website associated to the Disputed Domain Name does not by itself bar the initiation of UDRP proceedings by the Complainant.

The Panel notes that the Respondent was an employee of the Complainant until the employment was terminated in June 2020, which was well before the Respondent registered the Disputed Domain Name which took place one year later (June 2021). On this basis, the Respondent could not claim that he registered the Disputed Domain Name as a part of his mission for the Complainant (it also being noted that the Respondent has not made this claim in his response).

Even by assimilating the use of the Disputed Domain Name by the Respondent to a sort of criticism site, this would not provide a basis for rights or legitimate interests of the Respondent, given that the Disputed Domain Name is identical to the word elements of the trademark owned by the Complainant.²

Under paragraph 4(c)(iii) of the Policy, a genuine review or criticism site can provide a basis for rights or legitimate interests. However, domain names that are identical to a complainant's trademark generally do not qualify for this defence. See, *e.g.*, [WIPO Overview 3.0](#), section 2.5.1 ("Generally speaking, UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation.") and section 2.6.2 ("Panels find that even a general right to legitimate criticism does not necessarily extend to registering or using a domain name identical to a trademark (*i.e.*, <trademark.tld> (including typos)); even where such a domain name is used in relation to genuine noncommercial free speech, panels tend to find that this creates an impermissible risk of user confusion through impersonation."). In this case, the Disputed Domain Name is identical to the word elements of the Complainant's trademark so that the Disputed Domain Name carries a high risk of implied affiliation as it creates a risk of user confusion through impersonation.

On this basis, the Panel finds that the Complainant has made a *prima facie* showing that the Respondent has no rights or legitimate interests in the Disputed Domain Name and that the Respondent has not

² Regardless of any potential general right to or prohibition against the public distribution of the Report the Respondent may have according to relevant local law, the Panel notes that in either event this would not explain the choice of the Disputed Domain Name and does not impact the inherently misleading nature of the Disputed Domain Name.

sufficiently established any rights to or any legitimate interests in the Disputed Domain Name itself, which would rebut the *prima facie* case made by the Complainant.

The Panel is consequently satisfied that the Complainant has established that the second requirement of paragraph 4(a) of the Policy is met.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trademark or service mark) or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name;
- (ii) circumstances indicating that the respondent registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct;
- (iii) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent intentionally is using the domain name in an attempt to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances from which such bad faith may be found. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant is seeking to profit from or exploit the trademark of another. See *Match.com, LP v. Bill Zag and NWLAWS.ORG*, WIPO Case No. [D2004-0230](#).

In this case, the Panel finds on the basis of the allegations of the Complainant that the Respondent registered and uses the Disputed Domain Name in bad faith for the following reasons:

The Panel first holds that the Respondent has registered the Disputed Domain Name in bad faith because the trademark distinctively identifies the Complainant and the Complainant's activities such that the choice of the Disputed Domain Name cannot be explained other than as a reference to the trademark of the Complainant. In this regard, the Parties' prior relationship makes it clear that the Respondent was aware of the Complainant and its trademark rights at the time of registration of the Disputed Domain Name, and intentionally sought to create an association with such. The Respondent has not submitted any credible explanation as to the choice of selecting the Disputed Domain Name other than to create an association with the Complainant and its trademarks.

The previous use of the Disputed Domain Name pointing to a third-party company offering products that are directly competing with those commercialized by the Complainant confirms that the Respondent targeted the trademark and the Complainant when registering the Disputed Domain Name. Moreover, in the context of this proceeding, the unauthorized disclosure of the Report does not avoid a finding of bad faith in the use of the Disputed Domain Name which is also supported by the prior redirection of the Disputed Domain Name to a competitor of the Complainant and the inherently misleading nature of the Disputed Domain Name.

On this basis, the Panel finds that the Respondent registered and uses the Disputed Domain Name in bad faith pursuant to paragraph 4(b) of the Policy, so that the conditions of paragraph 4(a)(iii) of the Policy are met.

8. Reverse domain name hijacking

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”.

Reverse Domain Name Hijacking (RDNH) is defined under the UDRP Rules as “using the UDRP in bad faith to attempt to deprive a registered domain-name holder of a domain name”. Mere lack of success of a complaint is not sufficient to find RDNH. See [WIPO Overview 3.0](#), section 4.16.

A finding of RDNH is warranted, for example, when a panel finds that the complainant (especially one represented by counsel) should have recognized that it could not succeed on one of the three elements of the complaint under any fair interpretation of the available facts or brings a complaint based on only the barest of allegations without any supporting evidence.

In this case, the Panel does not find that the Complainant is “using the UDRP in bad faith to attempt to deprive a registered domain-name holder of a domain name”. Similarly to what was noted above (see section 7), the fact that the Respondent may have had obligations to report certain incidents to national authorities in Canada, that he claims that his employment contract with the Complainant was unduly terminated by the Complainant (as an alleged measure of retaliation), and that the disclosure of the Report would allegedly demonstrate that the libelous claims of the Complainant are false does not lead to the conclusion that the Complainant is “using the UDRP in bad faith”.

The Panel does not and cannot express an opinion as to the legal assessment of the respective behaviors of the Respondent and of the Complainant under the applicable local laws. What the Panel assesses here is whether the specific conditions under the Policy are met. The findings that the Panel makes by application of the Policy are independent from the legal assessment that may be made under the applicable local laws in order to decide whether the Respondent may have breached its obligations that it has as a former employee of the Complainant (to which the exchanges that took place between the Parties before the initiation of these proceedings seem to refer) and these findings made here should have no bearing of the findings that might be made in court proceedings between the Parties.

9. 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, <sleep.country>, be transferred to the Complainant.

/Jacques de Werra/

Jacques de Werra

Sole Panelist

Date: January 26, 2023