

ADMINISTRATIVE PANEL DECISION

Breitling SA v. Voica Eva
Case No. DRO2022-0001

1. The Parties

The Complainant is Breitling SA, Switzerland, represented by Brandstock Domains GmbH, Germany.

The Respondent is Voica Eva, Romania.

2. The Domain Name and Registrar

The disputed domain name <breitling.ro> (the “Disputed Domain Name”) is registered with ROTLD (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 4, 2022. On February 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On February 7, 2022, the Registrar transmitted by email to the Center its verification 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 February 7, 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 February 7, 2022.

The Center sent an email communication to the Parties, in both English and Romanian, on February 7, 2022, indicating that the Language of the Registration Agreement was Romanian. The Complainant submitted a request for English to be the Language of the Proceeding on February 7, 2022. The Respondent did not comment on this.

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 the Respondent of the Complaint in both Romanian and English, and the proceedings commenced on February 16, 2022. In

accordance with the Rules, paragraph 5, the due date for Response was March 8, 2022. The Response was filed with the Center on February 16, 2022.

The Center appointed Gabriela Kennedy as the sole panelist in this matter on March 17, 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 manufactures high-end chronographs, watches, and related accessories, and has stores and distributors worldwide. The Complainant was founded in 1884 by Léon Breitling, and has manufactured and sold BREITLING watches ever since.

The Complainant is also the owner of numerous trademark registrations worldwide for the BREITLING mark including, *inter alia*, the International Trademark Reg. No. 279322 registered on January 31, 1964; International Trademark Reg. No. 160212 for BREITLING (device), registered on March 10, 1952, and European Union Trade Mark No. 0613794 for BREITLING (device), registered on January 7, 1994 (“the Complainant’s Trademark”). The Complainant also owns and operates the website to which the domain name <breitling.com> resolves. Thus, the Complainant has obtained an exclusive right to the Complainant’s Trademark through extensive use.

The Disputed Domain Name was registered on November 14, 2007. The Disputed Domain Name resolves to an active website offering the Disputed Domain Name for sale.

5. Parties’ Contentions

A. Complainant

The Complainant’s primary contentions can be summarized as follows:

(a) The Complainant requests that the language of proceedings be English. Neither the Complainant, nor its representatives, understand Romanian. It would therefore, be burdensome and expensive for the Complainant to translate this Complaint with all its annexes, which would also unnecessarily delay this procedure. Moreover, the Respondent had previously communicated with the Complainant’s representative in English.

(b) The Disputed Domain Name is identical or confusingly similar to the Complainant’s Trademark. The Complainant’s Trademark is reproduced in its entirety in the Disputed Domain Name. The only elements which differentiate the Disputed Domain Name and the Complainant’s Trademark are the use of lower-case letter format and the addition of the country code Top-Level Domain (“ccTLD”) “.ro”.

(c) The Respondent does not have any rights or legitimate interests in the Disputed Domain Name. The Respondent does not own any BREITLING trademark and there is no evidence suggesting that the Respondent has been commonly known by the Disputed Domain Name. Although the Respondent indicated to the Complainant that she has a right in the Disputed Domain Name by virtue of her being the author of a book in which the main character is called Breit Ling, the Respondent has not provided any evidence to support such claim. Given that the Complainant’s Trademark is well-known worldwide, it could not have been legitimately adopted by the Respondent other than for the purpose of creating an impression of an association with the Complainant. The Complainant has never authorized or given permission to the Respondent, who is not associated with the Complainant in any way, to use the Complainant’s Trademark or to register the Disputed Domain Name. There is also no evidence of 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, nor a legitimate noncommercial or fair use of the Complainant's Trademark.

(d) Both the Respondent's registration of and its use of the Disputed Domain Name establish the Respondent's bad faith. The Respondent's registration of the Disputed Domain Name, which completely incorporates the Complainant's Trademark, is in itself an act of bad faith by someone with no legal connection to the Complainant's business. The Disputed Domain Name resolves to an active website offering the Disputed Domain Name for sale, demonstrating the Respondent's intention to generate profit from the Complainant's Trademark. In so doing, the Respondent's actions amounted to bad faith.

B. Respondent

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

However, the Respondent submitted an informal communication on February 16, 2022 in Romanian, stating that (i) the documents she received from the Center had not been translated and hence were difficult to understand; (ii) the Complainant requested her to place the Disputed Domain Name for sale for a fixed value; (iii) the Complainant subsequently offered to purchase the Disputed Domain Name at a price lower than the amount fixed by the Respondent and tried to blackmail the Respondent; (iv) the Complaint was filed despite the fact that the Respondent had already accepted the Complainant's purchase offer; (v) if necessary, the Respondent is prepared to provide the email correspondence in which she was requested to place the Disputed Domain Name for sale; and (vi) she is waiting for the translated documents to be delivered to her.

6. Discussion and Findings

6.1 Language of the Proceedings

Paragraph 11(a) of the Rules provides that "[u]nless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding". In the present case, the language of the Registration Agreement is Romanian.

The Complainant has requested that English be the language of the proceedings for the following reasons:

(a) The Complainant and its representatives are not able to understand Romanian. If the proceedings are conducted in Romanian, the Complainant would have to incur additional expense. Moreover, requiring the Complainant to translate the Complaint and its annexes into Romanian would cause unnecessary delay to the proceedings.

(b) The Complainant had previously corresponded with the Respondent in English to try to purchase the Disputed Domain Name. The correspondence between the Parties demonstrates the Respondent's ability to understand and communicate in English, and further in such communications she indicated she had already discussed the legal consequences of ownership of the disputed domain name with an attorney.

The Panel is mindful of the duty to ensure the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. The Panel also notes that on February 7, 2022, the Respondent was given the opportunity, but did not object to the Complainant's request for English to be the language of these administrative proceedings within the timeframe set out in the February 7, 2022 communication. Instead the Respondent waited until after the Center had proceeded with the formal Notification of the Complaint in English and Romanian, and made a preliminary determination (explained in English and Romanian) to accept the Complaint as filed in English, accept a Response in English or Romanian, and appoint a Panel familiar with English and Romanian (if available, and in due course), to indicate the Respondent was waiting

for translated documents.

Further, noting the above and in particular the Parties' prior communications, it appears the Respondent had sufficient understanding of English and the present dispute to put forward a substantive response to the Complainant's contentions, including in Romanian – as the Panel has accepted the Respondent's informal communication. However, as discussed in more detail below, the Respondent failed to put forward convincing contentions or any evidence to support her case. In these circumstances, the Panel considers the Respondent's delayed request for translation to be an attempt to delay this proceeding, and accordingly that no procedural orders are required before proceeding to a decision.

Having considered the circumstances above, the Panel has determined that these administrative proceedings shall be conducted in English.

6.2 Substantive Issues

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements:

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark 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 by the Respondent in bad faith.

A. Identical or Confusingly Similar

The Panel accepts that the Complainant has rights in the Complainant's Trademark, based on its various trademark registrations such as, *inter alia*, the trademarks listed above in Section 4.

It is well established that in making an enquiry as to whether a trademark is identical or confusingly similar to a domain name, the ccTLD extension, ".ro" in this case, may be disregarded. See section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Disputed Domain Name incorporates the word component of the Complainant's Trademark in its entirety.

As such, the Panel finds that the Disputed Domain Name is identical to the Complainant's Trademark for the purposes of the Policy, and accordingly, paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Once a complainant establishes a *prima facie* case in respect of the lack of rights or legitimate interests of a respondent in a Disputed Domain Name, the respondent then carries the burden of demonstrating that it has rights or legitimate interests in the domain name. Where the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. See section 2.1 of the [WIPO Overview 3.0](#).

The Panel accepts that the Complainant has not authorized the Respondent to use the Complainant's Trademark, and there is no relationship between the Complainant and the Respondent which would otherwise entitle the Respondent to use the Complainant's Trademark. Accordingly, the Panel is of the view that a *prima facie* case has been established by the Complainant and it is for the Respondent to show rights or legitimate interests in the Disputed Domain Name.

The Respondent did not submit a formal Response. The fact that the Respondent did not submit a formal Response does not automatically result in a decision in favour of the Complainant. However, the Panel may

accept all reasonable and supported allegations and inferences flowing from the Complainant as true (see *Entertainment Shopping AG v. Nischal Soni, Sonik Technologies*, WIPO Case No. [D2009-1437](#); and *Charles Jourdan Holding AG v. AAIM*, WIPO Case No. [D2000-0403](#)).

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish rights or legitimate interests in the Disputed Domain Name by demonstrating any of the following:

- (i) before any notice to her 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 was in connection with a *bona fide* offering of goods or services;
- (ii) the Respondent has been commonly known by the Disputed Domain Name, even if she 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.

There is no evidence to suggest that the Respondent's use of, or demonstrable preparations to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name was in connection with a *bona fide* offering of goods or services. The Panel agrees with the Complainant that the Respondent's use of the Disputed Domain Name cannot be regarded as legitimate noncommercial or fair use as the Respondent appears to have registered the Disputed Domain Name solely for the purpose of selling the Disputed Domain Name for a sum above the out-of-pocket costs of registration.

In addition, no evidence has been provided to show that the Respondent has trademark rights corresponding to the Disputed Domain Name, or that the Respondent has become known by the Disputed Domain Name.

Prior to the filing of the Complaint, the Respondent claimed to have registered the Disputed Domain Name in connection to a book she had written, without evidence or specific reference to the title of such book. Such claims were not made in the Respondent's informal communication of February 16, 2022, and the Panel finds such unsupported claims unpersuasive, noting in particular that the Complainant's well-known Trademark is not one that would likely be adopted by the Respondent other than for the purposes creating an impression of an association with the Complainant or otherwise taking unfair advantage of the goodwill of the Complainant's Trademark. In this regard, the Panel also notes the nature of the Disputed Domain Name, being identical to the Complainant's well-known BREITLING trademark, carries a high risk of implied affiliation. Section 2.5.1 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name and the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar to a widely-known trademark by an unaffiliated entity can already by itself create a presumption of bad faith. See paragraph 3.1.4 of the [WIPO Overview 3.0](#).

After reviewing the supporting evidence submitted by the Complainant, the Panel agrees with the Complainant that the Complainant's Trademark appears to be well-known. A quick Internet search conducted by the Panel shows that the top search results returned for the keyword "breitling" are the Complainant's websites and third party websites providing information relating to the Complainant's luxury watch business. Therefore, taking this into consideration together with the fact that the Disputed Domain Name incorporates the Complainant's Trademark in its entirety, the Respondent must have been aware of the Complainant and the rights in the Complainant's Trademark when registering the Disputed Domain Name.

In addition, the Panel finds that the following factors further support a finding that the Disputed Domain Name was registered and is being used by the Respondent in bad faith:

(i) The Respondent failed to provide any evidence of any actual or contemplated good faith use by it of the Disputed Domain Name.

(ii) The Disputed Domain Name currently resolving to a website where it is offered for sale for a sum above the out-of-pocket costs of registration.

(iii) The identical nature of the Disputed Domain Name, wholly incorporating the Complainant's well-known trademark.

(iv) It is difficult to conceive of any plausible use of the Disputed Domain Name that would amount to good faith use, given that the Disputed Domain Name solely contains the Complainant's well-known trademark in its entirety. The Respondent has not demonstrated any attempt to make legitimate use of the Disputed Domain Name and the website to which it resolves, which evidences a lack of rights or legitimate interests in the Disputed Domain Name (see *Washington Mutual, Inc., v. Ashley Khong*, WIPO Case No. DH2005-0740).

In the circumstances, the Panel finds that the Respondent registered and has been using the Disputed Domain Name in bad faith, and paragraph 4(a)(iii) of the Policy has been satisfied.

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 <breitling.ro> be transferred to the Complainant.

/Gabriela Kennedy/

Gabriela Kennedy

Sole Panelist

Date: March 28, 2022