

ADMINISTRATIVE PANEL DECISION

Friday Beers, LLC v. zengyi xu, 1
Case No. D2023-0592

1. The Parties

The Complainant is Friday Beers, LLC, United States of America (“United States”), represented by Adelman Matz P.C., United States.

The Respondent is zengyi xu, 1, China.

2. The Domain Name and Registrar

The disputed domain name <fridaybeersmerch.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 February 9, 2023. On February 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 10, 2023, 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 (DomainsByProxy.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 13, 2023 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 15, 2023.

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, and the proceedings commenced on February 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 10, 2023.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on March 16, 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. Factual Background

The Complainant is based in Los Angeles, United States and was founded by the brothers Jack, Samuel, and Max Barrett in 2019. The Complainant provides a comedy and media platform as well as a lifestyle and clothing brand.

The Complainant, in addition to being the registrant of the domain name <fridaybeers.shop>, which was created on January 17, 2020, used in connection with its social media platforms and merchandise shop, is the owner of the following, amongst other, trademark registrations:

- United States Trademark Registration No. 6,399,421 for the mark FRIDAY BEERS., in class 25, registered on June 29, 2021;
- United States Trademark Registration No. 6,790,119 for the mark FRIDAY BEERS, in class 41, registered on July 12, 2022;
- United Kingdom Trademark Registration No. UK00003810003 for the mark FRIDAY BEERS, in classes 32 and 33, filed on July 15, 2022 and registered on November 11, 2022; and
- Australia Trademark Registration No. 2286660 for the mark FRIDAY BEERS, in classes 32 and 33, registered on July 15, 2022.

The disputed domain name was registered on August 1, 2022 and appears to have been used in connection with an online shop offering merchandise using the Complainant's FRIDAY BEERS trademarks without authorization. Presently the disputed domain name does not resolve to an active webpage.

5. Parties' Contentions

A. Complainant

The Complainant claims to be a wildly popular comedy and media platform and lifestyle and clothing brand, having swiftly gained popularity as a relatable voice in weekend culture, sports, music, and character-driven comedy, presently counting with a growing network that comprises millions of followers and which delivers hundreds of millions of monthly "views" with comedy parodies across a collection of related brands including FRIDAY BEERS, Friday Beers Podcast, Friday Beers University, Friday Beers Tasty Licks, Welcome to Friday, Almost Friday, Dr. Locks, Country Club Adjacent, DJ Press Play, Commence Suckdown, and Entrapranure.

Also according to the Complainant, the Complainant regularly posts memes, images, and videos displaying the FRIDAY BEERS trademark on its accounts at the social networks Instagram, Twitter and TikTok, where it has amassed significant numbers of followers, what demonstrates the Complainant's widespread reputation and popularity in connection with the FRIDAY BEERS mark (the Complainant currently has nearly 2 million followers on Instagram, 108,000 followers on Twitter, and nearly 270,000 followers on TikTok). The Complainant therefore asserts that it has acquired strong rights in and to the FRIDAY BEERS trademark.

According to the Complainant, the disputed domain name is confusingly similar to the Complainant's FRIDAY BEERS trademark, reproducing the FRIDAY BEERS trademark in its entirety, simply adding the descriptive term "merch", still making the Complainant's trademark clearly recognizable within the disputed domain name.

Furthermore, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name given that:

- (i) the Complainant has not authorized the Respondent to use the FRIDAY BEERS trademark;

- (ii) the Respondent is using the disputed domain name in an illegitimate manner to suggest some form of connection, sponsorship, or endorsement by the Complainant for the purposes of selling illegitimate counterfeit merchandise using the Complainant's FRIDAY BEERS trademark without authorization; and
- (iii) the Respondent has never been commonly known by the disputed domain name and has never acquired any trademark or service mark rights in the disputed domain name.

The Complainant thus contends that the disputed domain name has been registered and used in bad faith given its use in connection with the sale of illegitimate counterfeit merchandise containing the Complainant's duly registered FRIDAY BEERS trademark on the unauthorized disputed domain name. The Complainant further asserts that the registration of the disputed domain name itself was made in bad faith given that the Respondent was under constructive notice of the Complainant's FRIDAY BEERS trademark registrations. In addition to that, the Complainant argues that its FRIDAY BEERS trademark is well reputed being its unauthorized use in the disputed domain name further evidence of the Respondent's bad faith as well as the Respondent's lack to comply with ICANN's domain name registration Policy that states that domain name registrants should not violate someone else's rights. Additionally, the Complainant sent a cease and desist letter to the Respondent (Annex 22 to the Complaint) having the Respondent failed to respond to it or to take any action thereto, what should be also regarded as a further indicative of the Respondent's bad faith. Lastly, the Complainant asserts that the Respondent is a cybersquatter having also been named respondent in several recent adverse decisions.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth the following three requirements which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

- (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 Complainant must prove in this administrative proceeding that each of the aforesaid three elements is present in order to obtain the transfer of the disputed domain name.

A. Identical or Confusingly Similar

The Complainant has established rights in the FRIDAY BEERS trademark, duly registered.

The disputed domain name reproduces in its entirety the Complainant's FRIDAY BEERS trademark being confusingly similar therewith, and the addition of the term "merch" does not prevent a finding of confusing similarity under the Policy. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), sections 1.7 and 1.8.

The first element of the Policy has therefore been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a non-exclusive list of circumstances that indicate a respondent's rights to or legitimate interests in a disputed domain name. These circumstances are:

- (i) before any notice 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 (as an individual, business, or other organization) has been commonly known by the disputed domain name, in spite of not having acquired 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.

The Respondent, in not formally responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights to or legitimate interests in the disputed domain name. This entitles the Panel to draw any such inferences from such default as it considers appropriate pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden of proof is still on the Complainant to make a *prima facie* case against the Respondent.

In that sense, and according to the evidence submitted, the Complainant has made a *prima facie* case against the Respondent that the Respondent has not been commonly known by the disputed domain name, and neither has the Complainant ever authorized the Respondent to use the FRIDAY BEERS trademark.

Also, the absence of any indication that the Respondent has rights in a term corresponding to the disputed domain name, or any possible link between the Respondent and the Complainant that could be inferred from the details known of the Respondent or the webpage relating to the disputed domain name, corroborate with the Panel's finding of the absence of rights or legitimate interests.

The composition of the disputed domain name, namely a reproduction of the Complainant's popular trademark with the addition of the term "merch", reflects the Respondent's illicit intent to mislead unsuspecting Internet users expecting to find the Complainant or to create an impression of association with the Complainant, which cannot confer upon the Respondent rights or legitimate interests.

Another element to consider is the past use of the disputed domain name in connection with an online shop offering merchandise using the Complainant's FRIDAYriday BEERS trademarks without authorization which makes it even more difficult to conceive which rights or legitimate interests the Respondent would have in the disputed domain name that is clearly confusingly similar to the Complainant's trademark.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name.

C. Registered and Used in Bad Faith

The Policy indicates in paragraph 4(b)(iv) that bad faith registration and use can be found in respect of a domain name, where, by using the domain name, a respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

In this case, both the registration and use of the disputed domain name in bad faith can be found in view of the past use of the disputed domain name in connection with an online shop offering merchandise using the Complainant's FRIDAY BEERS trademarks without authorization and the present passive holding of the

disputed domain name which, given the circumstances of this case, including the reproduction of the Complainant's trademark in the disputed domain name and the implausibility of any good faith use the disputed domain name may be put, the Panel finds that the current non-use of the disputed domain name does not prevent a finding of bad faith under the doctrine of "passive holding". See [WIPO Overview 3.0](#), section 3.3.

Other factors corroborate a finding of bad faith, such as:

- (i) the Respondent's lack of reply to the Cease and Desist letter sent by the Complainant;
- (ii) the Respondent's choice to retain a privacy protection service in an attempt to conceal its true identity;
- (iii) the indication of what appears to be a false address in the Whois data and, consequently, the Center not being able to deliver the Written Notice to the Respondent;
- (iv) the Respondent pattern of bad faith conduct arising from the Respondent having been found guilty of bad faith registration and use in other UDRP proceedings; and
- (v) the Respondent's lack of reply to the proceeding, failing thereby to invoke any circumstance which could demonstrate good faith in the registration or use of the disputed domain name.

For the reasons above, the Respondent's conduct has to be considered, in this Panel's view, as bad faith registration and use of the disputed domain name.

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 <fridaybeersmerch.com> be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: March 23, 2023