

ADMINISTRATIVE PANEL DECISION

OEE Ltd, Because Music SAS v. Matthew Klein
Case No. D2024-0709

1. The Parties

The Complainants are OEE Ltd, United Kingdom (“UK”) and Because Music SAS, France, represented by Cabinet Herrburger, France.

The Respondent is Matthew Klein, United States of America (“United States”), represented by John Berryhill, Ph.d. Esq., United States. ¹

2. The Domain Name and Registrar

The disputed domain name <because.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 15, 2024. On February 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 16, 2024, 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 (Domain by Proxy and GoDaddy Operating Company, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainants on February 19, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint on February 20, 2024.

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”).

¹In their amended Complaint, the Complainants have continued to name GoDaddy Operating Company, LLC, a party related to the Registrar of the disputed domain name as a co-respondent, because the website to which the disputed domain name resolved showed in its privacy policy the name of this party. Given the information provided by the Registrar to the Center on the identity of the Respondent, the Panel considers only Matthew Klein as the Respondent in these proceedings.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on February 21, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 16, 2024. The Response was filed on behalf of the Respondent with the Center on March 16, 2024.

The Center appointed Willem J. H. Leppink, Emmanuelle Ragot and Andrew D. S. Lothian as the panelists in this matter on April 2, 2024. 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.

On March 26, 2024, the Complainants submitted by email to the Center an unsolicited supplemental filing. Subsequently, on April 3, 2024, the Respondent also submitted by email to the Center an unsolicited supplemental filing.

4. Factual Background

The following facts are undisputed.

The Complainants are two related companies. The Complainant Because Music SAS, is part of a group that is owned by the Complainant OEE Ltd. The Complainant Because Music SAS is an independent music label from France, founded in 2005.

The Complainant OEE Ltd. owns several trademarks in relation the word mark BECAUSE, including the French trademark BECAUSE (word mark) with registration number 3313560, applied for on September 14, 2004, registered for goods and services in class 9, and the European Union trademark BECAUSE MUSIC (word mark) with registration number 018126202, applied for on September 19, 2019, and registered on March 6, 2020, for goods and services in classes 9, 16, 25, 35, 38, 41.

The Panel will refer to the Complainants as “the Complainant” (singular) when there is no useful purpose in distinguishing between the two.

The Respondent is a domain name investor with a portfolio of several domain names.

The disputed domain name was registered for the first time on December 4, 1995. The Complainant acquired the disputed domain name on June 26, 2007, through the online platform “Sedo.com”. The Complainant was the owner of the disputed domain name until December 31, 2021, when the disputed domain name was not timely renewed. The Respondent acquired the disputed domain name through the online platform “Sedo.com” in 2022.

At the time of filing the Complaint the disputed domain name resolved to a parked page with pay-per-click (“PPC”) links.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends the following.

The disputed domain name reproduces the trademarks of the Complainant in its entirety or in its distinctive element.

The Respondent must be deemed to have no rights or legitimate interests in the disputed domain name, since it was reserved solely for the purpose of resale. The disputed domain name was previously owned by the Complainant who did not renew the disputed domain name in due course. The disputed domain name is linked to a PPC parked page and is, according to a Whois page provided as evidence by the Complainant, offered for sale for USD 999999.99. Consequently, there is no evidence of the Respondent's (preparation) of use of the disputed domain name.

As a result, the disputed domain name was reserved in bad faith by the Respondent, with the intention of being sold to the Complainant for a financial consideration greater than the Respondent's costs directly related to the disputed domain name.

B. Respondent

The Respondent contends that the Complainant has not satisfied all three of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Respondent contends the following.

The Respondent agrees that the Complainant has satisfied the first element by showing its trademark rights, but the Complainant cannot claim to be the owner of a famous mark.

The Respondent furthermore notes that "because" is a common dictionary word. Furthermore, the mere offering for sale of domain names consisting of dictionary words is in itself not an illegitimate activity, if it is absent of the targeting of a particular trademark owner. Therefore, the mere offering of the disputed domain name by the Respondent is no illegitimate use of the disputed domain name. Furthermore, the Respondent notes that it has no control nor authorization over the offering of the disputed domain name for sale on the third party Whois service consulted by the Complainant. The Respondent also has a wide portfolio of domain names and began accumulating domain names related to "because" before acquiring the disputed domain name.

The Respondent notes that it has bought the disputed domain name through the same online marketplace as that through which the Complainant bought the disputed domain name back in 2007. The Respondent adds that there is no evidence that the Respondent's primary purpose in acquiring the disputed domain name was driven by the Complainant's mark or that the Respondent's purpose was to sell the disputed domain name to the Complainant.

6. Discussion and Findings

6.1 Preliminary Matter

Before entering into the merits of the case, the Panel addresses the matter of the unsolicited supplemental filings submitted by the Complainants and the Respondent. No provision concerning supplemental filings is made in the Rules or Supplemental Rules, except for paragraphs 10 and 12 of the Rules, from which it follows that the panel, in its sole discretion, may determine the admissibility, relevance, materiality, and weight of the evidence, insofar as both parties are treated with equality and are given a fair opportunity to present their case.

Both the Complainants and the Respondent submitted unsolicited supplemental filings which is generally discouraged, as is described in section 4.6 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). However, when the Complainants prove that the supplemental filing is of utmost importance to the case and it could not have provided the information within its prior complaint panels may find it justified to accept an unsolicited supplemental filing. The Respondent will then be allowed to respond the Complainants' unsolicited filing. The Panel is not satisfied that such exceptional circumstances exist and, therefore, decides that the first unsolicited supplemental filing by the

Complainants will not be admitted. As a general principle, a complainant has “one bite at the apple” and the Complainants could have easily foreseen the defenses as raised by the Respondent. The Respondent’s unsolicited provisional supplemental filing is filed in case the Panel would allow the first unsolicited filing by the Complainant. As the Panel does not admit this, as set out above, the Respondent’s unsolicited filing will also not be admitted.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant’s trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. The Complainants and the Respondent also do not disagree on this.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

In light of its assessment under 6.C., the Panel will not discuss the second element.

C. Registered and Used in Bad Faith

The evidence in the case file as presented does not indicate that the Respondent’s aim in registering the disputed domain name was to profit from or exploit the Complainant’s trademark and thus there is no evidence that the Respondent targeted the Complainant.

The Respondent has acquired the disputed domain name for resale on the secondary market. There is evidence that the Respondent’s primary intent in acquiring the disputed domain name was to sell it, in a general offer for sale, for valuable consideration in excess of its out-of-pocket costs. However, there is no evidence, or at least, there is not sufficient evidence, that the Respondent acquired the disputed domain name due to its value in connection with a trademark, and consequently with the intent to sell it to the Complainant or a competitor of the Complainant. Given the nature of the disputed domain name, which consists of such a common dictionary term, without any further evidence provided, no inference can be made that it would e.g., have been implausible for the Respondent having registered the disputed domain name without knowing the Complainant and the Complainant’s rights.

There is insufficient evidence of the fame of the Complainant’s mark, and absolutely no evidence that any such fame has displaced the dictionary word usage in the minds of the public. There is evidence of multiple other parties selecting the word or mark “because” for numerous different uses (including the Respondent in its domain name acquisitions that predate the availability of the disputed domain name to purchase on the secondary market). The word “because” does not uniquely or even predominantly refer to the Complainant.

The Panel appreciates that it can be harsh for a domain name registrant as the Complainant to lose a domain name as a result of a non-timely renewal, but that in itself does not impact the assessment of whether the Respondent has been in bad faith when registering the disputed domain name.

The Panel finds the third element of the Policy has not been established.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Willem J. H. Leppink/
Willem J. H. Leppink
Presiding Panelist

/Emmanuelle Ragot/
Emmanuelle Ragot
Panelist

/Andrew Lothian/
Andrew Lothian
Panelist
Date: April 10, 2024