ARBITRATION
AND
MEDIATION CENTER

WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

ADMINISTRATIVE PANEL DECISION
The James Beard Foundation, Inc. v. adile gozcu
Case No. D2024-2088

1. The Parties

The Complainant is The James Beard Foundation, Inc., United States of America ("United States"), represented by Debevoise & Plimpton, United States.

The Respondent is adile gozcu, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <jbfgalaforgood.com> is registered with Dynadot Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 17, 2024. On May 20, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 22, 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 (REDACTED FOR PRIVACY, Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 22, 2024, 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 May 22, 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").

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 23, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 12, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 24, 2024.

The Center appointed Jeremy Speres as the sole panelist in this matter on July 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.

4. Factual Background

Founded in 1986, the Complainant is a New York non-profit corporation dedicated to the culinary arts and to advocacy related to the food industry. The Complainant contends that it has been using the JBF mark for over a decade. Amongst numerous other events, the Complainant organizes an annual charity gala under its JBF GALA FOR GOOD mark, which it adopted in 2023. The gala's history, however, predates the adoption of that mark, albeit under different names.

On February 7, 2024, the Complainant filed a United States trademark application for the word mark JBF GALA FOR GOOD under serial no. 98395968 in classes 36 and 41, with a claimed first use in commerce date of November 3, 2023.

The disputed domain name was registered on February 8, 2024, and resolves to a website offering the disputed domain name for sale for USD 2,850.

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 that the disputed domain name was registered primarily for the purpose of selling it to the Complainant for valuable consideration in excess of documented out-of-pocket costs, thus constituting cybersquatting under paragraph 4(b)(i) of the Policy.

B. Respondent

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

6. Discussion and Findings

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("WIPO Overview 3.0"), section 1.7.

The Panel finds the Complainant has established unregistered trademark rights for the purposes of the Policy in its JBF and JBF GALA FOR GOOD marks which predate registration of the disputed domain name. WIPO Overview 3.0, section 1.3. The Complainant's marks are inherently distinctive, and the Complainant's evidence establishes widespread use and recognition of these marks in trade.

The Complainant's JBF GALA FOR GOOD mark is plainly identical to the disputed domain name for the purposes of the Policy. WIPO Overview 3.0, section 1.7.

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

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. WIPO Overview 3.0, section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Complainant's JBF GALA FOR GOOD mark was in use and enjoyed a reputation prior to registration of the disputed domain name, the disputed domain name is identical to the Complainant's mark, and the Complainant has certified that the disputed domain name is unauthorized by it. Generally speaking, UDRP panels have found that domain names identical to a complainant's trademark, as in this case, carry a high risk of implied affiliation (WIPO Overview 3.0, section 2.5.1). The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

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

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Complainant's JBF GALA FOR GOOD mark enjoyed significant recognition prior to registration of the disputed domain name, which is identical to the mark. The mark is inherently unique and incorporates the Complainant's JBF mark which had been used by the Complainant for at least a decade prior to registration of the disputed domain name, attracting much repute. Noting the Panel's general powers articulated inter alia in paragraphs 10 and 12 of the Rules, Internet searches for the second-level portion of the disputed domain name return results exclusively relating to the Complainant. In the circumstances, there is no conceivable good faith use of the disputed domain name that would not result in consumer confusion. This is an indicator of bad faith. WIPO Overview 3.0, section 3.1.4.

Where the facts establish that a respondent's intent in registering a domain name was to unfairly capitalize on the complainant's nascent (typically as yet unregistered) trademark rights, panels have been prepared to find that the respondent has acted in bad faith. Such scenarios include registration of a domain name following the complainant's filing of a trademark application. WIPO Overview 3.0, section 3.8.2. Here the disputed domain name was registered the day after the Complainant filed its trademark application for JBF GALA FOR GOOD. Given the uniqueness and reputation of the Complainant's mark and the timing, this is unlikely to have been a coincidence. *Lazard Freres & Co. LLC and Lazard Frères S.A.S. v. Super Privacy Service LTD c/o Dynadot / Domain Admin, Kevin Yao*, WIPO Case No. D2021-1028.

Here the disputed domain name is offered for sale for an amount which is likely, without evidence from the Respondent to the contrary, in excess of the Respondent's out-of-pocket expenses relating directly to the disputed domain name. When a domain name is identical to a distinctive mark, as is the case here, panels are skeptical of claims that a domain was merely registered for legitimate speculation (based for example on

any claimed dictionary meaning) as opposed to targeting a specific brand owner. WIPO Overview 3.0, section 3.1.1. The Complainant's mark is highly specific to its annual gala event, and, viewed as a whole, has no dictionary meaning that the Respondent could, in good faith, have sought to adopt. Paragraph 4(b)(i) of the Policy is eminently applicable in the circumstances.

The Panel draws an adverse inference from the Respondent's failure to take part in the present proceeding where an explanation is certainly called for. WIPO Overview 3.0, section 4.3. The Respondent apparently supplied incomplete or false address details in the WhoIs record for the disputed domain name; the Center's courier indicated that a "bad address" was supplied and that the Center's correspondence could not be delivered to the Respondent. In the circumstances of this case, this suggests an attempt by the Respondent to evade pursuit. *Kabushiki Kaisha Raibudoa v. Kubota, A*, WIPO Case No. D2001-0817.

The Panel finds that the Complainant has established the third element of the Policy.

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 <jbfgalaforgood.com> be transferred to the Complainant.

/Jeremy Speres/
Jeremy Speres
Sole Panelist
Date: July 16, 2024