

ADMINISTRATIVE PANEL DECISION

Polmos Zyrardow Spolka Z Ograniczoną Odpowiedzialnością v. Francois Adoree, Belvedere Perfume
Case No. D2022-3845

1. The Parties

The Complainant is Polmos Zyrardow Spolka Z Ograniczoną Odpowiedzialnością, Poland, represented by Cabinet Germain & Maureau, France.

The Respondent is Francois Adoree, Belvedere Perfume, France.

2. The Domain Name and Registrar

The disputed domain name <belvedereperfume.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 13, 2022. On October 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 14, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on October 18, 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 October 20, 2022.

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 October 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 10, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 11, 2022.

The Center appointed Luca Barbero as the sole panelist in this matter on November 18, 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 is a Polish distillery which is the owner of the trademark BELVEDERE, used in connection with the Complainant's vodka since 1993.

The pure version of the BELVEDERE vodka has been awarded the title of "Vodka producer of the Year" for three consecutive years (2015-2017), in the "International Spirits Challenge" competition, with six silver medals and in 2013, 2014, 2015 and 2016 has been awarded five gold medals by the unbiased wines and spirits guide "The Fifty Best". In addition, in 2020 it was awarded 90 points in the "Ultimate Spirits Challenge" featuring ratings/reviews from monthly judged blind tastings and rated as "Excellent, highly recommended".


BELVEDERE also ranks third place in Europe on the Vodka market, with 13% market share, second place in Germany, the Netherlands and France and first place in Poland and Greece.


The turnover of the BELVEDERE products varied between almost EUR 25 million in 2020 and almost EUR 45 million in 2019.

The Complainant has taken part in numerous events over the years across Europe and has featured in many newspapers and magazines including the national French newspapers "Le Figaro" in 2013 and "les Echos" in 2015 and the "GQ" magazine in 2021.

The Complainant has provided evidence of ownership, amongst others, of the following trademark registrations:

- International trademark registration No. 348878A for BELVEDERE (word mark), registered on October 10, 1968, in class 33;

- European Union Trade Mark registration No. 009588864 for  registered on May 20, 2011, in class 33;

- United States of America trademark registration No. 3543379 for  registered on December 9, 2008, in international class 33.

The Complainant is also the owner of the domain name <belvederevodka.com>, which was registered on May 20, 1997 and is used by the Complainant to promote its products under the trademark BELVEDERE.

The disputed domain name <belvedereperfume.com> was registered on October 14, 2019 and is pointed to a website offering perfumes for sale, using the Complainant's word and figurative trademarks cited above on the bottles of perfumes as well as on the related packaging.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the trademark BELVEDERE in which the Complainant has rights as it reproduces the trademark in its entirety with the mere addition of the term "perfume" and the generic Top-Level Domain ("gTLD") ".com".

The Complainant emphasizes that given that BELVEDERE is an inherently distinctive and well-known name, the addition of the descriptive word “perfume” does not suffice to distinguish the disputed domain name from the Complainant especially considering both words “perfume” on one part and the Complainant’s “vodka” on the other, are descriptive.

With reference to rights or legitimate interests in respect of the disputed domain name, the Complainant states that the Respondent is in no way affiliated with the Complainant nor has it ever been granted permission or license by the Complainant to use its trademarks in any way.

With reference to the circumstances evidencing bad faith, the Complainant indicates that the Respondent is using the disputed domain name to sell perfumes which identically reproduce, both on the bottles and on the packaging, each and every distinctive sign registered and used by the Complainant. The Complainant contends that, considering the distinctive character and reputation of the Complainant’s trademark BELVEDERE, the Respondent appears to have intentionally attempted to attract Internet users to its website for commercial gain, by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation and endorsement of its website.

The Complainant points out that the contact details listed on the Respondent’s website are false since the address indicated on the “store list” page, refers to a store called “Chablis store” located in 75, rue Nationale, Paris, France and a store called “Delano” located in 61, rue Nationale, Paris, France, even though neither of the two exists. The Complainant also highlights that the phone numbers indicated on the website are not active.

With reference to the Respondent’s details displayed in the contact page of the Respondent’s website, the Complainant underlines that, though there is a perfume store at that address, it refers to a store called “Maître Parfumeur et Gantier” and not to a store called “Belvedere Perfumes” and, upon calling the number indicated, the shop confirmed it does not sell perfumes under the trademark BELVEDERE.

In view of the above, the Complainant submits that also the Respondent’s contact details provided in the Whois records are false. The Complainant thus contends that the Respondent obviously intended to fraudulently use the identity and contact details of a real shop that has nothing to do with the Respondent, to fraud users.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules: “A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.” Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- (i) that the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has established rights over the trademark BELVEDERE based on the trademark registration cited under section 4 above.

It is well accepted that the first element functions primarily as a standing requirement, and that the threshold test for confusing similarity involves a reasoned but relatively straightforward comparison between a complainant's trademark and the disputed domain name to assess whether the trademark is recognizable within the disputed domain name (section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). In addition, where the relevant trademark is recognizable within the disputed domain name, the addition of other terms does not prevent a finding of confusing similarity under the first element (section 1.8 of the [WIPO Overview 3.0](#)). Moreover, the gTLD is commonly disregarded under the first element confusing similarity test being a technical requirement for registration (section 1.11.1 of the [WIPO Overview 3.0](#)).

In the case at hand, the Complainant's trademark BELVEDERE is entirely reproduced in the disputed domain name, with the mere addition of the term "perfume", which is not sufficient to prevent a finding of confusing similarity.

Therefore, the Panel finds that the Complainant has proven that the disputed domain name is confusingly similar to a trademark in which the Complainant has established rights according to paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant must show that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent may establish a right or legitimate interest in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

"(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

In the case at hand, by not submitting a Response, the Respondent has failed to invoke any circumstance that could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain name.

The Panel notes that there is no relation, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant's trademarks. Moreover, there is no element from which the Panel could infer a Respondent's right over the disputed domain name, or that the Respondent might be commonly known by the disputed domain name.

Also considering the reputation of the Complainant's trademarks, the Panel finds that the Respondent's use of the disputed domain name to direct users to a website promoting the sale of perfumes which identically reproduce the Complainant's figurative marks and providing unrelated and/or incorrect contact details, does not amount to *bona fide* offering of goods or services or a legitimate noncommercial or fair use without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's trademarks.

Therefore, the Panel finds that the Complainant has proven that the Respondent has no rights or legitimate interests in the disputed domain name according to paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the Complainant prove that the disputed domain name was registered and is being used by the Respondent in bad faith.

The Panel finds that, in light of i) the prior registration and use of the Complainant's trademark BELVEDERE in connection with the Complainant's products, ii) the widely known character of the trademark in its sector and iii) the confusing similarity of the disputed domain name with the Complainant's trademark, the Respondent was more likely than not aware of the Complainant's trademark at the time of registration of the disputed domain name.

Moreover, the Panel notes that the disputed domain name is pointed to a website where the Complainant's word and figurative trademarks are reproduced on the bottles of a range of perfumes offered by the Respondent as well as on the related packaging, a circumstance which suggests that the Respondent was indeed well aware of the Complainant's trademarks.

The Panel also finds that, by pointing the disputed domain name to a website promoting and offering for sale perfumes using the Complainant's word and figurative trademarks, whilst failing to accurately and prominently disclose the relationship with the trademark owner, the Respondent has intentionally attempted to attract Internet users to its website for commercial gain, by causing a likelihood of confusion with the trademark BELVEDERE as to the source, sponsorship, affiliation or endorsement of its website and the products promoted therein according to paragraph 4(b)(iv) of the Policy.

The Panel also finds that the Respondent's provision of incorrect contact information on the website to which the disputed domain name resolves is a further circumstance evidencing the Respondent's bad faith.

Therefore, the Panel finds that the Complainant has also proven that the Respondent registered and is using the disputed domain name in bad faith according to paragraph 4(a)(iii) 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 <belvedereperfume.com> be transferred to the Complainant.

/Luca Barbero/

Luca Barbero

Sole Panelist

Date: December 5, 2022