

ADMINISTRATIVE PANEL DECISION

Dr. Frank Lipman, Be Well Health & Wellness, LLC v. brett sandman
sandman

Case No. D2022-4214

1. The Parties

The Complainant is Dr. Frank Lipman, Be Well Health & Wellness, LLC, United States of America (“United States”), represented by Brennan Manna Diamond, United States.

The Respondent is brett sandman sandman, United States.

2. The Domain Name and Registrar

The disputed domain name <bewellbydrfranklipman.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 November 3, 2022. On November 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 9, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 November 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 4, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 7, 2022.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on December 15, 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 Dr. Frank Lipman (“Dr. Lipman”) is a medical doctor practicing in the State of New York, United States, a published author, and the owner of the Complainant Be Well Health & Wellness, LLC (“Be Well”). Be Well is a limited liability company established under the law of the State of Delaware, United States and headquartered in New York, New York. The online database of the Delaware Secretary of State shows that Be Well was formed on November 19, 2015.

The Panel notes that the Complainant Be Well sells multivitamin dietary supplements branded BE WELL BY DR. FRANK LIPMAN, which are advertised and distributed online. The Complainant Dr. Lipman also promotes his services, products, and advice on healthy living through social media, and on his website at “www.drfranklipman.com”.

The Complainant Be Well holds United States Trademark Registration Number 4207152 (registered September 11, 2012) for the standard character mark BE WELL BY DR. FRANK LIPMAN. The mark was originally registered in the name of Eleven Eleven Wellness Inc., another company owned by the Complainant Dr. Lipman. The mark was assigned to the Complainant Be Well in November 2016, as reflected in the online database of the United States Patent and Trademark Office (“USPTO”).

Given Dr. Lipman’s ownership of Be Well, which holds the relevant trademark registration, and the fact that both Dr. Lipman and Be Well use the trademark commercially, the Panel finds it appropriate to include both parties as Complainants in this proceeding (collectively referred to as the “Complainant”, unless specified otherwise).

The Complaint attaches historical Whois records showing that the Complainant Dr. Lipman originally registered the disputed domain name on March 23, 2011. The Panel notes that the Internet Archive’s Wayback Machine includes archived screenshots showing that the disputed domain name was used for many years, starting in May 2011, for the Complainants’ website displaying the Complainants’ trademark and advertising dietary supplements and cleansing products, with images of products branded with the Complainant’s mark. Based on archived screenshots, it appears that in 2019 the Complainants were revising their product lines and transitioning to emphasize the website at “www.drfranklipman.com”. The Complainants report that they allowed the domain name registration for the disputed domain name to lapse in early 2021.

The Registrar’s Whois database shows that the disputed domain name was “created” on February 17, 2015 (this may reflect a change in registrars or other registration details) and was registered in the name of a domain privacy service at the time this dispute arose. After receiving notice of the Complaint in this proceeding, the Registrar identified the underlying registrant as the Respondent, listed as “brett sandman sandman”, showing no organization and listing a postal address in the State of Florida, United States, and an email address that does not directly reference the named Respondent or disputed domain name.

The Complaint attaches evidence from Namebio.com showing that the disputed domain name was last sold at auction on GoDaddy.com (for 750 United States dollars) on April 24, 2021. This is presumably when the Respondent acquired the disputed domain name. A screenshot from the Wayback Machine immediately before that date, on April 22, 2021, shows that the disputed domain name resolved to a landing page with an announcement that the domain name “has expired”, with a link to a domain name registrar.

Screenshots from the Wayback Machine show that the disputed domain name has resolved since August 2021 to a website (the “Respondent’s website”) with information about Cannabidiol (CBD) healthcare products and treatments. The website initially listed an email address for contacts different from the one provided to the Registrar. Since October 2021 (and continuing through the time of this Decision), the Respondent’s website has displayed the Complainants’ trademark and much other content directly referring to the Complainants, including a photo of Dr. Lipman. The home page is headed, “What You Need To Know About Be Well By Dr. Frank Lipman”. The words, “Be Well by Dr. Frank Lipman” appear in the upper left corner of every page of the website and at the bottom of every page. A copyright notice appears as a footer

on every page as well, claiming copyright in the name of “Be Well By Dr. Frank Lipman Company”, with no further information about such a company. The “Our Team” section of the website includes a “bio” of Dr. Lipman, followed by photos and contact information for ten women who are promoted as experts in such matters as “healthy life, sex, and love”. Their contact details are given at a blogging and ecommerce website whose connection to the Respondent is unclear.

The Parties were previously involved in a UDRP dispute regarding the same disputed domain name as the present case, *Dr. Frank Lipman, Be Well Health & Wellness, LLC v. Be Well by Dr. Frank Lipman Company, Be Well by Dr. Frank Lipman Media, Brett Sandman Sandman*, WIPO Case No. [D2022-0753](#).

5. Parties’ Contentions

A. Complainants

The Complainants assert that the disputed domain name is identical to their registered BE WELL BY DR. FRANK LIPMAN trademark, which the Respondent has no permission to use. The Complainants deny any connection with a “Dr. Frank Lipman Company” and contend that there is no evidence that such a company exists. The Complainants also deny any association with the “experts” featured on the Respondent’s website as part of the supposed “team” working with the Complainant Dr. Lipman.

Accordingly, the Complainants argue that the Respondent has no rights or legitimate interests in the disputed domain name and that the Respondent registered and used the disputed domain name in bad faith, infringing the Complainants’ trademark rights and appropriating Dr. Lipman’s likeness without permission, in an effort to disrupt the Complainants’ business and create confusion as to source or affiliation, attracting Internet users to the Respondent’s website and other online sites for commercial gain.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest a respondent of a domain name, a complainant must demonstrate each of the following: (i) the 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 domain name; and (iii) the domain name has been registered and is being used in bad faith. Under 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”.

On April 30, 2022, the UDRP panel in *Dr. Frank Lipman, Be Well Health & Wellness, LLC, supra*, denied the complaint in that case, which involved the disputed domain name and Parties in the present case. However, that UDRP panel further indicated that such denial was “without prejudice and with a limited leave to refile should Complainant be able to provide genuine evidence of prior common law rights in the Dr. Frank Lipman name and mark or proof of a change in the ownership in the disputed domain name since its original registration on March 23, 2011”.

The WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.18, provides that:

“A refiled case is one in which a newly-filed UDRP case concerns identical domain name(s) and parties to a previously-decided UDRP case in which the prior panel denied the complaint on the merits. [...] As the

UDRP itself contains no appeal mechanism, there is no express right to refile a complaint; refiled complaints are exceptional.

Panels have accepted refiled complaints only in highly limited circumstances such as [...] (v) where the case has previously been decided (including termination orders) expressly on a 'without prejudice' basis.

In the refiling itself, a complainant must clearly indicate the grounds it believes would justify acceptance of the refiled complaint. The WIPO Center would initially assess whether grounds have been pleaded which prima facie justify accepting the refiled complaint. It remains however for any appointed panel to ultimately determine whether such preliminarily-accepted refiled complaint should proceed to a decision on the merits."

Considering the complaint in *Dr. Frank Lipman, Be Well Health & Wellness, LLC, supra* was denied without prejudice, the Complainant has directly addressed the panel's concerns raised in the prior UDRP proceeding, and in the Panel's findings below, the Panel considers circumstances exist to permit the Panel to accept the refiled Complaint and render a decision in the present case. Moreover, the Panel notes that the Respondent has not objected to the refiling of the Complaint in the present case, or otherwise participated in this proceeding (and also did not participate in *Dr. Frank Lipman, Be Well Health & Wellness, LLC, supra*).

A. Identical or Confusingly Similar

The first element of a UDRP complaint "functions primarily as a standing requirement" and entails "a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name". [WIPO Overview 3.0](#), section 1.7. The disputed domain name incorporates the Complainants' registered BE WELL BY DR. FRANK LIPMAN trademark in its entirety, save for the spaces between words and the period after the abbreviation "DR.", as these cannot be included in domain name system (DNS) addresses for technical reasons. As usual, the addition of the Top-Level Domain ".com" may be disregarded as a standard registration requirement (see *id.* section 1.11.1).

The Panel finds that the disputed domain name is confusingly similar to the Complainants' registered trademark and concludes that the Complainants have established the first element of the Complaint.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy gives non-exclusive examples of instances in which a respondent may establish rights or legitimate interests in a domain name, by demonstrating any of the following:

- (i) before any notice to it of the dispute, the respondent's 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) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial 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.

Because a respondent in a UDRP proceeding is in the best position to assert rights or legitimate interests in a domain name, it is well established that after a complainant makes a *prima facie* case, the burden of production on this element shifts to the respondent to come forward with relevant evidence of its rights or legitimate interests in the domain name. See [WIPO Overview 3.0](#), section 2.1.

The Complainants have demonstrated trademark rights, deny authorizing the Respondent to use the trademark, and demonstrate that the disputed domain name has been used for a website appropriating the Complainant Dr. Lipman's name and image, and linking to other commercial sites. Thus, the Complainants

have made a *prima facie* case, and the burden of production shifts to the Respondent. The Respondent did not respond to the Complaint, and no rights or legitimate interests are evident from a perusal of the Respondent's website.

Moreover, the disputed domain name carries a high risk of implied affiliation. See [WIPO Overview 3.0](#), section 2.5.1.

The Panel finds that the Respondent has failed to meet its burden of production and concludes that the Complainants prevail on the second element of the Complaint.

C. Registered and Used in Bad Faith

The Policy, paragraph 4(b), furnishes a non-exhaustive list of circumstances that "shall be evidence of the registration and use of a domain name in bad faith", including the following suggested by the Complainants (in which "you" refers to the registrant of the domain name):

"(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location."

The Complainants registered the trademark BE WELL BY DR. FRANK LIPMAN in 2012 and used the disputed domain name themselves from 2011 until sometime in 2020. The record indicates that the Respondent likely acquired the disputed domain name in 2021 and was clearly aware of the Complainants and their mark. Not only is the disputed domain name composed of the mark – an entire phrase incorporating the Complainant Dr. Lipman's name – but the Respondent's website features not only this name but a photo and biographical sketch of Dr. Lipman and content falsely asserting that the website is associated with the Complainant Dr. Lipman and a company and "team" of experts working with him. The contacts provided on the Respondent's website lead visitors to other sites, services, and products, not to the Complainants.

This conduct may or may not be intended "primarily" to disrupt the Complainants' business, although it has that effect. It certainly matches the example of bad faith described in the Policy, paragraph 4(b)(iv), intentionally creating a likelihood of confusion as to source or affiliation in an attempt to attract Internet users to other sites, presumably for commercial gain.

The Panel finds bad faith probable on this record and concludes that the Complainant has established the third element of the Complaint.

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 <bewellbydrfranklipman.com> be transferred to the Complainant.

/W. Scott Blackmer/

W. Scott Blackmer

Sole Panelist

Date: December 30, 2022