

ADMINISTRATIVE PANEL DECISION

Aguirre y Compañía S.A. v. Forrest Bailey
Case No. D2022-4414

1. The Parties

Complainant is Aguirre y Compañía S.A., Spain, represented by Elzaburu, S.L.P., Spain.

Respondent is Forrest Bailey, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <bullpadel.xyz> is registered with Sav.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 18, 2022. On November 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 18, 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 (Privacy Protection) and contact information in the Complaint. The Center sent an email communication to Complainant on November 22, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on November 25, 2022.

The Center verified that the Complaint together with the amendment to 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 Respondent of the Complaint, and the proceedings commenced on November 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 19, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on January 11, 2023.

The Center appointed Gabriel F. Leonardos as the sole panelist in this matter on January 18, 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

Complainant is a Madrid-based company from the sports branch, specialized in the production and selling of products related to the sport “paddle”, such as rackets, footwear, and textile products.

Complainant’s products are produced and sold under the trademark BULLPADEL internationally.

Complainant owns a wide portfolio of trademark registrations internationally containing the word mark BULLPADEL, such as:

Registration No.	Trademark	Jurisdiction	International Class	Date of Registration
87244153	BULLPADEL	United States	18, 25, 28	June 27, 2017
015896855	BULLPADEL	European Union	18, 25, 35	March 8, 2017
1552360	BULLPADEL	International Registration	18, 25, 28	August 17, 2020

Complainant contends its BULLPADEL trademark is well known around the world for its products in the area of sporting goods.

The disputed domain name was registered on February 21, 2022, and resolves to a webpage in which the disputed domain name is offered for sale.

5. Parties’ Contentions

A. Complainant

Complainant affirms that the disputed domain name is identical to its trademark BULLPADEL, since it consists solely of the word BULLPADEL.

In addition, Complainant states that Respondent does not have any rights or legitimate interests in respect of the disputed domain name, nor is Respondent commonly known by the disputed domain name. Further, Respondent has not been authorized, or licensed to use Complainant’s trademark BULLPADEL as a domain name, nor is Respondent associated with Complainant.

Complainant observes that the disputed domain name redirects users to a webpage where the disputed domain name is being offered for sale at USD 1,450. Thus, Complainant alleges that Respondent could not demonstrate any legitimate noncommercial or fair use of the disputed domain name.

Further, Complainant observes that Complainant’s representatives sent Respondent a cease and desist letter, which went without response – and that would also demonstrate, according to Complainant, the absence of rights or legitimate interest concerning the disputed domain name.

Finally, Complainant states that (i) BULLPADEL is a well-known trademark, and the registration of the disputed domain name consisting solely on the trademark without any legitimate interest demonstrated by Respondent would indicate bad faith; and (ii) the disputed domain name is being offered for sale for an amount that exceeds the out-of-pocket costs directly related to it, which is an evidence of bad faith.

Accordingly, Complainant requests transfer of the disputed domain name to Complainant.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

To succeed in a UDRP complaint, Complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied, as following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) 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 burden of proving these elements is upon Complainant.

Respondent had 20 days to submit a response in accordance with paragraph 5(a) of the Rules and failed to do so. Paragraph 5(f) of the Rules establishes that if a respondent does not respond to a complaint, in the absence of exceptional circumstances, the panel's decision shall be based upon the complaint.

A. Identical or Confusingly Similar

Complainant has duly proven that it owns prior trademark rights for BULLPADEL, and that the disputed domain name is constituted solely of the trademark BULLPADEL in its entirety.

Thus, the Panel finds that the disputed domain name is identical to Complainant's trademark BULLPADEL, and so the requirement of the first element of paragraph 4(a) of the Policy is satisfied.

B. Rights or Legitimate Interests

The consensus view of UDRP panels on the burden of proof under paragraph 4(a)(ii) of the Policy is summarized in section 2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") as follows: "[w]hile 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 often impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element".

In this case, noting the facts and contentions listed above, the Panel finds that Complainant has made out a *prima facie* case showing that Respondent lacks rights or legitimate interests in the disputed domain name, so the burden of production shifts to Respondent. As Respondent has not replied to Complainant's contentions, the Panel has considered Complainant's un rebutted *prima facie* case to be sufficient to

demonstrate that Respondent has no rights or legitimate interests in the disputed domain name.

Respondent has not used the disputed domain name in the context of a *bona fide* or legitimate noncommercial or fair use that could demonstrate rights or legitimate interests, since, *inter alia*, evidence shows that the disputed domain name redirects to a website where the disputed domain name is being offered for sale for USD 1,450. Also, Respondent is not commonly known by the disputed domain name.

Moreover, the nature of the disputed domain name, being identical to Complainant's trademark, carries a high risk of implied affiliation (see section 2.5.1 of the [WIPO Overview 3.0](#)).

Therefore, the Panel finds that the requirement of the second element of paragraph 4(a) of the Policy is also satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists a number of circumstances that, without limitation, are deemed evidence of registration and use of a domain name in bad faith.

Respondent has registered the disputed domain name that fully incorporates Complainant's duly proven well-known trademark BULLPADEL in its entirety. The Panel finds it more likely than not that Respondent was aware of Complainant's rights to the trademark BULLPADEL at the time of the registration of the disputed domain name – as Complainant enjoys an international reputation for the BULLPADEL trademark.

With that in sight, the Panel finds that Respondent registered the disputed domain name with the intention of attracting Internet users and consumers in search of Complainant's products and services offered under the trademark BULLPADEL.

In addition, the Panel finds that the use of the disputed domain name to redirect to a webpage where the disputed domain name is being offered for sale, on the circumstances of the present case, also indicates bad faith. Paragraph 4(b)(i) of the Policy identifies a classic case of bad faith registration and use, as follows:

“circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name”.

Finally, Respondent has not replied to Complainant's cease and desist letter nor the Complaint, which under the circumstances of this case, further indicates bad faith.

With that in sight, considering that (i) Respondent was most likely aware of Complainant's well-known trademark BULLPADEL at the time of registration of the disputed domain name; (ii) the disputed domain name is being offered for sale in the website which purports from it; and (iii) Respondent has failed to present any response to Complainant's contentions, not responding to the present Complaint and Complainant's previous cease and desist letter; the Panel finds that the circumstances of the present case support a finding of bad faith.

In light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith. Therefore, the requirement of the third element of paragraph 4(a) of the Policy is satisfied.

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 <bullpadel.xyz> be transferred to Complainant.

/Gabriel F. Leonardos/

Gabriel F. Leonardos

Sole Panelist

Date: February 1, 2023