

## **ADMINISTRATIVE PANEL DECISION**

Bonneval Emergence v. Bob Carberry  
Case No. D2024-2337

### **1. The Parties**

The Complainant is Bonneval Emergence, France, represented by SELAS Lexington Avocats, France.

The Respondent is Bob Carberry, United States of America (the "US").

### **2. The Domain Name and Registrar**

The disputed domain name <bonnevalwater.com> is registered with NameCheap, Inc. (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 7, 2024. On June 10, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 10, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 11, 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 June 13, 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 June 20, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 10, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 23, 2024.

The Center appointed Oleksiy Stolyarenko as the sole panelist in this matter on August 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**

The Complainant is a French company established in 2008, and its main activity is the exploitation of mineral water springs in all their forms. The Complainant exploits a mineral water source located in the French Alps, respecting the mountains and the water cycle with a focus on environmental sustainability. The Complainant markets and promotes its still and sparkling waters under the BONNEVAL and BONNEVAL WATERS trademarks.

The Complainant has registered a number of trademarks worldwide covering various goods and services related to its activities. Some of the BONNEVAL and BONNEVAL WATERS trademark registrations are indicated below:

- French trademark registration No. 4800828 for BONNEVAL WATERS, registered on February 4, 2022, in Classes 3, 5, and 32;
- International trademark registration No. 1663646 for BONNEVAL WATERS, registered on March 3, 2022, in Classes 3, 5, and 32 designated to various countries including the US;
- French trademark registration No. 4034382 for BONNEVAL, registered on January 17, 2014, in Classes 3, 5, 32, and 44;
- US trademark registration No. 87306351 registered on March 16, 2021, in classes 3, 5, and 32.

The Complainant has intensively used these trademarks since their registration.

The Complainant is the owner of <bonnevalwaters.com> domain name registered on August 9, 2016, which it uses to promote its mineral water online. The Complainant is actively using this domain name and the associated with the domain name website to promote its goods to its customers.

The Respondent is the US resident that registered the disputed domain name <bonnevalwater.com> on April 22, 2024. At the time of the decision the disputed domain name does not resolve to an active website. According to the Complainant, the disputed domain name was used to create an online messaging service for sending phishing emails requesting payment of fraudulent invoices from the customers of the Complainant.

#### **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.

The Complainant contends that it has established rights in the BONNEVAL WATERS trademark by virtue of longstanding use and registration in numerous jurisdictions worldwide. The trademark BONNEVAL WATERS is distinctive and well-known in connection with the Complainant's still and sparkling water.

The Complainant BONNEVAL WATERS trademark was registered in France, the European Union, and the US long before registration of the disputed domain name by the Respondent.

The disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

The disputed domain name is a complete reproduction of the Complainant's earlier trademarks, with the only difference being the deletion of the final "s" at the end of the disputed domain name.

Despite this minor difference the disputed domain name is almost identical to the Complainant's trademarks.

The Complainant considers this minor difference between its registered trademark BONNEVAL WATERS and the disputed domain name as a "typosquatting" case where the disputed domain name has a slight misspelling of a registered trademark leading to confusing similarity and/or virtual identity brought about through easily made typing errors.

The disputed domain name is also confusingly similar to the domain name owned by the Complainant, <bonnevalwaters.com>, registered on August 9, 2016.

The Respondent has no rights or legitimate interests in the disputed domain name, because the Respondent does not operate a legitimate website. The domain name registration only enabled the Respondent to create an online messaging service as "[...]@bonnevalwater.com" to send phishing emails requesting payment of fraudulent invoices.

The Respondent's use of the disputed domain name is intended to mislead consumers for financial gain, demonstrating no rights or legitimate interests in the domain name.

Respectively, according to the Complainant the disputed domain name is registered and used in bad faith, because the disputed domain name is confusingly similar with the Complainant trademark and was used by the Respondent in connection with phishing attempts targeting the Complainant's customers.

The Complainant requests the Administrative Panel to transfer the disputed domain name to the Complainant based on these contentions.

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

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Domain names that consist of a common, obvious, or intentional misspelling of a trademark are considered by panels to be confusingly similar to the relevant mark for purposes of the first element. [WIPO Overview 3.0](#), section 1.9.

The disputed domain name features the Complainant's BONNEVAL WATERS trademark with a missing letter "s" in the word "waters" and combined with generic top-level domain ("gTLD") ".com".

The gTLD is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1. Therefore, the Panel disregards the gTLD for the purposes of this comparison

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 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 did not find any evidence that the Respondent is commonly known by the disputed domain name and concludes that the Respondent is not commonly known by the disputed domain name under paragraph 4(c)(ii) of the Policy.

Taking into account the reputation and long period of use of the Complainant's BONNEVAL WATERS trademark, and in the corresponding Complainant's domain name and website, and in the absence of evidence to the contrary, the Panel finds that the Respondent is not involved in a bona fide offering of goods or services (under paragraph 4(c)(i) of the Policy) and the Respondent's activities do not fall under a legitimate noncommercial use (under paragraph 4(c)(iii) of the Policy). Moreover, it is clear that the Respondent hoped to capitalize on Internet users confusion given the typosquatting nature of the disputed domain name, namely the omitted "s", and the phishing campaign for which the disputed domain name was utilized for.

Panels have held that the use of a domain name for illegal activity as applicable to this case: phishing, impersonation/passing off, or other types of fraud can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel notes that the Respondent has registered the disputed domain name after the Complainant's BONNEVAL WATERS trademark was used in commerce. The Complainant's BONNEVAL WATERS trademark predates registration of the disputed domain name by years.

The Panel concludes that the Respondent intentionally misspelled the Complainant's BONNEVAL WATERS mark in the disputed domain name by removing the letter "s". Thus, the Respondent's aim on targeting the Complainant, its reputation, and its customers is clear to the Panel.

Evidence provided by the Complainant that the Respondent was further using the disputed domain name to send phishing emails to the Complainant's customers, confirms that intention and reason for registration of the disputed domain name by the Respondent.

Panels have held that the use of a domain name for illegal activity as applicable to this case: phishing, impersonation/passing off, or other types of fraud constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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 <bonnevalwater.com> be transferred to the Complainant.

*/Oleksiy Stolyarenko/*

**Oleksiy Stolyarenko**

Sole Panelist

Date: August 27, 2024