

ADMINISTRATIVE PANEL DECISION

Spinrite Inc. v. Maksym Mishchenko
Case No. D2025-3271

1. The Parties

The Complainant is Spinrite Inc., Canada, represented by Gowling WLG (Canada) LLP, Canada.

The Respondent is Maksym Mishchenko, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <thebernat.com> is registered with Spaceship, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 14, 2025. On August 15, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 15, 2025, 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 Purposes, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 21, 2025, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Respondent sent an email communication to the Center on August 22, 2025. The Complainant filed an amended Complaint on August 25, 2025.

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 September 8, 2025. In accordance with the Rules, paragraph 5, the due date for Response was September 28, 2025. The Respondent sent a further email communication to the Center on September 8, 2025. The Center notified the Parties of the commencement of the panel appointment process on September 30, 2025.

The Center appointed Steven A. Maier as the sole panelist in this matter on October 7, 2025. 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.

On October 24, 2025, the Panel issued Procedural Order No. 1. No submissions were received in response to Procedural Order No. 1.

4. Factual Background

The Complainant is a company located in Canada. It is a manufacturer and supplier of craft knitting yarns and consumer sewing threads, under the name and trademark BERNAT.

The Complainant is the owner of various registrations for the trademark BERNAT, including for example:

- Canada trademark registration number TMA502212 for the word mark BERNAT, registered on October 14, 1998, in International Classes 23 and 26; and

- United States of America trademark registration number 3147844 for the word mark BERNAT, registered on September 26, 2006, in International Class 23.

The Complainant operates a website at "www.bernat.com".

The disputed domain name was registered on April 4, 2024.

The disputed domain name has resolved to a website headed BERNAT, which contained information relating to the Complainant and its business, including images of its products. The website used phrases such as "our yarn selection" and "we at Bernat". The contact information shown on the website was that of the Complainant. The website included a link labelled "Shop Now", which redirected to a shopping page operated by the Complainant at Amazon.com.

5. Parties' Contentions

A. Complainant

The Complainant states that it has traded under the name and mark BERNAT since 1952 and that it has become a leading provider and developer in its field.

The Complainant submits that the disputed domain name is confusingly similar to its BERNAT trademark, and that the addition of the common term "the" in the disputed domain name does not mitigate the confusing similarity.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that it has never licensed or authorized the Respondent to use its BERNAT trademark, that the Respondent has not commonly been known by the disputed domain name, and that the Respondent is making neither bona fide commercial use nor legitimate noncommercial or fair use of the disputed domain name. The Complainant submits that, instead, the Respondent is using the disputed domain name to impersonate the Complainant for commercial gain.

The Complainant contends that the disputed domain name has been registered and is being used in bad faith. It submits that the Respondent clearly had knowledge of the Complainant and its business when it registered the disputed domain name, since the disputed domain name has been used directly to impersonate the Complainant. It contends that the Respondent attracts Internet users to its website by

falsely representing itself as the Complainant, and then monetizes that confusion by providing links to the Complainant's Amazon shop page, for which it receives referral fees under the Amazon affiliate marketing program.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

The Respondent did not file a formal Response in the proceedings. In its email dated August 22, 2025, the Respondent stated that it had been unaware of the situation and had removed the relevant website. In its email dated September 8, 2025, it stated that it was not the beneficial holder of the disputed domain name, having registered it on behalf of a third party with the email address "[...]@gmail.com", who was responsible for the relevant website content. However, the Respondent provided no further information or evidence in support of its contention as to the beneficial ownership of the disputed domain name.

6. Preliminary Issues

A. Identity of Respondent

On October 24, 2025, the Panel issued Procedural Order No. 1, inviting the third party identified by the Respondent to indicate whether or not it claimed to be the beneficial owner of the disputed domain name, and if so whether it wished to file a Response in the proceedings. The third party was given until October 28, 2025, to reply to these queries, but made no reply by that date.

While the registrar-disclosed registrant of a disputed domain name will generally be regarded as the appropriate respondent in proceedings under the UDRP, panels may direct that some other party be added or substituted as a respondent where there is evidence that that party is the beneficial holder of the disputed domain name. In this case, the Respondent has made a conclusory assertion as to beneficial ownership which is unsupported by any evidence, and no verification has been received from the alleged third-party beneficial holder. In the circumstances the Respondent, as the Registrar-disclosed registrant of the disputed domain name, remains the appropriate Respondent in the proceedings.

B. Location of Respondent

Since the Respondent's address is stated to be Ukraine, which is subject to an international conflict that may impact case notification, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 the Rules, whether the proceedings should continue. In this case, the Respondent having sent emails to the Center clearly indicating that it had received the Center's Notification of Complaint, the Panel finds there to be no issue over notification and determines that the proceedings should continue accordingly.

7. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the 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.

A. Identical or Confusingly Similar

The Complainant has established that it is the owner of registered trademark rights in the mark BERNAT. The disputed domain name wholly incorporates that trademark, preceded by the dictionary word “the”, which does not prevent the Complainant’s trademark from being recognizable within the disputed domain name.

The Panel therefore finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

In the view of the Panel, the Complainant’s submissions set out above give rise to a prima facie case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. However, the Respondent has failed to file any substantive Response in these proceedings, and has not submitted any explanation for its registration and use of the disputed domain name, or evidence of rights or legitimate interests on its part in the disputed domain name, whether in the circumstances contemplated by paragraph 4(c) of the Policy or otherwise.

The Panel finds, moreover, that the disputed domain name has been used for the purpose of impersonating the Complainant for financial gain, which cannot give rise to rights or legitimate interests on the Respondent’s part.

The Panel therefore finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

For the reasons discussed below, the Panel finds that by registering and using the disputed domain name comprising the Complainant’s distinctive trademark the Respondent has intended to capitalize on the reputation and goodwill inherent in that mark.

The Respondent’s website is unarguably presented as a website of the Complainant from which its products can be purchased. This constitutes a false representation and an impersonation of the Complainant, designed to take unfair advantage of the Complainant’s trademark and brand. The Panel further accepts that the Respondent has presumably obtained financial gain from its misleading activity, by obtaining revenues from the Amazon.com affiliate program based on purchases referred via its deceptive website.

The Panel therefore finds, in particular, that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s trademarks as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its website (paragraph 4(b)(iv) of the Policy).

The Panel finds in the circumstances that the disputed domain name has been registered and is being used in bad faith.

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 <thebernat.com> be transferred to the Complainant.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: October 29, 2025