

## **ADMINISTRATIVE PANEL DECISION**

Weissman's Theatrical Supplies, Inc. v. Evhen Shmelenkov  
Case No. D2025-4733

### **1. The Parties**

The Complainant is Weissman's Theatrical Supplies, Inc., United States of America, represented by Thompson Coburn LLP, United States of America.

The Respondent is Evhen Shmelenkov, Ukraine.

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

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 14, 2025. On November 17, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 19, 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 (Not available) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 20, 2025, 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 November 24, 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 November 26, 2025. In accordance with the Rules, paragraph 5, the due date for Response was December 16, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 17, 2025.

The Center appointed Charles Gielen as the sole panelist in this matter on December 19, 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.

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition. According to the information provided by the Registrar, the Respondent is a person with an address in Ukraine and with a telephone number showing the Ukrainian land code. As Ukraine is currently involved in an international conflict, the Panel has considered whether the conditions of paragraph 10 of the Rules have been satisfied. The Panel observes in this respect that, using the contact details supplied by the Registrar, the Center's email notice was timely delivered to the furnished Gmail address. The Respondent has not opposed the continuation of the proceedings. The fact that the Respondent was aware of the Complainant's objections is also evident from the following. The website to which the disputed domain name resolves, showed a link to the so-called Amazon Associates Program (hereinafter referred to as "Amazon Program"), which allows the users of that program to monetize their website. However, the Respondent has never been admitted to that program, which would have been impossible since participants need the consent from the owner of the brands the participants are selling on their website. Such consent has never been given. Upon receipt of a letter of formal notice by the representative of the Complainant, the Respondent removed the links to the Amazon Program from the website, so it seems clear that the Respondent was aware of the objections of the Complainant. Moreover, as described below, the Panel has no doubt that the Respondent registered and has used the disputed domain name in bad faith to target the Complainant and mislead consumers.

#### **4. Factual Background**

The Complainant is a supplier of dance apparel and related goods using the trade mark BALERA, which was first used in 2002. The Complainant owns United States of America Trade Mark Registration No. 2780710 for BALERA for class 25 ("[d]ance apparel, namely, leotards, tights, dance pants, jazz pants, leggings, unitards, tops, dance dresses and skirts, undergarments, dance shoes and theatrical costumes"), registered on November 4, 2003.

The Complainant's principal website is linked to the domain name <weissmans.com> which allows purchasers to shop for dance apparel and other goods, among others using the trade mark BALERA.

The disputed domain name was registered on August 13, 2024, and resolves to a website which displays the trade mark BALERA of the Complainant as well its logo and images of apparel from catalogues used by the Complainant. The Respondent also uses the Complainant's business address. Furthermore, the Respondent's website showed a link to the Amazon Program, allowing the participants to monetize their website. However, the Respondent was not a participant to that program, among others because it did not have the required authorization from the owner of the brand of the products it is offering on the website.

#### **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.

Notably, the Complainant contends that the disputed domain name is confusingly similar to the BALERA trade mark because it contains the BALERA trade mark in its entirety, simply adding the non-significant element "the" in front of "balera".

Furthermore, the Complainant contends that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Complainant contends that it has never authorized the Respondent to register or use the BALERA trade mark in any manner. It is not affiliated or associated with the Respondent and has not endorsed or sponsored them. Furthermore, according to the Complainant, the Respondent has not made a bona fide offering of goods or services in connection with the disputed domain name, nor is the Respondent making legitimate noncommercial or fair use of the disputed domain name. Instead, the Respondent does nothing more than appropriate the Complainant's original content and attempt to pass itself off as a legitimate company using the BALERA trade mark and the Complainant's business address. Given the Respondent's use of such information, there is no doubt that the Respondent is attempting to impersonate the Complainant. That clearly can never be a bona fide offering of goods and services. Finally, to the Complainant's knowledge, the Respondent has not been commonly known by the disputed domain name.

Therefore, the Respondent cannot establish rights or legitimate interests pursuant to paragraph 4(c)(ii) of the Policy.

Finally, the Complainant argues that the Respondent registered and is using the disputed domain name in bad faith. The Complainant contends that by using the trade mark of the Complainant and other information regarding the Complainant, such as its business address, as well as by obtaining commission on sales through the Amazon Program, the Respondent intentionally attempted to attract, for commercial gain, Internet users to the website by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation or endorsement of the website. Registration and use of the disputed domain name to improperly obtain monetary commissions from the Amazon Program evidences the Respondent's bad faith registration and use of the disputed domain name.

## **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 trade mark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

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

The Panel finds that the mark is recognizable within the disputed domain name. The only difference is that the word "the" appears in front of the word "balera". This difference does not prevent the finding of confusing similarity between the trade mark and 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](#), sections 1.7 and 1.9.

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.

First, the Respondent did not show that it owns any rights to the name “thebalera” nor that it has any license from the Complainant to use its BALERA trade mark. Furthermore, the Respondent did not argue that it is commonly known, or that it has ever been known under the name “thebalera”. Furthermore, the Panel did not find any evidence that the Respondent has used, or prepared to use, the disputed domain name in connection with a bona fide offering of goods or services. On the contrary, the disputed domain name does direct to a website, on which the trade mark BALERA of the Complainant as well as the logo used by the Complainant are being shown including information regarding the Complainant such as some of its products and its address. Such type of activity, impersonating the Complainant 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.

First all it is clear that the Respondent, when registering the disputed domain name had the trade mark of the Complainant in mind. This is evidenced by the fact that the Respondent on its website uses the trade mark and logo of the Complainant in relation to original apparel offered for sale by the Complainant. The Panel agrees with the Complainant, that the Respondent by using the trade mark of the Complainant and other information regarding the Complainant, such as its business address, as well as by obtaining commission on sales through the Amazon Program, intentionally attempted to attract, for commercial gain, Internet users to the website by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation or endorsement of the website. All these factors result in the finding that the Respondent registered and is using the disputed domain name in bad faith.

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 <thebalera.com> be transferred to the Complainant.

*/Charles Gielen/*

**Charles Gielen**

Sole Panelist

Date: December 27, 2025