ARBITRATION
AND
MEDIATION CENTER

WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

ADMINISTRATIVE PANEL DECISION
Bearfoot LLC v. Alexis Moret, BRFT Holdings LLC
Case No. D2026-1680

1. The Parties

The Complainant is Bearfoot LLC, United States of America (or U.S.), self-represented.

The Respondent is Alexis Moret, BRFT Holdings LLC, United States of America, represented by Law Offices of Nikitas E. Nicolakis, United States of America.

2. The Domain Name and Registrar

The disputed domain name <bearfoot.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 April 20, 2026. On April 21, 2026, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 22, 2026, 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 (Bearefoot L.L.C.) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 24, 2026, providing the registrant and contact information disclosed by the Registrar, and requesting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on April 24, 2026.

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 April 28, 2026. In accordance with the Rules, paragraph 5, the due date for Response was May 18, 2026. On May 14, 2026, the Respondent requested an automatic four-day extension of the Response due date in accordance with paragraph 5(b) of the Rules. The Response was then due May 22, 2026. The Response was filed with the Center on May 22, 2026.

The Center appointed David H. Bernstein as the sole panelist in this matter on June 8, 2026. 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 North Dakota limited liability company engaged in the sale of barefoot-style, minimalist athletic shoes for adults and children. The Complainant owns U.S. Reg. No. 6,482,834 for a logo consisting of a bear print with a human footprint within it, filed on November 9, 2020 and registered on September 14, 2021 in class 25 for Footwear. The registration reflects a claimed date of first use in commerce of February 2, 2019.

The Complainant appears to have continuously sold footwear and related accessories since February 2019 at the website "www.bearfoot.store".

The Respondent is a Delaware limited liability company, incorporated on December 12, 2023, that is also engaged in the sale of barefoot-style, minimalist athletic shoes. It states that it began doing business in October 2023 (which is a couple of months prior to its incorporation), using the primary domain name <bearefoot.com>, which it purchased from an earlier registrant on October 15, 2023.

On May 30, 2024, the Respondent purchased the disputed domain name <bearfoot.com> from a prior registrant and set it to permanently redirect to its primary website at "www.bearefoot.com".

On September 26, 2024, the Respondent filed a trademark application for BEAREFOOT. The Complainant filed a letter of protest against that application (which letter of protest was accepted by the United States Patent and Trademark Office ("USPTO"), and the evidence that the Complainant submitted of its logo registration was forwarded to the examining attorney for consideration). The Complainant also sent a cease-and-desist letter to the Respondent on March 25, 2025, objecting to the Respondent's trademark application, its registration and use of the disputed domain name, and its use of the BEAREFOOT trademark. The USPTO has two non-final office actions against this application, first on April 7, 2025, then on July 15, 2025. The office actions refused registration in part because of a likelihood of confusion with U.S. Reg. No. 1,752,621 for BEAR FEET for infant and children's shoes. For reasons that are not clear to the Panel, the Respondent's trademark application for BEAREFOOT remains "pending" on the USPTO website despite the deadline for reply having passed on January 15, 2026.

On April 29, 2025, the Complainant filed a trademark application for BEARFOOT. It also received a non-final office action refusing registration because of a likelihood of confusion with U.S. Reg. No. 1,752,621 for BEAR FEET for infant and children's shoes. The Complainant did not respond to the office action, and its application was thereafter abandoned without prejudice.

On March 30, 2026 (after the deadline for responding to the July 15, 2025 non-final office action), the Respondent purchased the trademark rights associated with U.S. Reg. No. 1,752,621, and states that it is now the owner of that registration. The application for that mark was filed on July 31, 1987 and registered on February 16, 1993. As of the date of the drafting of this decision, the assignment of that trademark has not yet been recorded with the USPTO.

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.

First, the Complainant argues the disputed domain name is identical to its BEARFOOT mark. It claims that it has common law trademark rights to the BEARFOOT mark because of its continuous and exclusive use of that mark in commerce, as well as the mark's geographic reach and recognition by consumers and the industry. The Complainant provides sales records from February 2019 to June 2020 showing early sales activity (which, by the end of June, had reached all 50 states), and records for its sales prior to the Respondent's incorporation spanning from February 2019 to December 2023 (totaling more than USD 4,500,000). It also presents evidence of Instagram accounts with thousands of followers (one registered in 2019, one in 2023) with "Bearfoot" in the name, and asserts that a prominent barefoot shoe reviewer, Anya's Reviews, recognized the Complainant on her blog.

Second, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. It asserts that the Respondent is not commonly known by "Bearfoot" nor does it use the disputed domain name to make a bona fide offering of goods and services, as it merely redirects customers to the Respondent's website at "www.bearefoot.com". The Complainant further argues that the Respondent lacks rights because it holds "no registered or pending" trademark rights for BEAREFOOT.

Third, the Complainant asserts that the Respondent is using the disputed domain name in bad faith. Specifically, it argues that the Respondent is using the disputed domain to intentionally redirect the Complainant's customers by creating a likelihood of confusion. In support of that assertion, the Complainant proffers several instances of apparent confusion from customers who mistakenly purchased shoes from the Respondent believing them to be from the Complainant. The Complainant also argues that, because the Respondent operates in the same niche market as the Complainant, only purchased the disputed domain name after a year in the industry, and has bid on the Complainant's mark as a keyword for its own advertising efforts, the Respondent knew that the disputed domain name contained the Complainant's mark. The Complainant additionally points to the Respondent's use of a privacy service to hide its identity, its failed effort to register the BEARFEOOT trademark, and its use of bear-related branding as further evidence of bad faith.

B. Respondent

The Respondent contends that the Complainant has not satisfied any of the elements required under the Policy for a transfer of the disputed domain name.

First, the Respondent argues that the Complainant does not possess common law trademark rights in BEARFOOT for the purposes of this proceeding. The Respondent contends that the Complainant's sales records are not authenticated and not conclusive of commercial activity. The Respondent further argues that the Complainant's shoes, shoe care items, and accessories bear only its logo and not the wordmark BEARFOOT, which means that the Complainant has no rights to the wordmark. The Respondent also questions the Complainant's level of industry recognition, proffering a low trust rating by using the website at "scam-detector.com" for Anya's Reviews and highlighting low follower engagement with the Complainant's Instagram posts.

Second, the Respondent asserts that it has rights and legitimate interests in the disputed domain name. Specifically, the Respondent's brand name is "Bearefoot," and it argues that its recent acquisition of the BEAR FEET mark – the mark which formed the basis for refusal for the Complainant's BEARFOOT trademark application – gives it "superior rights to any bearfoot or bearfeet related mark." The Respondent further asserts that it has made a legitimate use of the disputed domain name: to redirect its own customers to its webpage at "www.bearefoot.com" where it makes a bona fide offering of goods. The Respondent also claims that its ownership of the disputed domain name prevents typosquatting by others, while simultaneously alleging that the Complainant does not have exclusive rights to the "Bearfoot" name in a market where others use similar terminology for the same type of business.

Third, the Respondent contends that it did not register or use the disputed domain in bad faith. It argues that its registration and use of the disputed domain name is a means to prevent typosquatting, and reiterates its

intentions to redirect its own customers to its primary website. Further, the Respondent contends that its keyword activity does not indicate knowledge of the Complainant's alleged mark but rather is an attempt to capture customers looking for barefoot shoes who misspell the Respondent's own "bearefoot" brand as "bearfoot." The Respondent also asserts that consumer confusion documented by the Complainant arose not because of its use of the disputed domain name, but because of the phonetic similarity between its name and the Complainant's name. It categorizes such confusion as a regular occurrence in a competitive industry. The Respondent also contends that the Complainant offered gift cards to customers who wrote to the Complainant and stated that they were confused into believing that the Respondent's product came from the Complainant. Specifically, the Respondent claimed that the fact that the Complainant reached out to customers who emailed previously regarding an accidental purchase of the Respondent's shoes, offering them gift cards, constituted a course of conduct defaming the Respondent.

Finally, the Respondent claims that the Complaint constitutes attempted Reverse Domain Name Hijacking ("RDNH"). The Respondent claims that a finding of RDNH is appropriate because the Complainant (1) sent the Respondent a cease-and-desist letter; (2) filed a letter of protest with the USPTO; (3) has made "harassing and defaming" statements by calling the Respondent a "scam company" online; (4) lied about the status of the Respondent's trademark application as abandoned when it remains pending; (5) knew the disputed domain name was available and did not purchase it; and (6) knew that the Respondent made a bona fide offering of goods using the disputed domain name which did not target the Complainant.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to obtain transfer of the disputed domain name, the Complainant must establish that (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which it has rights; (ii) the Respondent lacks rights or legitimate interests in the disputed domain name; and (iii) the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The field of barefoot-style, minimalist shoes is crowded with marks that sound or look like "barefoot." Those include the Complainant's BEARFOOT brand, the Respondent's BEAREFOOT brand, and a third party's use of BEAR FEET (a trademark that has recently been acquired by the Respondent), all for barefoot-style shoes. The Panel also has found online references to VIVOBAREFOOT as a brand of barefoot-style shoes. See also "www.bar3foot.eu", "www.onbarefoot.com", and "www.forbarefeet.com". [1]

In the face of this crowded field, the Panel needs to assess whether the Complainant has trademark rights. Although the record is complex and the facts heavily disputed, it is the Panel's task to make the best finding it can, on the evidence submitted, using the preponderance of the evidence standard. *See* WIPO Overview of WIPO Panel Views on Select UDRP Questions ("WIPO Overview 3.1"), section 4.2; and *Nara Aziza Smith v. Vanessa Clarke*, WIPO Case No. D2025-1839.

Given that a number of these brands (BEAR FEET, BEARFOOT, and VIVOBAREFOOT) have coexisted for a number of years, the Panel finds, on the limited record before it, that each of these brand names is protectable as a mark, but the scope of protection is extremely narrow, essentially limited only to an exact duplicate of the mark at issue. See TMEP § 1207.01(d)(iii) (explaining that, in a crowded market where similar marks are used to sell similar goods such that consumers use minutia to distinguish them, marks are weaker and warrant a narrower scope of protection) (citing *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee en 1772*, 396 F.3d 1369, 1373-74 (Fed. Cir. 2005)). BEAR FEET and BEARFOOT as trademarks, in particular, and also the Respondent's mark BEAREFOOT, are all conceptually weak given that they are so similar to the descriptive term "barefoot." Nevertheless, because they also play on the word

[1] Noting in particular the general powers of a panel articulated inter alia in paragraphs 10 and 12 of the Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision, in particular to affirm or corroborate a party's contention. WIPO Overview 3.1, section 4.8.

"bear" (referencing the animal), they are not merely descriptive. Although the Complainant has submitted some evidence of confusion, such confusion may be inevitable given that all of these marks are slightly different plays on the descriptive term "barefoot."

The Panel understands that the USPTO, in assessing these marks, has found that the senior mark (BEAR FEET) has priority, and that the BEAR FEET mark was cited in non-final office actions against the other two marks. But those office actions are not prejudicial, and reflect only the USPTO's initial, non-final assessment of whether the marks (based solely on the information in the registration and applications) can coexist on the Principal Register. The USPTO office actions were not final, were not rendered after discovery and trial, did not consider marketplace conditions, and, as a matter of law, are not entitled to any preclusive effect. *See Peju Province Winery LP v, Cesari S.R.L.*, Case No. 24-1903, Summary Order. (2d Cir. June 8, 2026) (non-precedential), available at "https://ww3.ca2.uscourts.gov/decisions/SUM/24-1903_so.pdf".

That leaves the question of whether the Complainant has established, by a preponderance of the evidence, that it has trademark rights in BEARFOOT. The Panel finds the Complainant has established common law trademark rights for the purposes of the Policy. To establish common law trademark rights for purposes of the Policy, the Complainant must show that its mark has become a distinctive identifier which consumers associate with the Complainant's goods. Relevant evidence demonstrating acquired distinctiveness may include the duration and nature of the use of the mark (which may include social media presence and engagement); the amount of sales under the mark; and the degree of actual public recognition (e.g., recognition by consumers, industry participants, such as trade and professional associations, and the media). The claimed mark must also be used as a source identifier of goods or services, for example, on a website or on products or packaging used in commerce, provided that the mark, as used, is linked to the goods or services that are being branded with the mark. WIPO Overview 3.1, section 1.3.

Assessing the available record, the Panel finds that the Complainant's BEARFOOT mark has become a distinctive identifier that consumers associate with the Complainant's goods. The Complainant has been using the Bearfoot name in commerce at the "www.bearfoot.store" website for over seven years. It has grossed millions of dollars in nationwide sales. Whether the mark is on the goods sold on that website or not, the goods are sold on the BEARFOOT-branded website. See WIPO Overview 3.1, section 1.3 (use of a mark on a website at which goods are sold can show that the mark is used as a source identifier); and TMEP §§ 904.03(g); 904.03(i) (website may be an appropriate specimen showing that a mark is associated with goods regardless of whether the goods themselves bear said mark). It is unclear how known Anya's Reviews is in the barefoot shoes industry, but even if that is not evidence of industry recognition of the BEARFOOT mark, the Complainant's sales and duration of use suffice to establish trademark rights for purposes of the Policy.

The Respondent's assertion that the Complainant abandoned its trademark application for BEARFOOT and therefore that the Complainant lacks trademark rights is an incorrect statement of law. As noted above, the decision not to respond to an initial, non-final office action may mean that the application has been abandoned, but that does not establish a lack of trademark rights.

The Respondent's arguments regarding the veracity of the Complainant's sales records are also misplaced. The Respondent argues that the spreadsheet showing the Complainant's summary of sales is not evidence as it is not an authenticated business record. There is nothing in the Complainant's allegations that establishes the derived summary (or the underlying data) was 1) made in the regular course of business, 2) recorded at or near the time of the event by someone with knowledge, and 3) verified by a custodian's testimony or certification. The Complainant has not made the original records from which the summary was derived from available for examination. Additionally, there is no indication that the underlying documents are too voluminous that they are impractical to be examined by the Panel. Nor is there any indication that the underlying records themselves would qualify as business records. Finally, there is no mechanism for the Panel to determine whether the derived financial summary in Annex 1 of the Complaint is a fair and accurate representation of the documents it is purported to summarize.

That argument reflects a gross misunderstanding of the Rules governing UDRP proceedings. This administrative proceeding is not a court of law and the Federal Rules of Evidence do not apply here. Rather, the Panel is tasked with making findings of fact based on the evidence before it, using the preponderance of the evidence standard. Rules, paragraph 10(d); WIPO Overview 3.1, section 4.2. The Respondent is certainly free to submit factual evidence showing the Complainant's asserted facts to be inaccurate, but the Respondent has not done so. The Complainant has submitted this summary and has certified in its Complaint that the summary is accurate. See Rules, paragraph 3(b)(xiii). The Complainant is not required in a UDRP proceeding to authenticate the summary as a business record using the rules of evidence applicable in court trials. In the absence of factual allegations or evidence from the Respondent that these records are inaccurate, and that the Complainant more likely than not did not sell more than USD 4.5 million worth of merchandise under the BEARFOOT mark prior to the Respondent's incorporation, the Panel finds that the sales summary is more likely than not an accurate summary of the Complainant's sales over that period.

In sum, the Panel finds that the Complainant more likely than not has common law rights in the trademark BEARFOOT, but those rights are quite narrow given that BEARFOOT is phonetically identical to "barefoot" and has coexisted for years with the BEAR FEET mark for infant and children's barefoot-style shoes and, more recently, the Respondent's BEAREFOOT mark.

The next question is whether the domain name is identical or confusingly similar to the mark in which the Complainant has rights. It is well accepted that this part of 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 3.1, section 1.7.

Here, the Respondent concedes that the disputed domain name is identical to the Complainant's BEARFOOT mark. The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. WIPO Overview 3.1, section 1.7.

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 that 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 3.1, 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 successfully 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 Respondent more likely than not has rights in the BEAREFOOT trademark and, the Panel notes, the <bearefoot.com> domain name, but given the crowded field of marks in this category, that does not give the

Respondent rights or legitimate interests in the disputed domain name in light of the fact that the disputed domain name is identical to a trademark that has been used by a competitor in the same space since prior to the Respondent's incorporation. The Respondent's desire to use the disputed domain name to redirect potential consumers to its website does not support an assertion of rights or legitimate interests in the disputed domain name <bearfoot.com>, especially since the Respondent adopted the BEAREFOOT mark after the Complainant had already established itself as "Bearfoot". WIPO Overview 3.1, section 2.5.3.

If either of the Parties were infringing the other's trademark rights, that would be relevant to the question of whether that party is making a bona fide use of the trademark. See, e.g., WIPO Overview 3.1, section 2.13; and *Nara Aziza Smith v. Vanessa Clarke*, WIPO Case No. D2025-1839. In this case, though, neither Party has shown that the other is more likely than not infringing its trademark. The Complainant has shown that there is some confusion among consumers, but that may be the inevitable consequence of two parties using such similar marks in the same category.

The Respondent's recent acquisition of the BEAR FEET trademark does not change that analysis. This is a mark that has coexisted with the Complainant's mark for seven years, apparently without any confusion. The fact that the BEAR FEET trademark has priority does not necessarily mean that the Complainant is infringing that mark. In this crowded field, it is not self-evident that the Complainant's use of BEARFOOT mark infringes on this older BEAR FEET trademark, especially given how long those marks coexisted prior to the Respondent's acquisition of the trademark. Ultimately, this may be an issue that the Parties will need to resolve in a court. WIPO Overview 3.1, section 4.14.2.

The Respondent's ownership of the BEAR FEET mark might give it rights and legitimate interests in domain names incorporating the term BEAR FEET, but it does not give it rights or legitimate interests in the disputed domain name, especially in the circumstances of this case where the disputed domain name is an exact match of the mark of a competitor, the field is crowded and the Parties have coexisted using BEAR FEET (for children's and infants shoes) and BEARFOOT (for barefoot-style shoes) for more than seven years.

Accordingly, 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.

In the present case, the Respondent claims that there is no evidence that it was aware of the Complainant's business until the Complainant sent it a cease-and-desist letter, which was about ten months after the Respondent registered the disputed domain name. Notably, the Respondent did not affirmatively say it was unaware up until that point. The Complainant asserts that the Respondent must have been aware of the Complainant and its "www.bearfoot.store" website and business when it registered the disputed domain name.

Given that the Parties both compete in the market for barefoot shoes, and that the Complainant had been in business for more than five years at the time that the Respondent registered the disputed domain name, the Panel finds that the evidence supports an inference that the Respondent was aware of the Complainant when it registered the disputed domain name. That likelihood increases given that the Respondent was bidding on the keyword "bearfoot" for advertising. The Complainant also has submitted evidence that the Respondent bid on "vivo shoes" and "barefoot vitality," which refer to a barefoot shoe brand (VIVOBAREFOOT) and a type of shoe sold by another barefoot shoe brand, respectively. That the Respondent knew about these competitors and was bidding on those keywords supports an inference that the Respondent knew about the Complainant, which is why it was bidding on the "bearfoot" keyword as well.

Under paragraph 4(b)(iv) of the Policy, a respondent's use of a domain name to intentionally attract a complainant's customers to its own website for commercial gain by creating a likelihood of confusion constitutes bad faith. Panels have found actual confusion to be evidence of this type of bad faith. WIPO Overview 3.1, section 3.1.4. The Complainant has provided evidence of consumer confusion from customers who mistakenly purchased shoes from the Respondent while believing they were purchasing shoes from the Complainant. As such, the Complainant has shown that the Respondent's use of the disputed domain name constitutes bad faith diversion of Internet traffic.

The Panel finds that the Complainant has established the third element of the Policy.

D. Reverse Domain Name Hijacking

The Respondent has requested a finding of RDNH. Given that the Panel has determined that the Complainant has established all three elements of the Policy, the Panel necessarily concludes that the Complaint does not constitute an attempt at Reverse Domain Name Hijacking.

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 <bearfoot.com> be transferred to the Complainant.

/David H. Bernstein/
David H. Bernstein
Sole Panelist
Date: June 25, 2026