

PANEL DECISION

Bird Buddy Inc. / Bird Buddy Studio d.o.o. v. Abou Zakhm Selim, Bernadette
Case No. DEU2025-0009

1. The Parties

The Complainants are Bird Buddy Inc., United States of America (“United States”) and Bird Buddy Studio d.o.o., Slovenia, represented by Mewburn Ellis, Germany.

The Respondent is Abou Zakhm Selim, Bernadette, Canada.

2. The Domain Name, Registry and Registrar

The Registry of the disputed domain name <birdbuddy.eu> is the European Registry for Internet Domains (“EURid” or the “Registry”). The Registrar of the disputed domain name is D-Cube Resource.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 6, 2025. On the same day, the Center transmitted by email to the Registry a request for registrar verification in connection with the disputed domain name. Also on March 7, 2025, the Registry 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 and contact information (Unknown) in the Complaint.

The Center sent an email communication to the Complainant on March 17, 2025, providing the registrant and contact information disclosed by the Registry, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on March 21, 2025.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .eu Alternative Dispute Resolution Rules (the “ADR Rules”) and the World Intellectual Property Organization Supplemental Rules for .eu Alternative Dispute Resolution Rules (the “Supplemental Rules”).

In accordance with the ADR Rules, Paragraph B(2), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on March 24, 2025. In accordance with the ADR Rules, Paragraph B(3), the due date for Response was April 13, 2025. The Response was filed with the Center on April 11, 2025.

The Center verified that the Response satisfied the formal requirements of the ADR Rules and the Supplemental Rules.

The Center appointed Steven A. Maier as the sole panelist in this matter on April 17, 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 ADR Rules, Paragraph B(5).

The Complainant submitted an unsolicited supplemental filing on April 23, 2025.

4. Factual Background

The First Complainant is a corporation organized under the laws of the State of Delaware, United States, and the Second Complainant is a company registered in Slovenia. The First Complainant is the parent company of the Second Complainant, which is the relevant trademark owner in this case.

The Panel is satisfied that both the First and Second Complainants are proper parties to the proceeding under the criteria set out in section 4.11.1 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"),¹ and will refer to the First and Second Complainants collectively as the Complainant in the remainder of this Decision (save where the context otherwise requires).

The Complainant is the supplier of smart bird feeder products sold under the name and trademark BIRD BUDDY, which include the facility to capture photographs and video of the feeding birds.

The Complainant is the owner of various registrations for the trademark BIRD BUDDY, including for example the following:

- European Union trademark registration number 018345691 for the word mark BIRD BUDDY, registered on May 12, 2021 in International Classes 9, 20 and 21; and
- United States trademark registration number 6931664 for the word mark BIRD BUDDY, registered on December 20, 2022 in International Classes 9 and 21.

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

The disputed domain name was registered on September 23, 2024.

The disputed domain name has resolved to a page at "www.sedo.com" offering the disputed domain name for sale. The Complainant exhibits evidence that the minimum price requested was EUR 10,000 on February 4, 2025, and EUR 1,000 on February 26, 2025.

¹ While the present proceeding is subject to the ADR Rules as opposed to the Uniform Dispute Resolution Policy ("UDRP"), the Panel finds nevertheless that the principles set out in [WIPO Overview 3.0](#) may usefully be applied in this case.

5. Parties' Contentions

A. Complainant

The Complainant states that it was founded in 2020 as a Kickstarter campaign, supported by nearly 23,000 backers. It submits that it now has a community of over 100,000 users in 113 countries around the world, who capture over one million photos and video on a daily basis. The Complainant submits evidence of substantial media coverage of its products, including in international publications such as the New York Times, TechCrunch and Wired, and of garden and technology industry awards that it has won.

The Complainant contends that the disputed domain name is identical to its BIRD BUDDY trademark, ignoring the space between the two words in the trademark, which could not in any event be replicated in a domain name.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that it has no relationship with the Respondent and has never authorized it to use its BIRD BUDDY 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 contends that the Respondent registered the disputed domain name for the sole purpose of selling it to the Complainant for a sum in excess of its out-of-pocket costs associated with the registration.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. It submits that its trademark BIRD BUDDY is fanciful and distinctive, and that it is widely associated by the public as an indication of the Complainant's brand. The Complainant exhibits several pages of Google search results against the terms "birdbuddy" and "bird buddy" which relate exclusively or overwhelmingly to the Complainant and its products.

The Complainant submits that the Respondent was likely to have been aware of the Complainant's BIRD BUDDY trademark when it registered the disputed domain name. It contends that, in any event, the Respondent failed to make a good-faith effort to avoid registering a trademark abusive domain name, as required by paragraph 3 of the Terms and Conditions for .eu domain names.²

Further, the Complainant submits that the Respondent has engaged in a pattern of trademark-abusive domain name registrations. It cites five previous findings against the Respondent in cases under the ADR Rules or the UDRP, including *Instagram, LLC v. Bernadette Zakhm Selim Abou*, WIPO Case No. [DEU2018-0021](#) (domain name <instagram.eu>) and *Pathe Marques v. Bernadette Zakhm Selim Abou*, CAC Case No. ADREU008387 (domain name <pathe.eu>).

The Complainant submits, therefore, that the disputed domain name was registered primarily for the purpose of selling it to the Complainant as the holder of a recognized right in the circumstances contemplated by paragraph B(11)(f)(1) of the ADR Rules.

The Complainant requests the transfer of the disputed domain name.

² Paragraph 3(e) of the Terms and Conditions for .eu domain names states that: "you must... not register or use your Domain Name in a speculative or abusive way, in a way that violates any third-party rights, applicable laws or regulations, in bad faith, contrary to public interest or morality, or for any unlawful purpose..."

B. Respondent

The Respondent does not dispute that the disputed domain name is identical to the Complainant's BIRD BUDDY trademark. Nor does it dispute that it has made no use of the disputed domain name other than to offer it for sale, or that it seeks a price in excess of its costs of the registration and maintenance of the disputed domain name.

The Respondent states that it is in the business of buying and selling domain names. It submits that the disputed domain name consists of two dictionary words, "bird" and "buddy", and as such is a generic and/or descriptive name, as opposed to a brand name that can be associated solely with the Complainant.

The Respondent submits that the buying and selling of domain names is a legal activity, which gives rise to a legitimate interest in the domain names in question as long as it does not attempt to benefit from the goodwill or positive image of a third party's trademark. The Respondent states that it has never attempted to benefit from such goodwill, whether by way of pay-per-click advertising or any similar means, and has never misled the Complainant's customers or harmed its reputation.

The Respondent submits that both "bird" and "buddy" are very common terms in domain name registrations, with there being 681 ".com" names that include the word "bird" and 540 that include the word "buddy". It contends that the combination of these two terms was therefore a good choice for inclusion in a domain name portfolio.

The Respondent contends that the disputed domain name may be of interest to numerous parties other than the Complainant. It states that, even if the Complainant's products have generated significant recognition, that does not make the Complainant's trademark so well known that everyone should be assumed to know of it.

The Respondent denies that the price sought for the disputed domain name is an indication of bad-faith intent on its part. It states that it does not constitute use in bad faith to seek an appropriate market sum for a domain name such as the disputed domain name, and that while it and the Complainant may disagree as to the appropriate market price, this is ultimately a question for commercial negotiation.

C. The Complainant's Unsolicited Supplemental Filing

In the interests of fairness and procedural efficiency, unsolicited supplemental filings are generally discouraged in proceedings under the ADR Rules, save in cases where significant new factors have emerged since the filing of the relevant party's original pleading, where the opposing party makes submissions that the other party could not reasonably have anticipated, or where other exceptional circumstances exist.

The Complainant's unsolicited supplemental filing, as submitted, responds to the arguments advanced in the Response, substantially all of which the Panel believes the Complainant could reasonably have anticipated in its original Complaint. There being no other exceptional circumstances to justify a further filing, the Panel determines under its general powers as set out in paragraph B(7) of the ADR Rules that the Complainant's unsolicited supplemental filing should not be admitted in the proceeding.

6. Discussion and Findings

In order to succeed in the Complaint, it is necessary for the Complainant to establish that the elements required by the ADR Rules are present, namely:

- (i) the domain name is identical or confusingly similar to a name in respect of which a right is recognised or established by the national law of a Member State and/or European Union law; and either
- (ii) the domain name has been registered by the Respondent without rights or legitimate interest in the name; or
- (iii) the domain name has been registered or is being used in bad faith.

A. Identical or Confusingly Similar to a name in respect of which a right or rights are recognized or established by national law of a Member State and/or European Union law

The Complainant has established that it is the owner of European Union trademark rights for the word mark BIRD BUDDY. As has been accepted by the Respondent, the disputed domain name is effectively identical to that trademark. The Panel therefore finds that the first element under the ADR Rules is satisfied.

B. Rights or Legitimate Interests, and C. Registered or Used in Bad Faith

The Panel considers it convenient in this case to review the second and third elements under the ADR Rules together, since similar considerations inform the analysis of each requirement.

The Respondent is correct to say that the buying and selling of domain names is not unlawful per se, and that a domain name may in an appropriate case be offered for a market price that exceeds its costs of registration and maintenance. It is also correct that a party may legitimately register and offer for sale a domain name which comprises a dictionary term, which may be used for a purpose genuinely connected to that dictionary term, and which does not seek to target any third-party trademark rights.

The Panel does not, however, find those circumstances to be applicable in this case.

First, while the terms “bird” and “buddy” are indeed both dictionary words, each of which may well be seen individually in numerous domain name registrations, the combination of those terms to comprise the name “birdbuddy” does not result in a dictionary (or generic or descriptive) term used in common language, making it difficult to consider this as a reason for the registration (particularly when contrasted with the Complainant’s recognition).

Secondly, the Complainant has established to the satisfaction of the Panel that its BIRD BUDDY trademark has gained significant recognition and commercial goodwill, on an international basis, as a designator of goods or services associated with the Complainant. It is significant that a Google search against the relevant term or terms produces results which are effectively exclusive to the Complainant, and none which suggest the use in commerce of the same or a similar trademark by any other party.

Thirdly, the Panel considers that the Respondent was under a duty at the time of registration to exercise some level of due diligence with regard to the disputed domain name. By reference again to [WIPO Overview 3.0](#), section 3.2.3 states:

“Panels have held that especially domainers undertaking bulk purchases or automated registrations have an affirmative obligation to avoid the registration of trademark-abusive domain names. Panelists will look to the facts of the case to determine whether such respondent has undertaken good faith efforts to screen such registrations against readily-available online databases to avoid the registration of trademark-abusive domain names.”

And further:

“Noting registrant obligations under UDRP paragraph 2, panels have however found that respondents who (deliberately) fail to search and/or screen registrations against available online databases would be responsible for any resulting abusive registrations under the concept of willful blindness; depending on the facts and circumstances of a case, this concept has been applied irrespective of whether the registrant is a professional domainer.”

The Panel rejects any argument on the part of the Respondent (if such are its submissions) that there is no requirement for due diligence in respect of a domain name which comprises a combination of dictionary words, and/or that a domain name of that nature is incapable of taking unfair advantage of third-party trademark rights.

Fourthly, the Respondent has been found in five previous cases under the ADR Rules or the UDRP to have registered domain names which impinge upon third-party trademark rights. Those cases include two .eu domain names, <instagram.eu> and <pathe.eu>, which the Panel considers clearly to implicate widely-known third party trademarks.

In all the circumstances, the Panel infers on the balance of probabilities that the Respondent registered the disputed domain name in the knowledge of the Complainant’s trademark rights in the mark BIRD BUDDY, and with the intention of targeting those trademark rights, as opposed to intending the disputed domain name for use in connection with some legitimate purpose unrelated to that trademark.

The Panel finds in particular that the disputed domain name has been registered in order to prevent the holder of a name in respect of which a right is recognized or established by national and/or European Union law, from reflecting this name in a corresponding domain name, providing that the Respondent has engaged in a pattern of such conduct (paragraph B(11)(f)(2) of the ADR Rules.

Further or alternatively, the Panel finds that the disputed domain name was registered primarily for the purpose of selling, renting or otherwise transferring the domain name to the holder of a name in respect of which a right is recognized or established by national and/or European Union law (paragraph B(11)(f)(1) of the ADR Rules.

The Panel concludes in the circumstances that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was both registered and has been used in bad faith.

7. Decision

For the foregoing reasons, in accordance with Paragraph B(11) of the ADR Rules, the Panel orders that the disputed domain name <birdbuddy.eu> be transferred to the Second Complainant, Bird Buddy Studio d.o.o..³ The Panel is satisfied in this regard that the Second Complainant meets the general eligibility criteria for registration set out in Article 3 of Regulation (EU) 2019/517.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: May 1, 2025

³ The decision shall be implemented by the Registry within thirty (30) days after the notification of the decision to the Parties, unless the Respondent initiates court proceedings in a Mutual Jurisdiction, as defined in Paragraph A(1) of the ADR Rules.