

ADMINISTRATIVE PANEL DECISION

Dikar S. Coop, Blackpowder Products, Inc. v. Super Privacy Service LTD c/o
Dynadot / Paul Harry
Case No. D2022-0025

1. The Parties

Complainants are Dikar S. Coop, Spain, and Blackpowder Products, Inc., United States of America (“United States”), represented by The GigaLaw Firm, Douglas M. Isenberg, Attorney at Law, LLC, United States.

Respondent is Super Privacy Service LTD c/o Dynadot, United States / Paul Harry, United States.

2. The Domain Name and Registrar

The disputed domain name <bergaraguns.com> is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 4, 2022. On January 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 6, 2022, 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 and contact information in the Complaint. The Center sent an email communication to Complainant on January 14, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on January 14, 2022.

The Center verified that the Complaint together with the amendment to the 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 Respondent of the Complaint, and the proceedings commenced on January 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 10, 2022. Respondent did not submit any response. Accordingly, the Center

notified Respondent's default on February 17, 2022.

The Center appointed Georges Nahitchevansky as the sole panelist in this matter on February 23, 2022. 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

Complainant Dikar S. Coop is a Spanish entity that produces and offers a variety of products for outdoor activities, hunting, and shooting. Complainant Blackpowder Products, Inc. is the exclusive licensee of Complainant Dikar S. Coop in the United States for BERGARA branded products. The BERGARA brand is used in connection with gun barrel manufacturing equipment, a full line of precision rifles, and related products. For purposes of this proceeding, the Panel shall hereinafter refer to Complainants Dikar S. Coop and Blackpowder Products, Inc. jointly as "Complainants".

Complainant Dikar S. Coop owns a number of trademark registrations for BERGARA in various jurisdictions around the world in connection with its products. Of particular relevance to this proceeding, Complainant owns in the United States a registration for the word mark BERGARA (Registration No. 6,140,509, which issued to registration on September 1, 2020) and two registrations for a stylized version of B BERGARA (Registration Nos. 4,027,697 and 5,527,048, which issued to registration on September 20, 2011, and July 31, 2018, respectively). Complainants own and use the domain name <bergara.online> for a website that promotes and provides information regarding Complainants' BERGARA products. Complainants also own and use the domain name <bergarausa.com> as a redirect to the website at <bergara.online>.

Respondent appears to be an individual based in the United States. Respondent registered the disputed domain name on August 19, 2021. Shortly after registering the disputed domain name, Respondent posted a website at the disputed domain name for a claimed "Bergara Guns" company that promotes the sale of various BERGARA rifles, pistols, and other items online.

On December 27, 2021, Complainants' representative sent Respondent a demand letter concerning its registration and use of the disputed domain name and sales of BERGARA rifles. Respondent apparently did not respond to Complainants' demand letter. Currently the disputed domain name continues to resolve to Respondent's website.

5. Parties' Contentions

A. Complainant

Complainants maintain that the BERGARA brand has been extensively promoted in the United States through trade shows and other means and that the BERGARA brand has won numerous awards and recognition in the gun industry for its precision rifles and, in particular, with gun manufacturers as a source of gun barrels.

Complainant asserts that the disputed domain name is confusingly similar to the BERGARA mark as it fully incorporates the BERGARA mark with the descriptive word "guns", which if anything increases the confusing similarity since it relates directly to Complainants' BERGARA products.

Complainant argues that Respondent has no rights or legitimate interests in the disputed domain name as Respondent (i) has never been assigned, granted, licensed, sold, transferred or authorized in any way to register or use the BERGARA mark, (ii) is not commonly known by the disputed domain name, (iii) is using the disputed domain name with an unauthorized website purportedly offering guns for sale, and (iv) is falsely or misleadingly suggesting an association with Complainants and their BERGARA products.

Lastly, Complainants contend that Respondent has registered and used the disputed domain name in bad faith given that Respondent clearly knew about the BERGARA mark and then registered and used the disputed domain name with a website that falsely purports to be a website associated with Complainants for the sale of BERGARA rifles, pistols, and other merchandise. In addition, Complainants argue that Respondent's bad faith is further established by the fact that Respondent has been the subject of multiple adverse UDRP decisions involving similar facts at those in this proceeding.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). Complainant has provided evidence that it owns and uses the BERGARA mark, which has been registered and used in the United States.

With Complainant's rights in the BERGARA mark established, the remaining question under the first element of the Policy is whether the disputed domain name (typically disregarding the generic Top-Level Domain ("gTLD") ".com") is identical or confusingly similar with Complainant's mark. See *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#). The threshold for satisfying this first element is low and fully incorporating the identical mark in a disputed domain name is sufficient to meet the threshold.

In the instant proceeding, the disputed domain name is confusingly similar to Complainant's BERGARA mark as it incorporates the BERGARA mark in its entirety at the head of the disputed domain name. The addition of the word "guns" does not prevent a finding of confusing similarity between the disputed domain name and Complainant's mark as BERGARA is clearly identifiable in the disputed domain name. See, e.g., *Dr. Ing. h.c. F. Porsche AG v. Rojeen Rayaneh*, WIPO Case No. [D2004-0488](#). The Panel therefore finds that Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in the BERGARA mark and in showing that the disputed domain name is identical or confusingly similar to that trademark.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the complainant must make at least a *prima facie* showing that the respondent possesses no rights or legitimate interests in a disputed domain name. *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once the complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

The evidence submitted in this proceeding shows that Respondent has used the disputed domain name for a website that purports to offer Complainant's BERGARA rifles, pistols, and other items for sale. The website prominently uses the name "Bergara Guns" with a rifle logo and repeatedly maintains that "Bergara Guns" is a retailer for BERGARA with statements that would likely be seen by consumers as suggesting some sort of authorization by, relationship with, or connection to Complainants, such as, by way of example, (i) "As a retailer of the Bergara rifles, we guarantee the quality of the Bergara firearms on sale at Bergara Guns", and (ii) "Whatever type of Bergara rifle you're looking for, start your search for your quality Bergara firearms right here at Bergara Guns." Indeed the entire website, which includes product images lifted from Complainants' website at "www.bergara.online", is set up in a way to suggest that Respondent is an authorized retailer of BERGARA firearms.

Notably, Respondent's website appears to only accept payment for the various BERGARA products being offered for sale through Zelle payments (an easy way to send money between bank accounts with just an email address or mobile phone number) or cryptocurrency. Such forms of payments for online sales of firearms to be shipped "worldwide" appear to be suspicious, particularly when Respondent's website provides no contact information or other details about the alleged "Bergara Guns" company or where it might in fact be located. Reviewing the totality of Respondent's website, it is not altogether clear to the Panel whether Respondent actually ships anything to anyone who places an order or simply collects money for the alleged purchase of BERGARA firearms and is never heard from again. Moreover, the fact that Respondent did not respond to Complainants' demand letter specifically requesting information concerning Respondent's license to sell firearms in the United States or its *bona fides* as a retailer for BERGARA products, coupled with Respondent's failure to appear in this proceeding, tends to confirm that Respondent is not a legitimate retailer.

Added to this, is the fact that Respondent has lost several proceedings under the Policy that involve facts that are quite similar to those before this Panel. Such prior cases further confirm that Respondent is not a *bona fide* retailer but is attempting to use the BERGARA name and mark in order to attract consumers to a website that purports to sell BERGARA firearms, but which in fact may be a ruse to obtain payments under false pretenses. Again the fact that Respondent has decided not to appear in this matter and explain its actions makes it more likely than not that Respondent does not have any legitimate interest in the disputed domain name.

To be sure, even if Respondent were in fact a *bona fide* retailer, such would not give Respondent the rights to pass itself off as connected to or an authorized retailer of BERGARA products, when such is not the case. The fact that Respondent's website prominently uses the name "Bergara Guns" with language that suggests a connection to Complainants, and which contains no disclaimer or information about Respondent's actual location, suggests that Respondent is attempting to pass itself off as somehow authorized by or affiliated with Complainants.

What is before the Panel here certainly does not provide Respondent with a legitimate interest in the disputed domain name under the "*Oki Data* test" adopted by numerous UDRP panels. See *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); see also [WIPO Overview 3.0](#) at section 2.8. Simply put, Respondent's

use of Complainant's BERGARA mark is meant to attract web traffic to a website that appears to be connected to Complainants for purposes of promoting possibly fraudulent sales of BERGARA firearms for Respondent's profit. Such actions by Respondent do not come close to being legitimate under the "Oki Data test." [WIPO Overview 3.0](#) at sections 2.5.1 and 2.8.1.

Given that Complainant has established with sufficient evidence that it owns rights in the BERGARA mark, and given Respondent's above noted actions and failure to respond, the Panel concludes that Respondent does not have a right or legitimate interest in the disputed domain name and that none of the circumstances of paragraph 4(c) of the Policy are evident in this case.

C. Registered and Used in Bad Faith

Given that Respondent has (i) registered the disputed domain name that fully incorporates Complainant's BERGARA mark in connection with a word that reflects the very product Complainant is known for and (ii) used the disputed domain name to attract and redirect consumers to Respondent's website promoting alleged sales of BERGARA products that appear suspicious based on the payment methods used and the lack of any information concerning Respondent or its location, it is easy to infer that Respondent was likely well aware of Complainant's BERGARA mark when Respondent registered the disputed domain name

Given the reputation that Complainant's BERGARA products enjoy, the disputed domain name is likely to be viewed by consumers as linked to Complainants and/or to a website that is authorized to sell Complainants' BERGARA firearms. Certainly, Respondent's website is set up so as to not dispel, and in fact to further, that association. Simply put, Respondent's actions make it more likely than not that Respondent opportunistically registered and used the disputed domain name in bad faith to intentionally and misleadingly attract Internet users to Respondent's website for Respondent's own profit by creating a likelihood of confusion with Complainant's BERGARA mark. See [WIPO Overview 3.0](#) at section 3.1.4 (and cases cited therein). That this is Respondent's likely intent is further affirmed by Respondent's pattern of registering and using domain names based on the trademarks of other gun manufacturers for similar purposes. See, e.g., *Smith & Wesson, Inc. v. Paul Harry*, Forum Claim No. 1937517 (transferring <smithfirearms.com>) and *Sig Sauer Inc. v. Paul Harry*, Forum Claim No. 1937112 (transferring <sigsauerarms.com>).

Accordingly, the Panel finds that Complainant succeeds under this 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 <bergaraguns.com> be transferred to Complainant.

/Georges Nahitchevansky/

Georges Nahitchevansky

Sole Panelist

Date: March 9, 2022