

## **ADMINISTRATIVE PANEL DECISION**

The Bayada Way Institute v. Domain Admin Privacy Protect, LLC  
(PrivacyProtect.org) / Domain Admin, TotalDomain Privacy Ltd  
Case No. D2022-1985

### **1. The Parties**

The Complainant is The Bayada Way Institute, United States of America (“United States”), represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Domain Admin Privacy Protect, LLC (PrivacyProtect.org), United States / Domain Admin, TotalDomain Privacy Ltd, Panama.

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

The disputed domain name <fieldbayada.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 1, 2022. On June 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 2, 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 the Complainant on June 2, 2022, 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 June 7, 2022.

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 June 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 30, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 4, 2022.

The Center appointed Mario Soerensen Garcia as the sole panelist in this matter on July 7, 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**

The Complainant was founded in 1975, and it is one of the leader in providing a full range of clinical care and support services at home for children and adults of all ages, with more than 350 offices in 8 countries.

The Complainant owns several trademark registrations in various jurisdictions for the trademark BAYADA, including the United States trademark registration No. 1297195, granted on September 18, 1984.

The Complainant is also the owner of the domain name <bayada.com>, registered on August 20, 1996.

The disputed domain name was registered on November 22, 2014 but only transitioned to the Respondent between September 2 and 7, 2018, and it resolves to a website featuring links to third-party websites.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant argues that the Respondent registered the disputed domain name adding the descriptive term "field" to the Complainant's BAYADA trademark.

In addition, the Complainant mentions that it operates a subdomain at <field-bayada.com>, through which its clients can log on and access their accounts online and, therefore, the disputed domain name is confusingly similar to the Complainant's trademarks and domain name.

The Complainant informs that the Respondent is not sponsored by or affiliated with the Complainant in any way and that it has not given the Respondent permission to use its trademarks. Also, the Complainant says that the Respondent is not commonly known by the disputed domain name, which evinces a lack of rights or legitimate interests.

According to the Complainant, the Respondent is not using the disputed domain name to provide a *bona fide* offering of goods or services, since it was using a privacy Whois service at the time of the filing of this complaint and the disputed domain name is being used to redirect Internet users to a website featuring links to third-party websites, some of which directly compete with the Complainant's business.

Furthermore, the Complainant demonstrates that the disputed domain name is listed for sale for USD 26,249.00, far exceeding the expenses for its registration, which constitutes bad faith under the Policy. The Complainant adds that sent cease and desist letters to the Respondent and did not receive any response.

As per the Complaint, the Respondent's intention is to capitalize on the fame of the Complainant's BAYADA trademark to increase traffic to the disputed domain name's website, for commercial gain.

The Complainant comments that the Respondent has previously been involved in other UDRP cases and also currently holds registrations for several other domain names that misappropriate well-known trademarks, which provides evidence of the pattern of cybersquatting in which the Respondent is engaging.

Finally, the Complainant requests the transfer of the disputed domain name.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions.

## **6. Discussion and Findings**

As per paragraph 4(a) of the Policy, the Complainant must prove that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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 evidence presented demonstrates that the Complainant is the owner of the trademark registration for BAYADA and the domain name <bayada.com>.

The disputed domain name comprises the Complainant's trademark BAYADA in its entirety. The addition of the term "field" does not avoid a finding of confusing similarity between the disputed domain name and the Complainant's trademark, because BAYADA remains recognizable.

It is the general view among UDRP panels that the addition of other terms (whether descriptive, geographical, or otherwise) to a trademark in a domain name would not prevent a finding of confusing similarity under the first element of the UDRP. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")

As numerous prior UDRP panels have also recognized, the incorporation of a trademark in its entirety or a dominant feature of a trademark is sufficient to establish that a domain name is identical or confusingly similar to the complainant's mark. See section 1.7 of the [WIPO Overview 3.0](#).

The Panel finds that paragraph 4(a)(i) of the Policy has been proved by the Complainant, *i.e.*, the disputed domain name is confusingly similar to the Complainant's trademarks.

### **B. Rights or Legitimate Interests**

The Respondent has not submitted a response to the Complaint.

There is no evidence that the Respondent has any authorization to use the Complainant's trademarks or to register domain names containing the trademark BAYADA.

There is no evidence that the Respondent is commonly known by the disputed domain name.

There is no evidence that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name or that before any notice of the dispute the Respondent has made use of, or demonstrable preparations to use the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services. Moreover, the term "field" in the disputed domain name increases the confusing similarity between the disputed domain name and the Complainant's trademarks. Thus, the construction of the disputed domain name itself is such to carry a risk of implied affiliation that cannot constitute fair use. See section 2.5.1, [WIPO Overview 3.0](#).

The Panel finds that the use of the disputed domain name, which incorporates the Complainant's trademarks, does not correspond to a *bona fide* use of domain names under the Policy.

For the above reasons, the Panel finds that the condition of paragraph 4(a)(ii) of the Policy has been satisfied, *i.e.*, the Respondent has no rights or legitimate interests in the disputed domain name.

### **C. Registered and Used in Bad Faith**

The trademark BAYADA is registered by the Complainant in different jurisdictions, including the United States, and has been used since a long time. The Complainant maintains a strong Internet presence and registered the domain name <bayada.com> in 1996.

One of the ways the Complainant advertises its services is through its website, which therefore plays a very important role for the Complainant's activities. It seems unlikely that the Respondent would not have been aware of the Complainant at the time of the registration of the disputed domain name.

The disputed domain name is comprised by the trademark BAYADA and the word "field" and the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant's trademark BAYADA is distinctive and internationally known. Thus, a domain name that comprises such a mark is itself evidence of the Respondent's bad faith.

The Respondent's behavior shows a clear intent to obtain unfair commercial gain: First, the evidence indicates that the Respondent indeed registered the disputed domain name to use it for the purpose of generating click through revenue or to redirect Internet traffic to an alternative website and that is engaging in a pattern of cybersquatting. Also, the Respondent's hid its true identity using a privacy protection service and is offering the disputed domain name for sale.

Moreover, the Respondent has chosen not to respond to the cease and desist letters sent by the Complainant on April 7, 2022, April 19, 2022 and May 2, 2022, as well as the Complainant's allegations in the present Complaint. According to the panel's decision in *The Argento Wine Company Limited v. Argento Beijing Trading Company*, WIPO Case No. [D2009-0610](#): "the failure of the Respondent to respond to the Complaint further supports an inference of bad faith."

Therefore, this Panel finds that the Respondent has intentionally attempted to cause confusion with the Complainant's trademarks by misleading Internet users to believe that its website belongs to or is associated with the Complainant.

This Panel finds that the Respondent's attempt of taking undue advantage of the trademark BAYADA as described in paragraph 4(b)(iv) of the Policy has been demonstrated.

For the above reasons, the Panel finds that the condition of paragraph 4(a)(iii) of the Policy has been satisfied, *i.e.*, 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 <fieldbayada.com> be transferred to the Complainant.

*/Mario Soerensen Garcia/*

**Mario Soerensen Garcia**

Sole Panelist

Date: July 21, 2022