

ADMINISTRATIVE PANEL DECISION

Breitling SA v. Igor Yuzvak

Case No. D2022-4358

1. The Parties

The Complainant is Breitling SA, Switzerland, represented by IP Twins, France.

The Respondent is Igor Yuzvak, Canada.

2. The Domain Name and Registrar

The disputed domain name <breitlingmeta.com> (the “Disputed Domain Name”) is registered with DreamHost, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 16, 2022. On November 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On November 16, 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 (Proxy Protection LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 18, 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 November 21, 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 November 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 11, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 20, 2022.

The Center appointed Mariya Koval as the sole panelist in this matter on December 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

The Complainant, founded in 1884, is a Swiss company manufacturing high-end chronographs, watches, and related accessories. The Complainant is known for precision-made chronometers designed for aviators. With stores and distributors around the world, the Complainant has owned an international reputation as one of the best high-end luxury watchmakers worldwide.

The Complainant is the owner of numerous BREITLING trademark (the BREITLING Trademark) registrations throughout the world, among which are:

- International Trademark Registration No. 160212, registered on March 10, 1952, in respect of goods in class 14;
- International Trademark Registration No. 279322, registered on January 31, 1964, in respect of goods in class 14; and
- European Union Trademark Registration No. 0613794, registered on January 7, 1994, in respect of services in class 35;

The Complainant operates the domain name <breitling.com> reflecting its BREITLING Trademark in order to sell and promote its goods. The Complainant has also a presence on all major social media including Facebook, Instagram, Twitter, and YouTube.

The Disputed Domain Name was registered on November 20, 2021. As at the date of this decision, the Disputed Domain Name resolves to an inactive website.

5. Parties' Contentions

A. Complainant

The Complainant contends that it and its BREITLING Trademark is widely well known; a simple search on an online search engine yields results related to the Complainant.

The Complainant further contends that the Disputed Domain Name is confusingly similar to the Complainant's BREITLING Trademark in which it has established rights. The Disputed Domain Name reproduces the BREITLING Trademark in its entirety, the only difference lies in the addition of the term "meta" to the Disputed Domain Name. The Complainant submits that this minor difference is not important enough to avoid the risk of confusion between the Disputed Domain Name and its BREITLING Trademark.

The Complainant claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name in view of the following:

- the Respondent is not commonly known under the Disputed Domain Name;
- the Respondent has acquired no BREITLING Trademark;
- the Respondent reproduces the Complainant's Trademark without any license or authorization from the Complainant;
- the Respondent's use of the Disputed Domain Name or preparation to use it demonstrates no intent to use it in connection with a *bona fide* offering of goods or services. On the contrary, the Disputed

- Domain Name is not used in any way;
- the adoption and extensive use by the Complainant of its BREITLING Trademark predates the first registration of the Disputed Domain Name.

The Complainant also asserts that the Respondent has registered and is using the Disputed Domain Name in bad faith for the following reasons:

- given the high similarity of the Disputed Domain Name to the Complainant's BREITLING Trademark as well as the notoriety of the Complainant, it is clear that the Respondent knew or should have known about the Complainant and its Trademark;
- it is very likely that the Respondent chose the Disputed Domain Name because of its identity with or similarity to the BREITLING Trademark in which the Complainant has rights and legitimate interests. This was most likely done in the hope and expectation that Internet users searching for the Complainant's services would instead come across the Respondent's website;
- the Respondent does not use the Disputed Domain Name in connection with a *bona fide* offering of goods or services. Indeed, any use of the BREITLING Trademark would amount to trademark infringement and damage to the reputation of the Trademark;
- the Complainant's BREITLING Trademark registrations significantly predate the registration date of the Disputed Domain Name.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, in order for the complainant to succeed it 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; and
- (ii) the 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

The Complainant has properly asserted its rights in the BREITLING Trademark due to the long use and numerous registrations worldwide. The Panel notes that the registration of the Complainant's Trademark predates the registration of the Disputed Domain Name for almost seventy years. The Panel also finds that the Complainant has established that the BREITLING Trademark is well known.

The Disputed Domain Name completely reproduces the Complainant's BREITLING Trademark in combination with the term "meta" and the generic Top-Level Domain ("gTLD") ".com". According to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8, where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. In this case, the addition of the term "meta" to the BREITLING Trademark does not prevent a finding of confusing similarity and does not change the overall impression of the Disputed Domain Name as being confusingly similar to the Complainant's Trademark.

According to the [WIPO Overview 3.0](#), section 1.11, the applicable gTLD in a domain name (e.g., “.com”, “.club”, “.nyc”) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.

Pursuant to section 1.7 of the [WIPO Overview 3.0](#), in cases where a domain name incorporates the entirety of a trademark, the domain name will normally be considered identical or confusingly similar to that mark for purposes of UDRP standing.

Accordingly, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's Trademark pursuant to paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the overall burden of proof is on the Complainant. However, once the Complainant presents a *prima facie* case that the Respondent has no rights or legitimate interests in the Disputed Domain Name, the burden of production of evidence shifts to the Respondent, section 2.1 of the [WIPO Overview 3.0](#).

The Complainant contends that it has never authorized or licensed the Respondent to use the Complainant's BREITLING Trademark and that the Respondent has used the Complainant's Trademark without permission of the Complainant. On the other hand, the Respondent did not present any response to the Complaint. Currently, the Disputed Domain Name resolves to an inactive website.

There is no evidence that the Respondent is commonly known by the Disputed Domain Name or any similar name. Moreover, there is no evidence that the Respondent has used or made demonstrable preparations to use the Disputed Domain Name in connection with a legitimate noncommercial use.

Also, taking into consideration the long use of the Complainant's BREITLING Trademark, which also represents the Complainant's full corporate name that has been used long prior to the official registration of the Trademark, it is implausible to assume that the Respondent was unaware of the Complainant's BREITLING Trademark at the time of registration of the Disputed Domain Name and instead purposefully registered the Disputed Domain Name in an aim to mislead unsuspecting Internet users expecting to find the Complainant. In accordance with the [WIPO Overview 3.0](#), section 2.5.1, even where a domain name consists of a trademark plus an additional term (at the second- or top-level), UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner.

The website under the Disputed Domain Name is inactive from the registration date, which gives no grounds for considering the use the Disputed Domain Name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use.

The Respondent did not file any response to the Complaint and did not participate in this proceeding, respectively, the Respondent did not present any evidence for supporting any rights or legitimate interests in the Disputed Domain Name.

In view of the foregoing, the Panel finds that the Respondent lacks rights or legitimate interests in the Disputed Domain Name and that the Complainant succeeds under the second element of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy indicates some circumstances, 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:

- (i) circumstances indicating that you [respondent] have registered or you have acquired the domain

name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.

The Panel comes to the conclusion that the Disputed Domain Name was registered and is being used in bad faith in view of the following. The Complainant obtained the registration of the BREITLING Trademark almost seventy years earlier than the Respondent registered the Disputed Domain Name in 2021. Having considered that the Complainant's trademark BREITLING is globally well known and that the Complainant has spent huge amounts and efforts for promotion of its Trademark, it is highly likely that the Respondent has been very well aware of the reputation of the BREITLING Trademark when registering a confusingly similar Disputed Domain Name that completely incorporates the Complainant's Trademark and corporate name. The Panel considers it is obvious bad faith that the Respondent deliberately chose the Disputed Domain Name to create a likelihood of confusion with the Complainant's BREITLING Trademark so as to create a false association or affiliation with the Complainant.

The Panel also concludes that addition of the term "meta" to the BREITLING Trademark does not change an impression of strong association of the Disputed Domain Name with the Complainant's BREITLING Trademark.

According to section 3.1.4 of the [WIPO Overview 3.0](#), UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. The Panel is of the opinion that it is clear that the Respondent, having registered and used the Disputed Domain Name, which is confusingly similar to the Complainant's well-known BREITLING Trademark, intended to disrupt the Complainant's business and confuse Internet users seeking for or expecting the Complainant. In view of the absence of any evidence to the contrary and that the Respondent did not file any response to claim otherwise, the Panel concludes that the Respondent has registered and is using the Disputed Domain Name in bad faith.

Also, the Panel notes that the Disputed Domain Name is currently inactive. However, according to section 3.3 of the [WIPO Overview 3.0](#) it is well established that the lack of use of a disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding. Having considered the reputation of the Complainant's BREITLING Trademark and the failure of the Respondent to submit a response or to provide any evidence of *bona fide* use, the Panel finds the Respondent's bad faith use of the Disputed Domain Name.

Finally, the Respondent, not participating in these proceedings, has failed to indicate any facts and/or evidence, which would show the good faith registration and use of the Disputed Domain Name. Moreover, the Respondent masked its identity in the publicly-available WhoIs via the use of a privacy service, which under the circumstances of this proceeding is a further inference of bad faith.

In view of the foregoing, the Panel finds that the paragraph 4(a)(iii) of the Policy has been satisfied by the Complainant and accordingly, 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, <breitlingmeta.com>, be transferred to the Complainant.

/Mariya Koval/

Mariya Koval

Sole Panelist

Date: January 6, 2023