

ADMINISTRATIVE PANEL DECISION

Bega Cheese Limited v. admin
Case No. D2023-0619

1. The Parties

The Complainant is Bega Cheese Limited, Australia, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is admin, Republic of Korea.

2. The Domain Name and Registrar

The disputed domain name <begacheese.com> is registered with Gabia, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 10, 2023. On February 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 13, 2023, 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 (Hyunmi Lee) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 20, 2023, 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 February 21, 2023.

On February 20, 2023, the Center notified the Parties in both English and Korean that the language of the registration agreement for the disputed domain name is Korean. On February 20, 2023, the Respondent requested for Korean to be the language of the proceeding. On February 21, 2023, the Complainant requested for English to be the language of the proceeding.

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 February 28, 2023. In accordance with the Rules,

paragraph 5, the due date for Response was March 20, 2023. The Respondent did not submit a formal response. On March 21, 2023, the Center informed the parties of Commencement of Panel Appointment Process.

The Center appointed Kathryn Lee as the sole panelist in this matter on March 29, 2023. 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 an Australian producer of cheese and other food products. The Complainant's origins date back to the establishment of the Bega Co-operative Creamery Company in 1899, uniting different farmers producing and selling dairy products across the Bega Valley region of Australia. The Complainant's own original factory was opened in 1900. It now sells over 1 million packs of cheese per day that are sold under the trademark BEGA. The Complainant owns trademark registrations to BEGA in a number of jurisdictions including Australian Trademark Reg. No. 726984 (registered on October 10, 1997), International Trademark Reg. No. 1287380 (registered on September 23, 2015), and Korean Trademark Reg. No. 40-03056760000 (registered on January 13, 1995). The Complainant has around 2,000 employees and its revenues were AUD 3.01 billion in 2022. Its official website is at domain name <begacheese.com.au> registered in February 2007.

The Respondent appears to be an individual or company with an address in the Republic of Korea.

The disputed domain name was registered on August 13, 2022, and is connected to a website with pay-per-click links.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the BEGA trademark in which the Complainant has rights. The Complainant explains that the disputed domain name incorporates the Complainant's trademark as a whole, and that the generic, descriptive term "cheese" makes the disputed domain name even more confusingly similar to the disputed domain name due to the close association with the Complainant's trademark.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain name and confirms that it has not authorized or licensed rights to the Respondent in any respect. The Complainant further contends that there is no evidence of the Respondent's 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. The Complainant states that the Respondent's use of the disputed domain name to display pay-per-click links, some of which are for competing businesses of the Complainant, is not a *bona fide* offering of goods or services that give rise to rights or legitimate interests in the disputed domain name.

Finally, the Complainant contends that the disputed domain name was registered and is used in bad faith. The Complainant contends that the disputed domain name was registered in bad faith since the Complainant is known internationally and has used the BEGA trademark since 1900, well before the Respondent's registration of the disputed domain name. The Complainant argues that the Respondent knew, or should have known, of the Complainant's trademark, and that the Respondent's registration of the disputed domain name shows intent to cause confusion among Internet users as to the source of the disputed domain name. The Complainant also asserts that the Respondent's email address is associated with other domain names that include famous trademarks, and that this shows the Respondent is engaging in a pattern of bad faith

registrations and use. Lastly, the Complainant argues that the Respondent's offer to sell the disputed domain name constitutes bad faith as the Respondent seeks to profit unfairly by selling it for a profit.

B. Respondent

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

6. Discussion and Findings

A. Language

Paragraph 11(a) of the Rules provides that the language of the proceeding shall be the language of the registration agreement, unless otherwise agreed to by the parties, subject to the authority of the panel to determine otherwise. In this case, the language of the Registration Agreement is Korean, and both Parties have had an opportunity to argue their position on this point. The Center issued a notice in Korean and English stating that it would accept the Complaint filed in English, and that the Response would be accepted in either Korean or English. The Respondent subsequently chose not to submit any response.

The Panel finds it proper and fair to render this decision in English. The disputed domain name is composed of Latin characters and the webpage to which the disputed domain name resolves displays links and an offer for sale of the disputed domain name in English. Besides, both Parties were given the opportunity to submit arguments in the language of their preference, and the language in which to render the decision is reserved for the Panel. The Panel would have considered a Response in Korean, but no Response was submitted. Accordingly, the Panel determines that rendering the decision in English is fair and procedurally efficient given the circumstances of this case.

B. Identical or Confusingly Similar

The Complainant has demonstrated with supporting evidence that it has rights to the trademark BEGA. As for the disputed domain name, it consists of "bega" combined with the term "cheese". According to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7, a domain name is considered confusingly similar to a trademark if it "incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name". In this regard, the Complainant's mark is readily recognizable within the disputed domain name, and therefore, the disputed domain name is confusingly similar to the Complainant trademark. The additional term "cheese" does not prevent a finding of confusing similarity (see [WIPO Overview 3.0](#), section 1.8).

For the reasons mentioned above, the Panel finds that the first element has been established.

C. Rights or Legitimate Interests

On the basis of the present record, the Panel finds that the Complainant has made the required allegations to support a *prima facie* case showing that the Respondent has no rights or legitimate interests in the disputed domain name. Once such a *prima facie* case has been established, the burden of production shifts to the Respondent to demonstrate its rights or legitimate interests in the disputed domain name, with the burden of proof always remaining with the Complainant. However, the Respondent in this case has chosen to file no Response to these assertions by the Complainant, and there is no evidence or allegation in the record that would warrant a finding in favor of the Respondent on this point.

Besides, a respondent's use of a domain name is not considered "fair" if it falsely suggests affiliation with the trademark owner. See [WIPO Overview 3.0](#), section 2.5.1. Here, the dominant element of the disputed domain name corresponds exactly to the Complainant's trademark, and the additional term "cheese" is the very product that the Complainant produces, and carries a risk of implied affiliation.

For the reasons provided above, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name, and that the second element has been established.

D. Registered and Used in Bad Faith

The Panel finds that there is sufficient evidence to find bad faith in this case.

Section 3.1 of the [WIPO Overview 3.0](#) provides that bad faith under the UDRP is “broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark”. Here, evidence suggests that the Respondent likely knew of the Complainant when registering the disputed domain name. First of all, the Panel finds that “bega” is a distinctive term, and the Respondent has given no explanation for having registered a domain name containing this particular term, especially with the term “cheese” which is the main product of the Complainant. Further, information on the Complainant and its trademark would have been easily discoverable through an Internet search.

Therefore, with no explanation to the contrary from the Respondent, the Panel finds that the Respondent more likely than not registered the disputed domain name with knowledge of the Complainant and its trademark in order to unfairly profit from the likelihood of association with the Complainant’s trademark and the products using the trademark.

Also, by linking the disputed domain name with a parking page displaying pay-per-click links to food and dairy products that are the very goods of the Complainant, the Respondent created a likelihood of confusion and likely benefited commercially from the confusion of Internet users that visited the site by mistake as per paragraph 4(b)(iv) of the Policy.

For the reasons given above, the Panel finds that the third element has been established.

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, <begacheese.com>, be transferred to the Complainant.

/Kathryn Lee/

Kathryn Lee

Sole Panelist

Date: April 25, 2023