

ADMINISTRATIVE PANEL DECISION

Bryte Insurance Company Limited v. Tandezile Nzalo, Mint Finance
Case No. D2023-2318

1. The Parties

The Complainant is Bryte Insurance Company Limited, South Africa, represented by Adams & Adams Attorneys, South Africa.

The Respondent is Tandezile Nzalo, Mint Finance, South Africa.

2. The Domain Names and Registrars

The disputed domain name <bryteadvisory.com> is registered with Tucows Inc. (the “First Registrar”).

The disputed domain name <brytt.org> is registered with Wild West Domains, LLC (the “Second Registrar”).

The disputed domain names will be referred to jointly as the “Domain Names”.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 29, 2023. On May 30, 2023, the Center transmitted by email to the Registrars a request for registrar verification in connection with the Domain Names. On May 30, 2023, the Registrars transmitted by email to the Center their verification responses disclosing registrant and contact information for the Domain Names which differed from the named Respondent (Brytt & Company) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 1, 2023, providing the registrant and contact information disclosed by the Registrars, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on June 2, 2023.

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 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 29, 2023. The Center informed the Parties of its commencement of Panel appointment process on July 3, 2023.

The Center appointed Jeremy Speres as the sole panelist in this matter on July 6, 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 a South African commercial risk specialist, offering a variety of insurance risk management solutions and related financial and advisory services. With a history dating back to 1849, the Complainant adopted the BRYTE brand in 2017 when its then predecessor in title, Zurich South Africa, was bought by Fairfax Financial Holdings, a Canadian international insurance group.

The Complainant owns numerous trade mark registrations for its BRYTE mark in Africa, including South African trade mark registration no. 2016/33569 BRYTE in class 36 with registration date December 13, 2018.

The disputed domain name <bryteadvisory.com> was registered on October 13, 2019, and currently resolves to a website stating that the domain name is not connected to a website yet. The disputed domain name <brytt.org> was registered on October 12, 2022, and currently resolves to a website headed “Brytt & Company”, ostensibly for a business that offers accounting and advisory, enterprise development, auditing, assurance, risk management, and corporate governance consulting services in South Africa.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the Domain Names are confusingly similar to its well known BRYTE mark, that the Respondent has no rights or legitimate interests in the Domain Names, and the Domain Names were registered and used in bad faith given that the Respondent intentionally acquired the Domain Names to take unfair advantage of the substantial goodwill in the Complainant’s mark.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant’s registered BRYTE mark is wholly contained within the disputed domain name <bryteadvisory.com> as its first element. Where a domain name incorporates the entirety of a trade mark, the domain name will normally be considered confusingly similar to that mark (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)) at section 1.7). The disputed domain name <brytt.org> is aurally identical to the Complainant’s mark, at least on the most likely pronunciation, and visually the two differ by only one letter (the last one), thus the Complainant’s mark remains recognisable within that disputed domain name. The Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

UDRP panelists may take judicial notice of the repute of a trade mark within their personal knowledge where it cannot reasonably be contested (see section 4.8 of the [WIPO Overview 3.0](#); and *Société des Produits Nestlé S.A. v. Sonia de Ferrero*, WIPO Case No. [D2016-1300](#)). The Panel, having been a resident of South Africa (the Respondent’s country) for many years prior to registration of the Domain Names, takes judicial

notice of the repute of the Complainant's BRYTE mark in South Africa predating the registration date of the Domain Names.

The Complainant's BRYTE mark was registered and well known in the Respondent's country prior to registration of the Domain Names. The Domain Names are confusingly similar to the Complainant's mark and the Complainant has certified that the Domain Names are unauthorised by it.

As per the discussion below in relation to bad faith, it is likely that the Respondent sought to capitalise on the repute of the Complainant's BRYTE mark when it sought to register domain names confusingly similar to the Complainant's well known mark, and to use those domain names in relation to services closely connected with and, in part, identical to those offered by the Complainant. The fact that the Respondent has not sought to defend the Domain Names in circumstances where it could reasonably be expected to if it had rights or legitimate interests in them is telling.

The Respondent's registration and usage of the Domain Names to take advantage of the Complainant's trade mark plainly cannot represent a *bona fide* offering of goods or services and cannot confer rights or legitimate interests under the Policy (*Sistema de Ensino Poliedro Vestibulares Ltda., Editora Poliedro Ltda. v. Anonymize, Inc. / STANLEY PACE*, WIPO Case No. [D2022-1981](#)). The Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Complainant's attorneys first addressed cease and desist correspondence to the Respondent in 2021 when it came to the Complainant's attention that the Respondent was offering financial and advisory, risk management, internal audit and corporate governance services under the BRYTE mark, and was using the disputed domain name <bryteadvisory.com>, which wholly incorporated the Complainant's mark, for email purposes for the same services. Subsequently, the Respondent appeared to change its mark to "brytt", and began using the disputed domain name <brytt.org>, in addition to the disputed domain name <bryteadvisory.com>, for the same services. The Complainant again addressed cease and desist correspondence to the Respondent, pointing out that the term "brytt" likewise infringed its BRYTE rights. No response was received from the Respondent. Previous UDRP panels have held that failure to respond to a cease and desist letter may properly be considered a factor in finding bad faith registration and use of a domain name. See *Encyclopedia Britannica v. John Zuccarini and The Cupcake Patrol a/ka Country Walk a/k/a Cupcake Party*, WIPO Case No. [D2000-0330](#).

When the Respondent registered the disputed domain name <bryteadvisory.com>, it is inconceivable that the Respondent was not aware of the Complainant's BRYTE mark, which was well known in the Respondent's own country at the time, wholly incorporated within that domain name, and used for services that are closely related and identical, in part, to those for which the Respondent ultimately used that domain name. In the circumstances, it is likely that the Respondent adopted the BRYTE mark, in competition to the Complainant, in order to capitalise on the Complainant's reputation.

When the Respondent subsequently registered the disputed domain name <brytt.org> in 2022 it had long been in receipt of the Complainant's objections and was, as a result, well aware of the Complainant's rights and the harm that was likely to befall the Complainant through use of a domain name and mark that was virtually identical to the Complainant's well known mark in the same market. The Respondent nevertheless persisted in using that disputed domain name for competing services.

UDRP panels have consistently found that registration of a domain name that is confusingly similar to a well known trade mark by an unaffiliated entity can by itself create a presumption of bad faith ([WIPO Overview 3.0](#) at section 3.1.4). The Respondent has failed to rebut this presumption, and the Panel draws an adverse inference from the Respondent's failure to take part in the present proceeding where an explanation is certainly called for ([WIPO Overview 3.0](#) at section 4.3).

The Complainant has satisfied paragraph 4(a)(iii) 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 Domain Names, <bryteadvisory.com> and <brytt.org>, be transferred to the Complainant.

/Jeremy Speres/

Jeremy Speres

Sole Panelist

Date: July 20, 2023