

ADMINISTRATIVE PANEL DECISION

Breitling SA v. Carolina Rodrigues, Fundacion Comercio Electronico
Case No. D2023-2424

1. The Parties

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

The Respondent is Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

2. The Domain Names and Registrar

The disputed domain names <breiteling.com> and <breitlling.com> (the “Disputed Domain Names”) are registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 5, 2023. On June 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On June 5, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Names which differed from the named Respondent (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 6, 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 June 6, 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 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 28, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 30, 2023.

The Center appointed Lynda M. Braun as the sole panelist in this matter on July 7, 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, a Swiss company founded in 1884, manufactures high-end chronographs, watches and related accessories. With stores and distributors on all continents, the Complainant has earned a reputation worldwide as a high-end luxury watchmaker.

The Complainant owns the following trademarks, including, but not limited to: BREITLING (device), International Trademark Registration No. 0160212, registered on March 10, 1952, in international class 14; and BREITLING (device) International Trademark Registration No. 0279322, registered on January 31, 1964, in international class 14. The Complainant owns dozens of additional registered trademarks in multiple jurisdictions worldwide.

The aforementioned trademarks will hereinafter collectively be referred to as the “BREITLING Mark”.

In addition, the Complainant owns the domain name <breitling.com>, which resolves to the Complainant's official website at “www.breitling.com” and which markets and promotes the goods and services the Complainant provides.

The Disputed Domain Names were registered on April 4, 2023, and initially resolved to pay-per-click (“PPC”) landing pages on which they hosted third-party sponsored hyperlinks from which the Respondent presumably collected revenue for each click.¹

5. Parties' Contentions

A. Complainant

The following are the Complainant's contentions:

- the Disputed Domain Names are confusingly similar to the Complainant's BREITLING Mark;
- the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names;
- the Disputed Domain Names were registered and are being used in bad faith; and
- the Complainant seeks the transfer of the Disputed Domain Names from the Respondent to the Complainant in accordance with paragraph 4(i) of the Policy.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy requires that the Complainant prove the following three elements in order to prevail in this proceeding:

- (i) the Disputed Domain Names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

¹ As of the writing of this decision, however, the disputed domain names resolve to different websites each time the disputed domain names are searched, some to dangerous scam pages, some to error landing pages which require a security check, and others back to various PPC landing pages.

- (ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names; and
- (iii) the Disputed Domain Names were registered and are being used in bad faith.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a two-fold inquiry: a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to that trademark. The Panel concludes that in the present case, the Disputed Domain Names are confusingly similar to the BREITLING Mark.

It is uncontroverted that the Complainant has established rights in the BREITLING Mark based on its years of use as well as its numerous registered trademarks for the BREITLING Mark in jurisdictions worldwide. The registration of a mark satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. As stated in section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), "[w]here the complainant holds a nationally or regionally registered trademark or service mark, this *prima facie* satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case". Thus, the Panel finds that the Complainant satisfied the threshold requirement of having rights in the BREITLING Mark.

The Disputed Domain Names consist of the BREITLING Mark in its entirety, although the <breiteling.com> Disputed Domain Name is misspelled by adding the letter "e" between the "t" and "i" in "breiteling", and the <breitlling.com> Disputed Domain Name is misspelled by repeating one letter – the second letter "l" in "breitlling". Such minor modifications to a trademark are commonly referred to as "typosquatting" and seek to wrongfully take advantage of errors by a user in typing a domain name into a web browser.

The misspelling of the Disputed Domain Names does not prevent a finding of confusing similarity to the BREITLING Mark. See [WIPO Overview 3.0](#), section 1.9 ("A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element"); see also *Silversea Cruises, Ltd. v. Whois Agent, Domain Protection Services, Inc. / Domain Vault, Domain Vault LLC*, WIPO Case No. [D2018-2306](#) ("The Domain Name [silverseas.com] is virtually identical to the SILVERSEA trademark but for the addition of the letter 's' creating a plural version of the SILVERSEA trademark. The addition of the letter 's' does not distinguish the Domain Name from the SILVERSEA trademark and is a common form of typosquatting").

The "breiteling" and "breitlling" portions of the Disputed Domain Names are followed by the generic Top-Level Domain ("gTLD") ".com". The addition of a gTLD such as ".com" in a domain name is a technical requirement. Thus, it is well established that such element may typically be disregarded when assessing whether a domain name is identical or confusingly similar to a trademark. See *Proactiva Medio Ambiente, S.A. v. Proactiva*, WIPO Case No. [D2012-0182](#) and [WIPO Overview 3.0](#), section 1.11.1. Thus, the Panel concludes that the Disputed Domain Names are confusingly similar to the Complainant's BREITLING Mark.

Accordingly, the Panel finds that the first element of paragraph 4(a) of the Policy has been met by the Complainant.

B. Rights or Legitimate Interests

Under the Policy, a complainant has to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such a *prima facie* case is made, the respondent carries the burden of production of evidence that demonstrates rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant may be deemed to have satisfied paragraph 4(a)(ii) of the Policy. See [WIPO Overview 3.0](#), section 2.1.

There is no evidence in the record suggesting that the Respondent has rights or legitimate interests in the Disputed Domain Names. The Complainant has not authorized, licensed, or otherwise permitted the

Respondent to use the Complainant's BREITLING Mark. There is also no evidence that the Respondent is commonly known by the Disputed Domain Names or by any similar names.

Further, the Complainant does not have any business relationship with the Respondent and based on the use made of the Disputed Domain Names to resolve to websites that contain PPC links, the Panel finds that the Respondent was not making a *bona fide* offering of goods or services nor making a legitimate noncommercial or fair use of the Disputed Domain Names. Applying the principles under paragraph 4(c) of the Policy, panels have found that the use of a domain name to host a parked page comprised of PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of a complainant's mark or otherwise mislead Internet users. See [WIPO Overview 3.0](#), section 2.9. In this instance, the Disputed Domain Names resolved to PPC landing pages with hyperlinks that capitalized on the goodwill of the BREITLING Mark. The Respondent purportedly used the PPC hyperlinks to monetize the links when Internet users visiting the Disputed Domain Names clicked on the sponsored links. Therefore, the Panel finds that nothing on the record before it would support a finding that the Respondent has any rights or legitimate interests in the Disputed Domain Names.²

In sum, the Panel finds that the Complainant has established an un rebutted *prima facie* case that the Respondent lacks rights or legitimate interests in the Disputed Domain Names.

Accordingly, the Panel finds that the second element of paragraph 4(a) of the Policy has been met by the Complainant.

C. Registered and Used in Bad Faith

The Panel finds that, based on the record, the Complainant has demonstrated the existence of the Respondent's bad faith pursuant to paragraph 4(b) of the Policy as set forth below.

First, based on the circumstances here, the Panel concludes that the Respondent registered and is using the Disputed Domain Names in bad faith in an attempt to attract Internet users to the Respondent's websites by creating a likelihood of confusion with the Complainant's BREITLING Mark as to the source, sponsorship, affiliation or endorsement of the Disputed Domain Names' resolving webpages. The Respondent's registration and use of the Disputed Domain Names indicate that such registration and use had been done for the specific purpose of trading on the name and reputation of the Complainant and its BREITLING Mark. See *Madonna Ciccone, p/k/a Madonna v. Dan Parisi and "Madonna.com"*, WIPO Case No. [D2000-0847](#) ("[t]he only plausible explanation for Respondent's actions appears to be an intentional effort to trade upon the fame of Complainant's name and mark for commercial gain").

Second, the Panel concludes that the Respondent knew about the Complainant's rights in the BREITLING Mark when it registered the Disputed Domain Names, since it added the letter "e" to "breiteling and the letter "l" to "breitlling" to misdirect users from the Complainant's website to the Respondent's websites by capitalizing on typing mistakes made by users. See *Nutricia International BV v. Eric Starling*, WIPO Case No. [D2015-0773](#). Moreover, it appears the Respondent was thus intentionally capitalizing on potential customer confusion. Considering the circumstances in this case, it is implausible that the Respondent would have been unaware of the Complainant's BREITLING Mark at the time the Respondent registered the Disputed Domain Names. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

Third, the Respondent displayed third-party PPC links on the landing pages to which the Disputed Domain Names resolved. The use of a confusingly similar domain name to display third-party sponsored hyperlinks and allegedly collect click-through fees is evidence of bad faith under paragraph 4(b)(iv) of the Policy. As such, the Respondent was trading on consumer interest in the Complainant and its BREITLING Mark to generate Internet traffic and to commercially benefit from the referral fees associated with the links that appeared on the landing pages. In the Panel's view, this constitutes bad faith. See *Fox News Network, LLC*

² This is true even when the Disputed Domain Names resolved to dangerous scam or landing error pages.

v. Warren Reid, WIPO Case No. [D2002-1085](#); *Volvo Trademark Holding AB v. Unasi, Inc.*, WIPO Case No. [D2005-0556](#); *Lewis Black v. Burke Advertising, LLC*, WIPO Case No. [D2006-1128](#). The Panel may thus reasonably infer that the Respondent was redirecting traffic to these third-party websites in exchange for a fee. See *Pfizer Inc. v. lipidor.com DNS Services*, WIPO Case No. [D2003-1099](#) (drawing “reasonable inference” that respondent was redirecting traffic in exchange for fee). Further, even if such links were automatically generated or the Respondent itself was not directly profiting (but rather a third party was profiting), the Respondent cannot disclaim responsibility for content appearing on the websites associated with the Disputed Domain Names (nor would such links *ipso facto* vest the Respondent with rights or legitimate interests). See [WIPO Overview 3.0](#), section 3.5.

Finally, the Respondent has engaged in a longstanding pattern of cybersquatting, having been involved in hundreds of other UDRP cases involving abusive domain name registration, and in which the disputed domain names were ordered to be transferred to the complainants in those cases. Thus, the Panel concludes that the Respondent in this case has engaged in a bad faith pattern of cybersquatting since the Respondent registered domain names corresponding to the registered trademarks of third-party brand owners. See [WIPO Overview 3.0](#), section 3.1.2.

Accordingly, the Panel finds that the third element of paragraph 4(a) of the Policy has been met by the Complainant.

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 Names <breiteling.com> and <breitlling.com> be transferred to the Complainant.

/Lynda M. Braun/

Lynda M. Braun

Sole Panelist

Date: July 19, 2023