

## **ADMINISTRATIVE PANEL DECISION**

BEL v. Milen Radumilo

Case No. D2024-0437

### **1. The Parties**

The Complainant is BEL, France, represented by DBK Law Firm, France.

The Respondent is Milen Radumilo, Romania.

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

The disputed domain name <avacaquericollection.com> is registered with DropCatch.com LLC (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 30, 2024. On January 31, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 31, 2024, 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 (Redacted for Privacy, NameBrightPrivacy.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 1, 2024, 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 2, 2024.

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 7, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 27, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 29, 2024.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on March 7, 2024. 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 company headquartered in France. It was founded in 1865. The Complainant's business is particularly focused on the production and marketing of processed cheese.

In the furtherance of this business, the Complainant has subsidiaries established in 30 different countries around the world and, according to the Complaint, has registered trademarks in more than 120 countries.

One of the Complainant's brands is "A VACA QUE RI", which translates from Portuguese into English as "the laughing cow".

Amongst other things, the Complainant secured the domain name <avacaqueri.com> in 1999. When the Panel entered this domain name into a browser for the purposes of preparing this decision, the domain name diverted to the Complainant's website at "www.group-bel.com". As it happened, the landing page featured a headline "The Laughing Cow® Official Supplier of the Tour De France ....". The right hand side of the screen featured a backdrop with an alternating pattern of the Tour de France logo and the Complainant's "Laughing Cow" image (see below) under the phrase "La Vache qui rit" – which the Panel understands to be French for "the laughing cow".

The Complaint includes evidence that the Complainant owns two registered trademarks for A VACA QUE RI:

- (a) Portuguese Registered Trademark No 298621, which was registered on March 8, 1994 in respect of various products in International Class 29 including cheese and other dairy products; and
- (b) Mozambique Registered Trademark No 020367, which was registered on April 20, 2012.

The Complainant also owns International Registration No. 716596 for the following figurative mark:



The International Registration was registered on July 16, 1999, based on a French registration and designated Mozambique.

The disputed domain name was registered on December 15, 2023.

(This was shortly after the Complainant obtained an order on October 19, 2023, that the Respondent transfer the domain name <passatempoavacaqueri.com> to the Complainant: *Bel v. Milen Radumilo* WIPO Case No. [D2023-3691](#).)

Initially, the disputed domain name resolved to a parking page with pay-per-click ("PPC") advertising links. At some point, possibly after the Complainant's representatives sent a cease and desist letter, the disputed domain name ceased to resolve to the original parking page at least when accessed from the location of the Complainant's representatives. (From the Panel's location, the disputed domain name still resolves to a parking page with PPC advertising links.) As stated in the Complaint, an MX record for the disputed domain name is still active.

## 5. Discussion and Findings

No response has been filed. The Complaint amended Complaint and Written Notice have been sent, however, to the Respondent at the electronic and physical coordinates confirmed as correct by the Registrar in accordance with paragraph 2(a) of the Rules. Bearing in mind the duty of the holder of a domain name to provide and keep up to date correct Whois details, therefore, the Panel finds that the Respondent has been given a fair opportunity to present his or her case.

When a respondent has defaulted, paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint in the absence of exceptional circumstances. Accordingly, paragraph 15(a) of the Rules requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable.

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (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 first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

For present purposes, it is sufficient to record that the Complainant has proven ownership of the two registered word marks for A VACA QUE RI.

The second stage of this inquiry simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of "likelihood of confusion" under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties, the date they were acquired and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See e.g., [WIPO Overview 3.0](#), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top Level Domain ("gTLD") component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

Disregarding the ".com" gTLD, the disputed domain name consists of the Complainant's registered trademark and the term "collection". As this requirement under the Policy is essentially a standing requirement, the addition of this term does not preclude a finding of confusing similarity.

See e.g., [WIPO Overview 3.0](#), section 1.8. Apart from anything else, the Complainant's trademark remains visually and aurally recognisable within the disputed domain name.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is confusingly similar to the Complainant's trademark and the requirement under the first limb of the Policy is satisfied.

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

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides a list of circumstances in which a Respondent may demonstrate that it has rights or legitimate interests in a disputed domain name. These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

The Respondent registered the disputed domain name well after the Complainant had registered its trademark.

The Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it.

The disputed domain name is not derived from the Respondent's name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived. From the available record, the Respondent does not appear to hold any trademarks for the disputed domain name.

While the use of a domain name in connection with a site providing PPC advertising links is not necessarily contrary to the Policy, it does preclude a finding of legitimate noncommercial or fair use. In the circumstances of this case, the Panel also considers it does not qualify as a good faith offering of goods or services.

Bearing in mind that the additional term "collection" is an ordinary dictionary word and has similar connotations to other descriptive terms such as "store" and "shop", the disputed domain name carries a very high risk of implied affiliation with the Complainant as the Complainant's trademark is clearly recognisable within the disputed domain name and provides its distinctive feature.

Further, (perhaps unsurprisingly) the disputed domain name is not descriptive of the goods or services being advertised by the PPC advertising links.

Yet further, the Respondent appears to be located in Romania and is not obviously associated with a Portuguese-speaking background.

Test further still, the Respondent's prior registration and use of the domain name <passatempoavacari.com> in connection with a website which alternated between pornographic materials and PPC advertising links provides a strong inference that in registering the disputed domain name the Respondent is targeting the Complainant's trademark.

In these circumstances, the Panel finds that the Respondent is not making a good faith offering of goods or services.

These matters, taken together, are sufficient to establish a prima facie case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain name. The basis on which the Respondent has adopted the disputed domain name, therefore, calls for explanation or justification. The Respondent, however, has not sought to rebut that prima facie case or advance any claimed entitlement.

Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

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

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g. *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd*, WIPO Case No. [D2010-0470](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

Plainly, having been ordered to transfer the domain name <passatempoavacaqueri.com> to the Complainant in October 2023 (*Bel v. Milen Radumilo*, WIPO Case No. [D2023-3691](#)), the Respondent was aware of the Complainant's trademark when the Respondent registered the disputed domain name in December 2023.

The reasons leading to the finding that the Respondent does not have rights or legitimate interests in the disputed domain name, therefore, also lead to conclusions that the Respondent registered and has been using the disputed domain name intentionally to attract users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark (paragraph 4(b)(iv) of the Policy) or is otherwise seeking to disrupt the Complainant's business (paragraph 4(b)(iii) of the Policy).

The conclusion that the Respondent has registered and is using the disputed domain name in bad faith is reinforced by the evidence included in the Complaint that, prior to this proceeding, the Respondent has been found to have registered and used a domain name in bad faith in some 210 previous decisions. One of those cases of course being the case involving the Complainant, *Bel v. Milen Radumilo*, WIPO Case No. [D2023-3691](#).

Accordingly, the Complainant has established all three requirements under the Policy.

## **6. 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 <avacaquericollection.com> be transferred to the Complainant.

*/Warwick A. Rothnie/*  
**Warwick A. Rothnie**  
Sole Panelist  
Date: March 25, 2024