

ADMINISTRATIVE PANEL DECISION

Betterup, Inc. v. Name Redacted
Case No. D2023-0453

1. The Parties

Complainant is Betterup, Inc., United States of America (“United States”), represented by Gilbride, Tusa, Last & Spellane LLC, United States.

Respondent is Name Redacted¹, United States.

2. The Domain Name and Registrar

The disputed domain name <betterup.careers> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 31, 2023. On February 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 1, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Withheld for Privacy) and contact information in the Complaint. The Center sent an email to Complainant on February 2, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on February 9, 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”).

¹ As discussed in the decision below, in light of potential identity theft, the Panel has redacted Respondent’s name from the decision. However, the Panel has attached as Annex 1 to this decision an instruction to the corresponding Registrar regarding transfer of the disputed domain name, which includes the name of Respondent. The Panel has authorized the Center to transmit Annex 1 to the corresponding Registrar as part of the order in this proceeding, and has indicated that Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on February 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 1, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on March 2, 2023.

The Center appointed Robert A. Badgley as the sole panelist in this matter on March 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

Complainant describes itself as "the inventor and global leader of professional digital coaching services, promoting mental wellness, life skills, professional skills coaching, mentoring, and related educational services."

Complainant holds various trademark registrations in the United States and the European Union for BETTERUP, including United States Patent and Trademark Office Reg. No. 5,788,037, registered on June 25, 2019 in connection with "Mobile software application for getting feedback from their peers in the field of professional skills development and performance," with a May 16, 2017 date of first use in commerce.

Complainant operates a commercial website at the domain name <betterup.com>.

The Domain Name was registered on August 6, 2022. The Domain Name has never resolved to a website. According to Complainant, Respondent has used the Domain Name to create an email address with the term "jobs" (...@betterup.careers) which impersonates an actual Complainant employee for purposes of perpetrating a scam on people who are interested in a career with Complainant. For example, Complainant asserts, and supports with a sworn affidavit and exhibits:

"At least one person has been 'successfully' victimized by Respondent. (...) Ms. [RK] apparently lost more than USD 11,000, and has lodged a complaint with the Better Business Bureau in California. (...) Respondent apparently convinces the victim that they have been hired by BetterUp, and then asks the victim to forward funds in order to make purchases further to the onboarding process. Those funds, of course, are never reimbursed and the 'hiring' is entirely fictitious."

Complainant has provided evidence of other people who received an email from the [...]@betterup.careers email address.

Respondent has not come forward to deny any of the foregoing allegations.

5. Parties' Contentions

A. Complainant

Complainant contends that it has established all three elements required under the Policy for a transfer of the Domain Name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel concludes that Complainant has rights in the trademark BETTERUP through registration and use demonstrated in the record. The Panel also concludes that the Domain Name is identical to that mark.

Complainant has established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel concludes that Respondent lacks rights or legitimate interests in connection with the Domain Name. The undisputed record shows that Respondent registered a Domain Name identical to Complainant's BETTERUP mark and Complainant's <betterup.com> domain name, and that Respondent sent fraudulent emails to prospective job applicants seeking a career with Complainant. At least one such prospective applicant lost USD 11,000 after being defrauded by Respondent.

In short, the undisputed record depicts Respondent's motives and conduct vis-à-vis the Domain Name as entirely fraudulent in nature. Obviously, Respondent lacks rights or legitimate interests in the Domain Name.

Complainant has established Policy paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation," are evidence of the registration and use of the Domain Name in "bad faith":

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or

- (ii) that Respondent has 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 Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that Respondent registered and used the Domain Name in bad faith under the Policy. The Panel incorporates its discussion above in the "Rights or Legitimate Interests" section. Respondent clearly had Complainant's mark in mind when registering the Domain Name, as is clear from the use to which Respondent put the Domain Name (setting up a fake email using the name of an actual Complainant employee to defraud people seeking a job with Complainant).

On this record, the Panel finds that Respondent has registered and used the Domain Name in bad faith within the meaning of the above-quoted Policy paragraph 4(b)(iv).

Complainant has established Policy paragraph 4(a)(iii).

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 Name <betterup.careers> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: March 13, 2023