

ADMINISTRATIVE PANEL DECISION

Bombas LLC v. Davi Newman

Case No. D2022-0270

1. The Parties

The Complainant is Bombas LLC, United States of America (“United States”), represented by Frankfurt Kurnit Klein & Selz, PC, United States.

The Respondent is Davi Newman, United States of America.

2. The Domain Name and Registrar

The disputed domain name <bombasstores.com> is registered with 1API GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 26, 2022. On January 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 28, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on February 2, 2022, 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 3, 2022.

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 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 24, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 1, 2022.

The Center appointed Kathryn Lee as the sole panelist in this matter on March 3, 2022. 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 United States apparel manufacturer and retailer which has used the trademark BOMBAS on socks and other clothing since 2013. It is particularly well-known for its superior quality socks and core mission of helping the homeless; the Complainant donates a pair of socks or other clothing item for every pair of socks or clothing item purchased by a customer, and through this model, the Complainant has donated more than 50 million socks and other clothing items. The Complainant has been prominently featured in national and regional advertising and promotional campaigns, and in 2020, it spent tens of million dollars in sales and marketing and had revenues in excess of this amount. The company and its business model have been featured in various publications and news media, including The New York Times, Fast Company, CNN, Business Insider, and the Daily Mail.

The Complainant owns trademark registrations for the BOMBAS mark in several jurisdictions including the following in the United States: the BOMBAS text mark registered in Class 25 on March 4, 2014 (Registration Number 4,492,577) and in Class 10 on March 24, 2020 (Registration Number 6,020,322), and the BOMBAS and design mark registered in Class 25 on December 19, 2017 (Registration Number 5,359,406).

The Complainant has owned and used the domain name <bombas.com> as its official website since July 2, 2014.

The Respondent appears to be an individual with an address in the United States.

The disputed domain name was registered on December 29, 2021, and resolves to a website claiming to be a website of the Complainant and advertising BOMBAS branded goods for sale.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the BOMBAS trademark in which the Complainant has rights. The disputed domain name incorporates the BOMBAS trademark in its entirety, and the other term "stores" simply suggests retail services for goods offered through the website and does not prevent a finding of confusing similarity. The disputed domain name is likely to confuse consumers looking for the Complainant's legitimate website.

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 Complaint explains that the website at the disputed domain name is a fraudulent recreation of the Complainant's official website, purporting to sell products identical to the Complainant's products and using the Complainant's proprietary images unlawfully, and such use does not confer 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 explains that the Respondent registered the disputed domain name eight years after the Complainant started using the BOMBAS mark. Not only that, the disputed domain name is linked to a website expressly designed to imitate the Complainant's official website and offers for sale counterfeits of the Complainant's goods. In doing so, the Respondent deceived visitors to the website, caused confusion with the Complainant's trademarks as to the source of the website at the disputed domain name, and undermined the Complainant's legitimate commercial interests.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has demonstrated with supporting evidence that it has rights to the trademark BOMBAS. As for the disputed domain name, it contains the BOMBAS mark in its entirety along with the term "stores". The term "stores" can be disregarded from consideration, and "bombas" is the dominant element of the disputed domain name. And as this dominant element corresponds to the Complainant's trademark in its entirety, the disputed domain name is confusingly similar to the Complainant's trademark. 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 where it "incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name".

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

B. 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, the Respondent used the disputed domain name to pass itself off as the Complainant and deal in what are most certainly counterfeits, and the use of a domain name for an illegal activity can never confer rights or legitimate interests on the Respondent. See [WIPO Overview 3.0](#), section 2.13.1.

In addition, 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 mark which carries a risk of implied affiliation, which is supported by the additional term "stores" given the retail business of the Complainant.

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.

C. Registered and Used in Bad Faith

The Panel finds that there is strong and clear evidence to find bad faith in this case.

The website at the disputed domain name falsely presents itself as the website of the Complainant, and copies many elements from the Complainant's legitimate website including the images, font, layout, and color scheme, resulting in a substantially similar overall appearance. As a result, visitors would be misled to believe that it is the official website of the Complainant, or a site in some way endorsed by the Complainant, and that the goods sold through the website are genuine Bombas-branded products. Accordingly, the Panel finds that the Respondent created a likelihood of confusion with the Complainant's trademark and intentionally attempted to attract Internet users to its website for commercial gain, amounting to registration and use of the disputed domain name in bad faith. Further, given the circumstances, the goods sold through the disputed domain name are most certainly counterfeits, and using a domain name in a fraudulent activity

is manifestly evidence of bad faith registration and use. See [WIPO Overview 3.0](#), section 3.1.4 and section 3.4.

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 <bombasstores.com> be transferred to the Complainant.

/Kathryn Lee/

Kathryn Lee

Sole Panelist

Date: March 17, 2022