

## ADMINISTRATIVE PANEL DECISION

Marmot Mountain, LLC v. Domain Admin, Whoisprotection.cc /

Name Redacted

Case No. D2022-0520

### 1. The Parties

The Complainant is Marmot Mountain, LLC, United States of America (“United States” or “US”), represented by Polsinelli PC, United States.

The Respondent is Domain Admin, Whoisprotection.cc, Malaysia / Name Redacted.<sup>1</sup>

### 2. The Domain Names and Registrars

The disputed domain name <marmot-canada.com> is registered with Web Commerce Communications Limited dba WebNic.cc. The disputed domain name <marmotcaonline.com> is registered with Alibaba.com Singapore E-Commerce Private Limited (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 15, 2022. On February 15, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On February 16, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on February 17, 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 22, 2022.

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<sup>1</sup> The Respondent appears to have used the name of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case.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.

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 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 20, 2022. On April 4, 2022, the Center received a letter from a third party claiming that the registration of the disputed domain name <marmot-canada.com> has been made without her knowledge or authorization by the Respondent using her identity. Accordingly, the Center notified the Parties that it will proceed to panel appointment on March 23, 2022.

The Center appointed Andrea Mondini as the sole panelist in this matter on April 6, 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 leading outdoor recreation clothing and sporting goods company and markets its products under the trademark MARMOT.

The Complainant owns numerous trademark registrations for its trademark MARMOT, *inter alia*, the US Trademark No. 3852909 registered on September 28, 2010, in international class 35 and the US Trademark No. 5338217 registered on November 21, 2017, in international class 25 for clothing items..

The Complainant also holds several domain names, including the domain name <marmot.com>.

The disputed domain name <marmot-canada.com> was registered on November 16, 2020. The disputed domain name <marmotcaonline.com> was registered on May 13, 2021.

The disputed domain names resolve to websites imitating the Complainant’s official website and featuring the Complainant’s MARMOT logo.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant contends as follows:

The disputed domain names are confusingly similar to the MARMOT trademark in which the Complainant has rights, because they incorporate this well-known trademark in its entirety, and the addition of the words “Canada” respectively “caonline” is not sufficient to avoid confusing similarity.

The Respondent has no rights or legitimate interests in respect of the disputed domain names. The mark MARMOT is associated with the Complainant, since the trademark MARMOT has been extensively used to identify the Complainant and its products. The Respondent has not been authorized by the Complainant to use this trademark and that the Respondent used the disputed domain names to spoof the Complainant’s corporate domain name and to engage in fraudulent activity.

The disputed domain names lead to fraudulent websites offering for sale counterfeit Marmot Mountain products, to scam Internet users.

The disputed domain names were registered and are being used in bad faith because it is obvious that the Respondent had knowledge of both the Complainant and its well known trademark MARMOT at the time it registered the disputed domain names, and because the use of the disputed domain names to engage in fraudulent phishing attempts and to sell counterfeit products constitutes use in bad faith. Numerous customers have placed orders on the websites found at the disputed domain names for products thought to be the genuine Complainant's products, which were never received.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions. On March 4, 2022, a person identified as the Respondent contacted the Center regarding the claimed unauthorized use of her identity and contact detail in relation to the disputed domain names. It appears, therefore, that there has been an identity theft.

## **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, in order to succeed, a complainant must establish each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to the trademark or service mark in which the complainant has rights;
- (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 Panel is satisfied that the Complainant owns trademark registrations for its MARMOT trademark.

The Panel notes that the disputed domain names incorporate the MARMOT trademark in its entirety. The addition of the words "canada" respectively "caonline" does not prevent a finding of confusing similarity under Policy, paragraph 4(a)(i). See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8.

For these reasons, the Panel concludes that the disputed domain names are confusingly similar to the Complainant's mark MARMOT.

The first element of paragraph 4(a) of the Policy has been met.

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

The Complainant states that it has not authorized the Respondent to use the trademark MARMOT and has submitted evidence that the Respondent used the disputed domain names to engage in fraudulent activities and phishing attacks pretending to be the Complainant in an attempt to defraud customers.

In the view of the Panel, the Complainant has succeeded in raising a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names. For its part, the Respondent failed to provide any explanations as to any rights or legitimate interests. Therefore, the Panel finds that the Respondent does not have any rights or legitimate interests in the disputed domain names.

The second element of paragraph 4(a) of the Policy has been met.

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

The Complainant has shown to the satisfaction of the Panel that its MARMOT trademark is well-known.

In the view of the Panel, considering that the Respondent engaged in fraudulent activities pretending to be the Complainant, it is obvious that the Respondent had knowledge of the Complainant's well-known trademark and intended to target such trademark when it registered the disputed domain names to take unfair advantage due to their similarity with the MARMOT trademark. In the circumstances of this case, this is evidence of registration in bad faith.

The Claimant has submitted evidence showing that the Respondent used the disputed domain names to spoof the Complainant's corporate domain name, to engage in fraudulent phishing attempts and to scam Internet users. By using the disputed domain names, the Respondent has thus intentionally attempted to attract, for fraudulent purposes, Internet users to its web site, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its web site.

The Panel thus finds that the disputed domain names were registered and are being used in bad faith.

The third element of paragraph 4(a) of the Policy has been met.

### **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 <marmot-canada.com> and <marmotcaonline.com> be transferred to the Complainant.

*/Andrea Mondini/*

**Andrea Mondini**

Sole Panelist

Date: April 13, 2022