

ADMINISTRATIVE PANEL DECISION

Boot Barn, Inc. v. HONG KONG LINEMART, HONG KONG LINEMART LIMITED

Case No. D2022-1402

1. The Parties

The Complainant is Boot Barn, Inc., United States of America (“United States”), represented by Sisun Law, United States.

The Respondent is HONG KONG LINEMART, HONG KONG LINEMART LIMITED, Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <us-bootbarn.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 19, 2022. On April 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 21, 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 April 25, 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 amendment to the Complaint on May 18, 2022.

The Center verified that the Complaint together with the amendment to the 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 May 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 8, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 9, 2022.

The Center appointed Alfred Meijboom as the sole panelist in this matter on June 17, 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 started as a single store in 1978, and has since become a large western and work wear retailer in the United States, offering a broad selection of cowboy boots, work boots, western wear, workwear, western-inspired fashion, and outdoor gear. The Complainant operates its website at “www.bootbarn.com”, which had roughly 2,900,000 visitors per month in traffic from February 2021 to February 2022.

The Complainant owns United States trademark BOOT BARN with registration number 2307397 and registered on January 11, 2000, for retail store services featuring western wear (the “Trademark”).

The disputed domain name was registered on November 23, 2021. The disputed domain name resolved to a website which operated an online shop that allegedly purports to provide products and services identical to and competing with those of the Complainant, coupled with the Respondent offering the Complainant’s products in United States dollars under the Trademark (the “Respondent’s Website”).

5. Parties’ Contentions

A. Complainant

The Complainant claims that the disputed domain name is confusingly similar to the Trademark. According to the Complainant, the inclusion of the letters “us” followed by a hyphen does not alter the overall impression of the disputed domain name because the letters “us” are an abbreviation for the United States, and the presence or absence of a punctuation mark such as a hyphen is insufficient to avoid a finding of confusing similarity.

Further, the Complainant alleges that, because it has shown that it owns the Trademark which it has been continuously using since at least 1996, it has established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Complainant also alleges that the Respondent has no legitimate rights or interests in the disputed domain name because the Respondent does not operate a legitimate business under such name, does not own any registered trademark rights in respect of the disputed domain name, there is no evidence to suggest that the Respondent has been commonly known under the disputed domain name, and the Complainant never authorized the Respondent to register and use the disputed domain name. Moreover, the Complainant alleges that the Respondent’s use of the Respondent’s Website is neither a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use of the disputed domain name.

According to the Complainant, the Respondent’s registration and use of the disputed domain name, when the Respondent should have reasonably been aware that consumers are likely to believe that the disputed domain name was owned, endorsed, or affiliated with the Complainant, is particularly indicative of the Respondent’s use of the disputed domain name in bad faith. Moreover, the Complainant alleges that it is inconceivable that the Respondent was unaware of the Trademark given the fact that the Complainant has used the Trademark in commerce since at least as early as 1996, and that the Respondent purports to offer services identical to those of the Complainant. The Complainant alleges that the Respondent clearly designed the disputed domain name to lure the Complainant’s consumers to the Respondent’s Website for services identical to those of the Complainant, but that are not associated with or endorsed by the Complainant.

B. Respondent

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

6. Discussion and Findings

The Respondent did not file a Response. However, as set out in section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the consensus view of UDRP panels is that the respondent's default does not automatically result in a decision in favor of the complainant. The Complainant must still establish each of the three elements required by paragraph 4(a) of the Policy. Although the Panel may draw appropriate inferences from the Respondent's default, paragraph 4 of the Policy requires the Complainant to support its assertions with actual evidence in order to succeed in this proceeding. Paragraph 14(b) of the Rules provides that, in the absence of exceptional circumstances, the panel shall draw such inferences as it considers appropriate from a failure of a party to comply with a provision or requirement of the Rules. The Panel finds that in this case there are no such exceptional circumstances.

Under the Policy, the Complainant must prove that:

- (i) the disputed domain name is identical or confusingly similar to a 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

It is well established that the generic Top-Level Domain ("gTLD") ".com" should typically be disregarded in the assessment under paragraph 4(a)(i) of the Policy.

The Panel finds that the disputed domain name is confusingly similar to the Trademark. The disputed domain name incorporates the Trademark in its entirety, and merely adds the term "us", which is a commonly used abbreviation for the United States, at the start of the disputed domain name, which does not prevent a finding of confusing similarity between the disputed domain name and the Trademark under the Policy (see *e.g.*, *Syngenta Participations AG v. Who Is Agent / Rogerio Biasotto*, WIPO Case No. [D2015-0253](#); and *Philip Morris USA Inc. v. Domain Admin / Whois Privacy Corp.*, WIPO Case No. [D2016-0910](#)).

Consequently, the first element of paragraph 4(a) of the Policy is met.

B. Rights or Legitimate Interests

The Complainant must show a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which the Respondent may rebut (*e.g.*, *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

The Panel takes note of the Complainant's various allegations and more specifically that no authorization has been given by the Complainant to the Respondent to use the Trademark or to register the disputed domain name, and the disputed domain name resolving to the Respondent's Website that intentionally created confusion as to the source, sponsorship, affiliation, or endorsement of the Respondent's Website. The Panel is satisfied that the Respondent designed and launched the Respondent's Website with the intention to mislead Internet users into believing that they visited the Complainant's online retail website which offers western wear for sale, which does not constitute a *bona fide* offering of goods or services.

The allegations of the Complainant remain unchallenged. There is no evidence before the Panel to show that the Respondent has rights or legitimate interests in the disputed domain name. The Panel therefore finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Pursuant to paragraph 4(b)(iv) of the Policy, there is evidence of registration and use of the disputed domain name in bad faith as the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's Website or location or of a product or service offered on the Respondent's Website or location.

The Panel is satisfied that the Respondent must have had the Trademark in mind when it registered the disputed domain name, as the Complainant secured registration for the Trademark more than 20 years before the registration of the disputed domain name, the term "boot barn" is not a generic term or otherwise commonly used in connection to sale of cowboy boots and western ware, the Respondent's Website used the Trademark in the same style as the Complainant's use of the Trademark on its website in an apparent attempt to mimic the Complainant's Trademark use and website, and the Respondent immediately upon registration of the disputed domain name directed the disputed domain name to the Respondent's Website offering the Complainant's products or services under the Trademark.

Further, the Panel considers the Respondent's Website offering the Complainant's products or services and creating an intentional association with the Complainant and the Trademark, as clear evidence of the Respondent's use of the disputed domain name to the detriment of the Complainant and the Trademark, and accordingly as use in bad faith.

Consequently, the third and last element of paragraph 4(a) of the Policy is also 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 name <us-bootbarn.com> be transferred to the Complainant.

/Alfred Meijboom/

Alfred Meijboom

Sole Panelist

Date: July 1, 2022