

ADMINISTRATIVE PANEL DECISION

The Body Shop International Limited v. Registration Private, Domains By Proxy, LLC / M M Faysal Ahmed, Salesmax Corporation
Case No. D2022-1968

1. The Parties

Complainant is The Body Shop International Limited, United Kingdom, represented by Studio Barbero S.p.A., Italy.

Respondent is Registration Private, Domains By Proxy, LLC, United States of America (“United States”) / M M Faysal Ahmed, Salesmax Corporation, Bangladesh.

2. The Domain Name and Registrar

The disputed domain name <bodyshop.shop> 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 May 31, 2022. On May 31, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 6, 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 Complainant on June 7, 2022, providing the registrant and contact information disclosed by Registrar, and inviting Complainant to submit an amendment to Complaint. Complainant filed an amendment to the Complaint on June 8, 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 Respondent of the Complaint, and the proceedings commenced on June 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 30, 2022. An informal communication was sent by Respondent to the Center on June 13, 2022 stating, in relevant part, “Hope you are doing well, Dear how i can help you solve this case?”.

The Center appointed Phillip V. Marano as the sole panelist in this matter on July 11, 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

Complainant is a manufacturer and retailer of beauty and cosmetics products headquartered in London, United Kingdom. Complainant owns valid and subsisting registrations for THE BODY SHOP trademark in numerous countries and regions, including registration for THE BODY SHOP (Bangladesh Reg. No. 38349, registered on May 6, 2014) in Bangladesh and (United Kingdom trademark No. 00901437490, registered on April 16, 2003) in the United Kingdom.

The disputed domain name was registered on June 4, 2020. At the time this Complaint was filed, the disputed domain name resolved to a website that prominently featured Complainant's THE BODY SHOP trademark and design mark. The website offered for sale ostensibly genuine products of the Complainant, and mimicked the trade dress of Complainant's official website, along with the website footer "Copyright © 2021 The Body Shop Bangladesh. All Rights Reserved."

5. Parties' Contentions

A. Complainant

Complainant asserts ownership of THE BODY SHOP trademark and has adduced evidence of trademark registrations in numerous countries and regions around the world including the European Union, the United Kingdom, and Bangladesh, with the earliest registration for the word mark in the United Kingdom dating back to April 16, 2003. The disputed domain name is confusingly similar to Complainant's THE BODY SHOP trademark, according to Complainant, because it incorporates the dominant and identical words "body shop", with the omission of the article "the", which does not affect the confusing similarity of the disputed domain name.

Complainant further asserts that Respondent lacks any rights or legitimate interests in the disputed domain name based on: the lack of any license or authorized reseller relationship between Complainant and Respondent; the lack of any website disclaimer of non-affiliation by Respondent as required under *Oki Data Americas, Inc. v. ASD Inc.*, WIPO Case No. [D2001-0903](#) and the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"); the lack of evidence that the Respondent is commonly known by the disputed domain name; the lack of evidence that Respondent has made use of, or made demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services; and Respondent's willful decision not to reply to Complainant's cease and desist letter and subsequent reminders.

Complainant argues that Respondent has registered and used the disputed domain name in bad faith for numerous reasons, including: the well-known nature of Complainant's THE BODY SHOP trademark; Respondent's unauthorized website use of Complainant's well-known THE BODY SHOP TRADEMARK and use of the disputed domain to create a fake official website posing as the local presence of Complainant in Bangladesh; Respondent's failure to respond to Complainant's cease and desist letter; Respondent's use of a privacy protection service to conceal its identity from the public; and Respondent's use of MX records for email communications, presumably also made in bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

To succeed in its Complaint, Complainant must establish in accordance with paragraph 4(a) of the Policy:

- i. the disputed domain name is identical or confusingly similar to a trademark in which Complainant has rights;
- ii. 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.

Panels typically treat a respondent's submission of a so-called "informal response" (merely making unsupported conclusory statements and/or failing to specifically address the case merits as they relate to the three UDRP elements, e.g., simply asserting that the case "has no merit" and demanding that it be dismissed) in a similar manner as a respondent default. See [WIPO Overview 3.0](#), Section 4.3. Indeed, this Respondent's informal response, "Hope you are doing well, Dear how i can help you solve this case?" has not substantively responded to Complainant's contentions.

Although Respondent did not submit any formal reply to Complainant's contentions, the burden remains with Complainant to establish by a balance of probabilities, or a preponderance of the evidence, all three elements of paragraph 4(a) of the Policy. [WIPO Overview 3.0](#), section 4.3 ("A respondent's default would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true [...] UDRP panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case, e.g. where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent."); see also *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#) ("The Respondent's default does not automatically result in a decision in favor of the complainant. The Complainant must still prove each of the three elements required by Policy paragraph 4(a)").

A. Identical or Confusingly Similar

Ownership of a nationally or regionally registered trademark serves as *prima facie* evidence that Complainant has trademark rights for the purposes of standing to file this Complaint. [WIPO Overview 3.0](#), section 1.2.1. Complainant submitted evidence that THE BODY SHOP trademark has been registered in the European Union, the United Kingdom, and Bangladesh, with the earliest registration for the word mark in the United Kingdom dating back to April 16, 2003. Thus, the Panel finds that Complainant's rights in THE BODY SHOP trademark have been established pursuant to the first element of the Policy.

The only remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant's THE BODY SHOP trademark. The Panel considers the disputed domain name confusingly similar to Complainant's THE BODY SHOP trademark because, disregarding the ".shop" generic Top-Level Domain ("gTLD"), the dominant "body shop" elements of THE BODY SHOP trademark are recognizable in the disputed domain. [WIPO Overview 3.0](#), section 1.7. ("This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name [...] [I]n cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar [...]"). In regards to gTLDs, such as ".shop" in the disputed domain names, they are generally viewed as a standard registration requirement and are typically disregarded under the first element. [WIPO Overview 3.0](#), section 1.11. In this Complaint, the ".shop" gTLD merely connotes an electronic storefront and is duplicative of the term "shop" in Complainant's THE BODY SHOP trademark.

In view of Complainant's registration for THE BODY SHOP trademark and Respondent's incorporation of the dominant "body shop" elements of that trademark in its entirety in the disputed domain name, the Panel concludes that Complainant has established the first element of the Policy.

B. Rights or Legitimate Interests

Complainant must make out a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name, shifting the burden of production on this element to Respondent to come forward with evidence demonstrating such rights or legitimate interests. Where, as in this Complaint, Respondent fails to come forward with any relevant evidence, Complainant is deemed to have satisfied the second element of the Policy. [WIPO Overview 3.0](#), section 2.1.

It is evident that Respondent, identified by Whois data for the disputed domain name as "M M FAYSAL AHMED, Salesmax Corporation", is not commonly known by the disputed domain name or Complainant's THE BODY SHOP trademark.

Resellers, distributors, and service providers using a domain name containing Complainant's trademark (usually in conjunction with descriptive terms like "parts", "repairs", or a geographic location) to undertake sales related to Complainant's products may be making a *bona fide* offering of goods and services and thus may have a legitimate interest in the disputed domain name. WIPO Overview, section 2.8.1. Panels apply the fact-specific "Oki Data Test" to determine whether rights or legitimate interests in the disputed domain name are present in cases where all of the following elements are met:

- i. Respondent must actually offer the goods or services at issue;
- ii. Respondent must use the site to sell only the trademarked goods or services;
- iii. the site must accurately and prominently disclose the registrant's relationship with the trademark holder; and
- iv. Respondent must not try to "corner the market" in domain names that reflect the trademark.

See *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

Complainant does not contest whether Respondent's website was actually reselling authentic goods from Complainant. Nor does Complainant contest whether Respondent's website sold any goods or services from any third parties. Rather, Complainant asserts, and the Panel agrees, that the disputed domain name resolved to a website that prominently featured Complainant's THE BODY SHOP trademarks yet failed to disclose the lack of any relationship with Complainant. Respondent used misleading phrases such as "The Body Shop Bangladesh", copied the overall trade dress of Complainant's website, and ostensibly asserted copyright ownership over that website and any pictorial works displaying Complainant's products. These facts falsely suggested that Respondent and its website were authorized by or affiliated with Complainant. Such website use of the disputed domain name by Respondent does not satisfy the "Oki Data Test."

In view of the failure of Respondent to disclaim any relationship with Complainant, Respondent's misappropriation of Complainant's trademark, design mark, and trade dress on Respondent's website, and the absence of a substantive Response, the Panel concludes that Complainant has established the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy proscribes the following non-exhaustive circumstances as evidence of bad faith registration and use of the disputed domain name:

- i. circumstances indicating that Respondent has registered or Respondent has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to Complainant who is the owner of the trademark to a competitor of that Complainant, for valuable consideration in excess of Respondent's documented out of pocket costs directly related to the disputed domain name; or
- ii. Respondent has registered the disputed domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- iii. Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- iv. by using the disputed 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.

Use of a domain name incorporating Complainant's trademark to redirect Internet users to Respondent's website where goods are offered in competition with Complainant is strong evidence of bad faith under paragraph 4(b)(iv) of the Policy. WIPO Overview, section 3.1.4 ("Panels have moreover found the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark: [...] seeking to cause confusion for respondent's commercial benefit, even if unsuccessful [...] the lack of a respondent's own rights to or legitimate interests in a domain name [or] redirecting the domain name to a different respondent-owned website [...]"). Here, the disputed domain name misappropriates Complainant's THE BODY SHOP trademark and resolves to Respondent's website that misappropriates Complainant's same trademark, logo, and official website trade dress, as well as asserts copyright ownership over the same content and fails to disclaim any relationship with Complainant. As discussed above, such website use of the disputed domain name by Respondent cannot constitute legitimate interests under the "Okidata Test." Accordingly, the Panel finds that use of the disputed domain name will divert potential customers from the Complainant's business to the website under the disputed domain name by attracting Internet users who mistakenly believe that the disputed domain name is affiliated with the Complainant, and which may further mistakenly believe that the products offered on this website are offered by the Complainant, or by an entity affiliated to the Complainant.

Moreover, the Panel finds that the choice of the ".shop" gTLD in the disputed domain name to be indicative of bad faith in the circumstances of the present case. Such gTLD specifically corresponds not only to Complainant's area of trade, but also to Complainant's trademark itself, and accordingly signals an abusive intent to confuse Internet users. See [WIPO Overview 3.0](#), section 3.2.1.

The Panel further concludes that failure by Respondent to answer Complainant's cease and desist correspondence "suggests that Respondent was aware that it has no rights or legitimate interests in the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith." See *America Online, Inc. v. Antonio R. Diaz*, WIPO Case No. [D2000-1460](#) (internal citations omitted). See also *Spyros Michopoulos S.A. v. John Toliás, ToJo Enterprises*, WIPO Case No. [D2008-1003](#). Furthermore, the failure of Respondent to substantively answer this Complaint, in the view of the Panel, is another indication of bad faith on the part of Respondent. See *Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#).

Where it appears that a respondent employs a privacy or proxy service merely to avoid being notified of a UDRP proceeding filed against it, UDRP panels tend to find that this supports an inference of bad faith. WIPO Overview section 3.6. In these circumstances, such use of a privacy or proxy registration service to shield Respondent's identity and elude or frustrate enforcement efforts by Complainant supports an inference of bad-faith use and registration of a disputed domain name. See *Fifth Third Bancorp v. Secure*

Whois Information Service, WIPO Case No. [D2006-0696](#) (the use of a proxy registration service to avoid disclosing the identity of the real party in interest is also consistent with an inference of bad faith when combined with other evidence of evasive, illegal, or irresponsible conduct).

Finally, the Panel considers configuration of an email server on the disputed domain name further supports an inference that the disputed domain name has been registered and used in bad faith. The disputed domain name contains the dominant “body shop” elements of Complainant’s THE BODY SHOP trademark, and the facts on the record only further suggest that Respondent has no legitimate interest in sending emails from the disputed domain name. Conversely, Complainant made a plausible argument that Respondent’s proactive configuration of an email server, creates a risk that Respondent is sending email correspondence to Complainant’s customers and prospective customers in bad faith. Prior UDRP panel decisions have recognized similar risks in relation to email phishing schemes and considered it as additional evidence of bad faith. See e.g. *Accor SA v. Domain Admin, C/O ID#10760, Privacy Protection Service INC d/b/a PrivacyProtect.org / Yogesh Bhardwaj*, WIPO Case No. [D2017-1225](#); *Carrefour S.A. v. WhoisGuard, Inc / Gaudet Jose*, Case No. [DCO2018-0041](#) (“The Panel concurs with the Complainant that the connection of the disputed domain name with an email server configuration enhances a likelihood of confusion and presents a risk that the Respondent is engaged in a phishing scheme.”)

In view of Respondent’s use of the disputed domain name in connection with a website designed to pass itself off as Complainant’s local presence in Bangladesh; Respondent’s failure to respond to Complainant’s cease and desist correspondence or this Complaint; Respondent’s use of a proxy registration service to mask its identity; and Respondent’s activation of MX records with a risk of email correspondence also passing itself off as Complainant; the Panel concludes that Complainant has established the third element of the Policy.

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 <bodyshop.shop> be transferred to the Complainant.

/Phillip V. Marano/

Phillip V. Marano

Sole Panelist

Date: August 2, 2022