

ADMINISTRATIVE PANEL DECISION

**Black Diamond Equipment, Ltd v. Client Care, Web Commerce
Communications Limited
Case No. D2024-1409**

1. The Parties

The Complainant is Black Diamond Equipment, Ltd, United States of America (“United States”), represented by Kane Kessler, PC, United States.

The Respondent is Client Care, Web Commerce Communications Limited, Malaysia.

2. The Domain Name and Registrar

The disputed domain name <blackdiamondsnz.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 April 2, 2024. On April 3, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 7, 2024, 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 (Whois Agent) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 15, 2024, 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 April 18, 2024.

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 April 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 9, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 10, 2024.

The Center appointed Masato Dogauchi as the sole panelist in this matter on May 16, 2024. 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 company with its office in Utah, the United States, which has been doing business in the field of outdoor apparel, climbing equipment and other related goods.

The Complainant has registered its BLACK DIAMOND trademark, such as:

- United States Registration for BLACK DIAMOND No 1686547, registered on May 12, 1992;
- United States Registration for BLACK DIAMOND No 1669513, registered on December 24, 1991;
- United States Registration for BLACK DIAMOND No 3812723, registered on June 6, 2010.

Additionally, the Complainant conducts its business on the Internet, among others, at <blackdiamondequipment.com>.

The disputed domain name was registered on May 10, 2023, and is offering for sale allegedly counterfeit goods falsely identified and labeled as BLACK DIAMOND goods.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

In accordance with the Rules, paragraph 15(a), a panel shall decide a case on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable. Since the Respondent has not made any arguments in this case, the following decision is rendered on the basis of the Complainant's contentions and other evidence submitted by the Complainant.

In accordance with the Policy, paragraph 4(a), in order to qualify for a remedy, the Complainant must prove each of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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 accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Incidentally, the Panel finds the addition of term "snz" does not prevent a finding of confusing similarity between the disputed domain name and the trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Accordingly, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Accordingly, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, in consideration of the fact that the Complainant has been doing business in the field of outdoor apparel, climbing equipment and other related goods using its BLACK DIAMOND trademark since 1992 at the latest, it is highly unlikely that the Respondent could have been unaware of the Complainant's trademark at the time of registration of the disputed domain name on May 10, 2023. Therefore, it is found that the Respondent registered the disputed domain name in bad faith.

With regard to the requirement that the Respondent is using the disputed domain name in bad faith, the Panel considers that the fact that the disputed domain name is offering for sale unauthorized goods falsely identified and labeled as BLACK DIAMOND goods at a steep discounted price sufficiently shows the Respondent's bad faith use of the Complainant's BLACK DIAMOND trademark.

The Respondent did not reply to the Complaint in this proceeding.

Accordingly, the Panel finds that the 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 <blackdiamondsnz.com> be transferred to the Complainant.

/Masato Dogauchi/

Masato Dogauchi

Sole Panelist

Date: May 24, 2024