

ADMINISTRATIVE PANEL DECISION

Brownells, Incorporated v. SHOOTERS WHOLESALE IMPORTS PTY LTD
Case No. DAU2025-0014

1. The Parties

The Complainant is Brownells, Incorporated, United States of America (“United States”), represented by Brown Winick Law, United States.

The Respondent is SHOOTERS WHOLESALE IMPORTS PTY LTD, Australia, self-represented.

2. The Domain Name and Registrar

The disputed domain name <brownells.com.au> is registered with Fluccs - The Australian Cloud Pty Ltd (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 9, 2025. On April 10, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 28, 2025, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the .au Dispute Resolution Policy (the “Policy”), the Rules for .au Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .au Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 6, 2025. In accordance with the Rules, paragraph 5(a), the due date for Response was May 26, 2025. The Response was filed with the Center on May 26, 2025.

The Center appointed John Swinson as the sole panelist in this matter on June 14, 2025. 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 corporation based in Iowa, United States. It is a gunsmithing business, and it sells gunsmithing and knife making tools and parts.

The Complainant owns a portfolio of trademark registrations, including Australian Trademark Registration No. 1014097 for BROWNELLS that was filed on August 3, 2004, and entered on the register on March 31, 2005. The Complainant states that it has used the BROWNELLS mark for over 50 years.

The Complainant operates a website located at the domain name <brownells.com>.

The disputed domain name was registered on January 31, 2011.

The Respondent resells the Complainant's products in Australia. According to the Respondent, the website at the disputed domain name was established by the Respondent in 2015 at the request of the Complainant. In 2017, the Complainant established a redirect on its United States website to the Respondent's website at the disputed domain name. The Respondent has an account with the Complainant and places orders for the Complainant's products using an online ordering system. For the past seven years, the Complainant shipped approximately 100 orders a year to the Respondent. A recent shipment was confirmed by email from the Complainant to the Respondent on March 5, 2025.

The Respondent owns Australian Business Name for "Brownells Australia". This was registered on June 12, 2015, and is current.

At the present time, the website at the disputed domain name includes the following message: "It is with great regret that we must announce the closure of the Brownells Australia website due to circumstances beyond our control."

5. Parties' Contentions

A. Complainant

In summary, the Complainant made the following submissions:

The Complainant owns relevant registered trademarks in Australia and the United States.

The Complainant has owned the <brownells.com> domain name since December 2, 1998.

The disputed domain name is confusingly similar to the Complainant's BROWNELLS trademarks in that it incorporates such trademarks.

The Respondent has used the disputed domain name after the Complainant began using its BROWNELL trademarks.

The Respondent is not a licensee of the Complainant and is not authorized to use the Complainant's trademarks or the disputed domain name.

The Respondent is not commonly known by the disputed domain name.

The website at the disputed domain name copies portions of the Complainant's website. The Respondent sells similar products to those of the Complainant's products, using the Complainant's trademarks.

The Complainant alleges that the Respondent is using the disputed domain name to intentionally confuse the Complainant's customers into believing its website is authorized by the Complainant for the purpose of selling similar products as the Complainant without authorization and for financial gain.

The Respondent is using the disputed domain name as a clear attempt to redirect Brownells customers to the Respondent's website. Further, the Respondent has no right or authority to use the Brownells trademarks, act on behalf of the Complainant, or sell products under the Brownells trademarks.

The Respondent sells the Complainant's products at drastically increased prices.

The Respondent is using the disputed domain name in connection with a revenue-generating scheme pursuant to which the Respondent receives compensation from revenues generated by the unauthorized sale of products under the Complainant's Brownells trademark. The Respondent is using the disputed domain name in connection with a revenue-generating scheme pursuant to which the Respondent collects what is thought to be an over-payment for products and may never deliver such products to the respective customers. Such behavior reflects poorly on the goodwill that the Complainant has generated with its customers through long standing use of its trademarks.

The Respondent's diversionary use of the Complainant's Brownells trademark to fraudulently induce the Complainant's customers to purchase products from the Respondent constitutes bad faith registration and use of the disputed domain name under Policy, paragraph 4(b)(iv).

B. Respondent

In summary, the Respondent made the following submissions:

The website at the disputed domain name was established at the request of the Complainant in 2015. Initially, the Respondent used the same colours as the Complainant's colours. In around 2017, the Respondent was asked to use different colours and fonts, and the Respondent made such changes. At no time has the Complainant asked the Respondent not to use the Brownells name on the Respondent's website.

For eight years, the Respondent has purchased Brownells products from the Complainant. Many customers were referred to the Respondent's website by the Complainant. The Respondent has a direct computer link into the Complainant's computerized ordering system, and this link is still active.

The Complainant has international account managers who have clear knowledge of the Respondent's website and who have supported its use and existence. The Complainant ships two airfreight shipments to the Respondent per week, and has done so since 2018.

The Respondent is known as Brownells Australia, and has bank accounts in this name. The Respondent has sold over AUD 5 million of Brownells goods. The Respondent has over 32,000 customers, and is commonly known as Brownells Australia.

In respect of the second element of the Policy, the Respondent relies upon paragraph 4(a)(i) of the Policy.

The Complainant asked the Respondent to establish the website at the disputed domain name, and in January 2016, the Complainant emailed the Respondent regarding orders being placed through that website.

The Respondent does not sell the Complainant's products outside of Australia.

6. Discussion and Findings

Paragraph 4(a) of the auDRP provides that a complainant must prove each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to a name, 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 or subsequently used in bad faith.

The burden of proof of each element is borne by the Complainant.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that the Panel deems applicable.

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's name, trademark or service mark.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be identical or confusingly similar to the trademark.

The first element functions primarily as a standing requirement.

The Complainant owns an Australian trademark registration for BROWNELLS. The Panel considers that the disputed domain name is identical to the Complainant's registered trademark.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances may be situations in which a respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to you of the subject matter of the dispute, your bona fide use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with an offering of goods or services (not being the offering of domain names that you have acquired for the purpose of selling, renting or otherwise transferring); or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant. Previous panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a prima facie case against the respondent under this head and an evidential burden will shift to the respondent to rebut that prima facie case. The ultimate burden of proof, however, remains with the Complainant. See, e.g., *GlobalCenter Pty Ltd v. Global Domain Hosting Pty Ltd.*, WIPO Case No. [DAU2002-0001](#).

The Respondent has a business name registration for “Brownells Australia”. A business name registration does not, of itself, establish that the respondent has rights or legitimate interests in a domain name corresponding to the registered business name. See, for example, *ESET, spol. s.r.o. v. Antivirus Australia PTY Ltd., Rodney Fewster, ESET Pty Ltd.*, WIPO Case No. [DAU2015-0014](#).

The evidence before the Panel suggests that the Respondent was commonly known in Australia by the disputed domain name for at least the past 7 years, and that the Respondent has bona fide use of the disputed domain name in connection with an offering of goods and services before notice of the dispute.

However, in view of the findings below in relation to the third element, the Panel does not need to reach a conclusion in relation to the second element of the Policy.

C. Registered or Subsequently Used in Bad Faith

Unlike the UDRP, the requirements that the disputed domain name be registered or used in bad faith are disjunctive in the auDRP. That is, it is sufficient for the Complainant to show either that the disputed domain name was registered in bad faith or has been used in bad faith.

Generally speaking, a finding that a domain name has been registered or is being used in bad faith requires an inference to be drawn that the respondent in question has registered or is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

In respect of bad faith, the Complainant alleges that the Respondent is using the disputed domain name to intentionally confuse the Complainant’s customers into believing its website is authorized by the Complainant for the purpose of selling similar products as the Complainant without authorization and for financial gain. However, the evidence presented by the Respondent shows that this allegation by the Complainant is incorrect. The Respondent established the website at the disputed domain name with the Complainant’s knowledge. In fact, the Complainant referred customers to the Respondent’s website. The Respondent demonstrated that the Respondent used the website at the disputed domain name to sell the Complainant’s products to Australian consumers and did so for approximately eight years without any complaint by the Complainant.

The Complainant makes no allegation that the Respondent was using the website at the disputed domain name to sell counterfeit products. There is no evidence that the Complainant sent correspondence to the Respondent alleging any bad conduct or trademark infringement by the Respondent.

The Complainant does not refer to the long-standing relationship between the Complainant and the Respondent. The Panel is puzzled as to why the Complaint does not address this relationship. As a result, the Complainant does not assert that this relationship has ended. Conversely, the Respondent does not explain why the Respondent has recently closed the website at the disputed domain name.

The Complainant alleges, in the alternative, that the Respondent is using the disputed domain name “as a clear attempt to redirect Brownells customers to Respondent’s website.” That is true, but it is with the Complainant’s knowledge, consent, and assistance. Further the Complainant asserts that the Respondent has no right or authority to use the Brownells trademarks, act on behalf of the Complainant, or sell products under the Brownells trademarks. This argument is not supported by the evidence in the case file, which

shows that the Respondent was authorized (in fact, encouraged) to sell the Complainant's products in Australia.

The Complainant also alleges that the Respondent's website is a "scam", that the Respondent does not deliver products as ordered and that the Respondent is engaged in fraud. These are serious allegations. The Complainant provided no evidence to support these allegations.

The Panel does not see any evidence of bad faith registration or subsequent bad faith use of the disputed domain name by the Respondent.

The Complainant has the burden of proof. The Complainant has not met its burden.

The Panel finds the third element of the Policy has not been established.

7. Decision

For all the foregoing reasons, the Complaint is denied.

/John Swinson/

John Swinson

Sole Panelist

Date: June 23, 2025