

ADMINISTRATIVE PANEL DECISION

DNVB, Inc. d/b/a Thursday Boot Co. v. Arvee Claravall
Case No. D2022-3801

1. The Parties

The Complainant is DNVB, Inc. d/b/a Thursday Boot Co., United States of America (“United States”), represented by Beard & Barks PLLC, United States.

The Respondent is Arvee Claravall, United States.

2. The Domain Name and Registrar

The disputed domain name <thursdaybootss.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 October 11, 2022. On October 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 13, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 18, 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 October 24, 2022.

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 October 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 17, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 18, 2022.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on December 2, 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 corporation established under Delaware law in 2014 and headquartered in New York City, New York, United States. The Complainant produces leather goods and apparel, prominently footwear, which it sells exclusively online through its website at “www.thursdayboots.com” (the “Complainant’s website”). The Complainant registered this domain name in June 2014 and has used it continuously since then to sell its footwear to customers throughout the world under the THURSDAY BOOT CO. mark.

The Complaint attaches a report from SimilarWeb supporting the popularity of the Complainant’s website, showing that it ranks 205 among fashion and apparel websites, with two to three thousand unique visitors per month when measured in late 2021. The Complainant cites advertising and media mentions of its THURSDAY BOOT CO. brand in publications such as GQ, Vogue, Gear Patrol, BuzzFeed, and Men’s Journal.

The Complainant raised funds on the crowdsourcing website “www.kickstarter.com” in October 2014 using the THURSDAY BOOT CO. mark. According to the Complaint, this “Kickstarter.com campaign broke the website’s record at the time for footwear products” and brought the brand into broad public recognition. The Complainant developed a portfolio of THURSDAY, THURSDAY BOOT CO., and THURSDAY EVERYDAY trademark registrations, including the following:

MARK	JURISDICTION	REGISTRATION NUMBER	REGISTRATION DATE
THURSDAY EVERYDAY (word)	United States	6001893	March 3, 2020
THURSDAY EVERYDAY (words and design)	United States	6001895	March 3, 2020
THURSDAY EVERYDAY (word)	Australia	2095004	May 11, 2020
THURSDAY EVERYDAY (word)	International Trademark, designations for Australia, Canada, European Union, Japan, Mexico, United Kingdom	1535296	May 12, 2020
THURSDAY (word)	European Union	018255634	December 1, 2020
THURSDAY (word)	United Kingdom	UK00918255634	December 1, 2020
THURSDAY BOOT CO. (word)	European Union	18255636	December 1, 2020
THURSDAY BOOT CO. (word)	United Kingdom	UK00918255636	December 1, 2020
THURSDAY BOOT CO. (words and design)	United States	6886835	November 1, 2022

It appears from the online databases of the relevant trademark offices that the Complainant first applied for registration of the mark THURSDAY BOOT CO. in a stylized form in August 2019 and then as a word mark in 2020, for THURSDAY EVERDAY as a word mark in 2020, and for THURSDAY as a word mark in 2020. The recently granted United States trademark registration for the design logo featuring the words “THURSDAY BOOT CO.” claims first use in commerce in October 2014, and the Panel notes that this logo appears on screenshots found through the Internet Archive’s Wayback machine from 2015 onward.

According to the Registrar, the disputed domain name was created on July 31, 2018 and is registered to the Respondent “arvee claravall”, as disclosed by the Registrar, listing no organization but using a contact email

address in the domain <oliviamiller.com>. The website at “www.oliviamiller.com” advertises Olivia Miller women’s footwear and handbags, a designer brand on the United States market since 1995. The online database of the New York Department of State shows that Olivia Miller, Inc. (“Olivia Miller”) is a corporation established under New York law and registered in the State of New York since 1996. Olivia Miller products are sold online and in retail chain stores such as Nordstrom, Walmart, and JCPenney. The state database also lists Arvee Claravall as the person at Olivia Miller responsible for receiving service of process on the corporation, at the corporation’s registered postal address, which is the same address shown in the registration of the disputed domain name in New York, New York, United States.

The disputed domain name redirects to a website (the “Respondent’s website”) at “www.vintagefoundryco.com”, which is headed “Vintage Foundry Co.” (“Vintage Foundry”) and advertises footwear for men and women available for purchase online. A footer on every page is entitled “About the Brand” and reads as follows:

“True to its ironwork factories roots, Vintage Foundry Co. crafts timeless designs merging traditional craftsmanship features and details with modern day style and flare to create an elevated and rustic style.”

The “About Us” page does not further identify the website operator but makes general statements such as this:

“Vintage Foundry Co. shoes are made for real people looking to elevate their wardrobe with statement shoes. Featuring vintage design elements with modern aesthetic Vintage Foundry Co. offers high quality footwear that is timeless, stylish, comfortable, and durable.”

The Terms of Service refer to “Vintage Foundry Co.” and give a postal address in the same building listed as the address for the disputed domain name registrant, in Arvee Claravall. No entity with a name corresponding to “Vintage Foundry” appears in the online database operated by the New York Secretary of State, Division of Corporations, as a company or partnership registered to do business in the State of New York. Nevertheless, the Panel observes that “Vintage Foundry Co.” shoes are advertised for sale online by retailers such as Macy’s, DSW, and Nordstrom Rack, as well as on Amazon.com. The Panel also observes that while there is no mention on the Respondent’s website of any connection with Olivia Miller, the address given for “Vintage Foundry Co.” is one floor down in the same building as the headquarters of Olivia Miller. The Complaint does not include any information about the possible relationship between Olivia Miller and Vintage Foundry Co.

The Panel notes that the Wayback Machine first shows the disputed domain name used to redirect to a “Vintage Foundry” website in 2021. Before that, there are no archived screenshots associated with the disputed domain name.

It is not clear why an employee of Olivia Miller would register the disputed domain name, leaving it dormant for three years and then redirecting it to the website of another, possibly related competitor of the Complainant. It is possible that the Respondent acquired the disputed domain name only in 2021, but that cannot be determined on the existing record.

5. Parties’ Contentions

A. Complainant

The Complainant asserts that it has been using “THURSDAY” marks for eight years, and the disputed domain name is confusingly similar to those marks. The Complainant states that it has not authorized the Respondent to use the marks, and the Respondent is not known by a corresponding name. Instead, the Respondent is using the disputed domain name to misrepresent itself as affiliated with the Complainant. The Complainant argues that this demonstrates bad faith in misdirecting Internet users for commercial gain, both users that mistype the Complainant’s partial name by adding an “s” to the word “boots” and those that

do an Internet search using any of the Complainant's marks, as the Complainant demonstrates that the leading search results are both the Respondent's and the Complainant's websites. The Respondent's website competes directly with the Complainant in selling footwear.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest a respondent of a domain name, a complainant must demonstrate each of the following: (i) the 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 domain name; and (iii) the domain name has been registered and is being used in bad faith. Under paragraph 15(a) of the Rules, "[a] Panel shall decide a 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 it deems applicable".

A. Identical or Confusingly Similar

The first element of a UDRP complaint "functions primarily as a standing requirement" and entails "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 disputed domain name incorporates the Complainant's registered THURSDAY trademark in its entirety, as well as the distinctive "Thursday" portion of the Complainant's registered THURSDAY EVERYDAY and THURSDAY BOOT CO. trademarks. The disputed domain name is especially similar phonetically, visually, and in overall impression to the THURSDAY BOOT CO. mark. The addition of the misspelled letter "s" to the word "boots" does not prevent a finding of confusing similarity. See *id.* section 1.9 ("typosquatting"). As usual, the addition of the Top-Level Domain ".com" is disregarded as a standard registration requirement (see *id.* section 1.11.1).

The Panel concludes that the Complainant has established the first element of the Complaint.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy gives non-exclusive examples of instances in which a respondent may establish rights or legitimate interests in a domain name, by demonstrating any of the following:

(i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) that the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or

(iii) the respondent is 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.

Because a respondent in a UDRP proceeding is in the best position to assert rights or legitimate interests in a domain name, it is well established that after a complainant makes a *prima facie* case, the burden of production on this element shifts to the respondent to come forward with relevant evidence of its rights or legitimate interests in the domain name. See [WIPO Overview 3.0](#), section 2.1.

The Complainant has demonstrated trademark rights, denies authorizing the Respondent to use the trademark, and demonstrates that the disputed domain name has been used only to redirect to a website selling competing products under an entirely different name. Thus, the Complainant has made a *prima facie* case, and the burden of production shifts to the Respondent. The Respondent did not respond to the Complaint, and no rights or legitimate interests are evident from a perusal of the website linked to the disputed domain name.

The Panel finds that the Respondent has failed to meet its burden of production and concludes that the Complainant prevails on the second element of the Complaint.

C. Registered and Used in Bad Faith

The Policy, paragraph 4(b), furnishes a non-exhaustive list of circumstances that “shall be evidence of the registration and use of a domain name in bad faith”, including the following (in which “you” refers to the registrant of the domain name):

“(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

Under the Policy, the Complainant must demonstrate bad faith in both the registration and the use of the disputed domain name. The Complainant's trademark registrations were obtained after the disputed domain name was first registered in July 2018, and there is no definitive evidence that the Respondent acquired the disputed domain name more recently. However, while the record lacks historical sales data, it includes sufficient evidence of Internet marketing and exposure to demonstrate that the THURSDAY BOOT CO. combined mark had acquired distinctiveness by 2018. The record and the Wayback Machine document the 2014 Kickstarter campaign and the early use of this logo for the Complainant's exclusively online business. See [WIPO Overview 3.0](#), section 1.3: “Particularly with regard to brands acquiring relatively rapid recognition due to a significant Internet presence, panels have also been considering factors such as the type and scope of market activities and the nature of the complainant's goods and/or services.”

The disputed domain name is confusingly similar to this mark in particular and nearly identical to the Complainant's own domain name, <thursdayboots.com>, representing an obvious case of typosquatting. “Thursday” is an English dictionary word but not associated with footwear apart from the Complainant's trademark, and “bootss” is clearly a deliberate misspelling, given that the Complainant had been operating with the correctly spelled domain name since 2014. The Respondent has employed the disputed domain name precisely to redirect visitors to a website selling products directly competing with the Complainant's “THURSDAY” branded products. This is plainly an instance of bad faith as contemplated by the Policy, paragraph 4(b)(iv).

The Panel concludes that the Complainant has established the third element of the Complaint, bad faith.

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, <thursdaybootss.com>, be transferred to the Complainant.

/W. Scott Blackmer/

W. Scott Blackmer

Sole Panelist

Date: December 16, 2022