

ADMINISTRATIVE PANEL DECISION

Menu A/S v. bo pam
Case No. D2022-3991

1. The Parties

The Complainant is Menu A/S, Denmark, represented by Aera A/S, Denmark.

The Respondent is bo pam, China.

2. The Domain Name and Registrar

The disputed domain name <menuspace.shop> is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 25, 2022. On October 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 25, 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 October 28, 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 amended Complaint on October 31, 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 November 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 22, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 23, 2022.

The Center appointed Christopher J. Pibus as the sole panelist in this matter on December 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

The Complainant was founded in 1978 and has since grown to be an internationally recognized Danish design company known for its modern furniture and interior designs. Its products are created by talented designers from all over the world. The Complainant sells furniture, lighting and accessories in the premium segment to professional and private customers in more than 40 countries. Its headquarters are located in Copenhagen.

The Complainant owns the MENU and MENUSPACE trademarks, which are registered as word marks including: Danish Trademark Registration no. VR 2020 01272, MENUSPACE, registered on July 17, 2020; International Registration no. 1556536, MENUSPACE, registered on July 17, 2020 (designating *inter alia* European Union and United States of America); Danish Registration no. VR 2003 01595, MENU, registered on May 12, 2003; International Registration no. 844063, MENU, registered on August 19, 2003 (designating *inter alia* China, Japan, and Norway); and European Union Trademark Registration no. 003105251, MENU, registered on November 3, 2004. The Complainant's trademark registrations date back as far as 2003 for MENU, and 2020 for MENUSPACE.

The Complainant is the owner of the domain name <menuspace.com> and has maintained an active associated website promoting its goods and services under the MENUSPACE trademark since as early as 2015.

The Respondent acquired the disputed domain name on June 29, 2022 and has recently been operating an associated website displaying designer furniture and accessories, the images of which are identical to those found on the Complainant's website.

5. Parties' Contentions

A. Complainant

The Complainant submits that it is the owner of well-established registered rights in the trademarks MENU and MENUSPACE in Denmark and other countries where it carries on business. The disputed domain name is confusingly similar to the Complainant's registered trademark MENUSPACE as it is virtually identical except for the addition of the generic Top-Level Domain ("gTLD") "shop" which is irrelevant to the confusion analysis.

With respect to the absence of rights or legitimate interests, the Complainant submits that the Respondent has engaged in a scheme to deceive users who access his website, by copying the content of the Complainant's website including product photographs and text taken from the Complainant's business. The Complainant asserts that the Respondent has never been authorized to engage in this conduct or to adopt a confusingly similar domain name. It further submits that the Respondent is not making a *bona fide* offering of services but rather is using the disputed domain name to deceive unknowing users through its association with the use of a copycat website. The Complainant submits that it has put forward clear *prima facie* evidence of the absence of rights or legitimate interests.

With respect to bad faith, the Complainant relies on evidence of the Respondent's look-a-like website, which exactly mirrors the Complainant's own website, to establish that the Respondent has deliberately targeted its business and its distinctive MENUSPACE word mark and logo. Based on this misconduct, the Complainant submits that there is sufficient evidence to support a finding of bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant clearly owns rights in its MENUSPACE trademark, established through use and registration in Europe including in Denmark where it carries on its business. With respect to identity or confusing similarity, the Panel finds the disputed domain name exactly replicates the Complainant's trademark, except for the addition of the gTLD suffix "shop." It is well-established that the addition of a gTLD suffix is not relevant to a confusion analysis and is to be disregarded under the Policy (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.11.1).

The Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Although the Policy places on the Complainant the burden of proof to establish the absence of rights or legitimate interests, the practice now recognizes that it is often sufficient for a Complainant to make out a *prima facie* case, which then shifts the burden to the Respondent to bring forward evidence to demonstrate the relevant rights or interests. Where the Respondent fails to produce such evidence, the Complainant will be deemed to have satisfied the second element ([WIPO Overview 3.0](#), section 2.1).

In this proceeding, the Complainant has provided detailed evidence of the Respondent's misconduct in misappropriating the Complainant's trademark and creating a virtual copy of the Complainant's website (associated with the disputed domain name) which forms part of a scheme to deceive users. The documentary evidence shows outright misappropriation of many product images and names on page after page of the copycat website. The totality of the evidence clearly establishes a *prima facie* case of the absence of rights or legitimate interests on the part of the Respondent. Illegal conduct of this nature is highly probative in connection with this issue. "Panels have categorically held that the use of a domain name for illegal activity (e.g., [...] impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent." ([WIPO Overview 3.0](#), section 2.13.1.)

In the absence of any response from the Respondent, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that the disputed domain name constitutes an abusive registration which was registered and is being used in bad faith. The Respondent clearly set out to target the Complainant and to deceive users into believing that his copycat website associated with the disputed domain name was in fact the website of the Complainant. The Respondent's website was cunningly adapted so it had all the appearance of the Complainant's virtual shop, including the replication of the Complainant's distinctive logo in multiple places as well as the reproduced product images, graphics, text and layout. The Panel notes one example to illustrate the level of copying engaged in by the Respondent across the entire product offering: the copycat website includes a photographic display of a lounge chair called Anderssen & Voll Brasilia which replicates the image and text created by the Complainant. However, the Respondent's bad faith goes beyond the unauthorized reproduction by pricing the item at an absurdly low level, more than 80% less than the purported regular price, thereby inflicting economic harm targeted at the Complainant's market.

[WIPO Overview 3.0](#), section 3.4 recognizes that this type of abusive conduct identifies the use of deceptive copycat websites as probative evidence of bad faith (see *Magna International Inc. v. Stefan Polisky*, WIPO Case No. [D2021-0875](#)).

The Complainant has satisfied paragraph 4(a)(iii) 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 <menuspace.shop> be transferred to the Complainant.

/Christopher J. Pibus/

Christopher J. Pibus

Sole Panelist

Date: December 29, 2022