

ADMINISTRATIVE PANEL DECISION

Cloud Catalyst Technologies, LLC v. Sheldon Benjamin
Case No. D2023-0020

1. The Parties

Complainant is Cloud Catalyst Technologies, LLC, United States of America (“United States”), represented by Culhane Meadows PLLC, United States.

Respondent is Sheldon Benjamin, United States.

2. The Domain Name and Registrar

The disputed domain name <gunbrokerllc.com> is registered with DreamHost, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 3, 2023. On January 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 4, 2023, 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 (Proxy Protection LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on January 5, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on January 9, 2023.

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 Respondent of the Complaint, and the proceedings commenced on January 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 2, 2023. A party identifying itself as “Ben Woods” (which is not the named Respondent “Sheldon Benjamin”) sent emails to the Center from Respondent’s email address as verified by the Registrar on January 8, 2023, and February 8, 2023, but Respondent did not provide a formal Response. The Center informed the Parties of the Commencement of Panel Appointment Process on February 7, 2023.

The Center appointed Ingrīda Kariņa-Bērziņa as the sole panelist in this matter on February 10, 2023. 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 an online retailer of firearms under the GUNBROKER.COM mark. It is the proprietor of several trademark registrations, including United States Trademark Reg. No. 3510548 for GUNBROKER.COM (device mark), registered on October 7, 2008, for services in class 35 (claiming a date of first use of September 30, 2000), and United States Trademark Reg. No. 4930953 for GUNBROKER.COM (word mark), registered on April 5, 2016, for services in class 35 (claiming a date of first use of March 13, 1999).

Complainant operates its primary business website at the domain name <gunbroker.com>.

The disputed domain name was registered on February 27, 2022. At the time of this Decision, it did not resolve to an active website. The record contains evidence that it previously resolved to an e-commerce site on which various firearms and related goods are offered for sale. The header of the website states “GUN Broker.com” with the latter portion stacked below the word gun, which mimics the way Complainant displays its registered mark on its website.

5. Parties’ Contentions

A. Complainant

Complainant’s contentions may be summarized as follows:

Under the first element, Complainant states that, since 1999, it or its predecessor-in-interest has operated a website under the name GUNBROKER.COM, which is the world’s largest online auction of firearms and accessories. Complainant has both common-law and registered rights in the GUNBROKER.COM mark. The disputed domain name is identical to Complainant’s mark, except for the addition of the letters “llc”, which do not distinguish the disputed domain name.

Under the second element, Complainant states that it has never assigned, granted, licensed, sold, transferred or in any way authorized Respondent to register or use the GUNBROKER.COM mark. Respondent’s website actively misrepresents that it is operated by GUNBROKER.COM, rather than GUNBROKERLLC.COM. Respondent is pretending to be Complainant. Respondent has never been known by the disputed domain name and is not making a legitimate noncommercial or fair use of the disputed domain name.

Under the third element, Complainant states that the disputed domain name was registered primarily for the purpose of attracting, for commercial gain, Internet users to Respondent’s website by creating a likelihood of confusion with Complainant’s mark. Complainant’s rights in its GUNBROKER.COM mark pre-date registration of the disputed domain name by more than 22 years. Respondent’s website logo drops the “llc” and copies text of the GUNBROKER.COM mark exactly.

Complainant requests transfer of the disputed domain name.

B. Respondent

On January 8, 2023, a party identifying himself as “Ben Woods” (which is not the named Respondent “Sheldon Benjamin”) sent an email to the Center from the email address of Respondent as verified by the

Registrar. Respondent's statements may be summarized as follows: He founded a business called Gun Broker LLC that served as a brokerage for specialized antique guns. When creating an e-commerce site, he sought a domain name "that best describes me so that my clients can easily find me". He states that "I believe that every domain name is unique in one way or another and during a domain name purchase you can only get an available domain and not the one that is already registered. I also know that during a domain name search, if you type a domain that is already existing, you will be given variants of other domain extensions. e.g .org, .net, .biz and others who have the same name but different extensions. I am equally aware that these various domain extensions bring about domain similarity which is very normal on the internet with a lot of proven examples. I want to clearly point out to the party that reported our domain that we did not steal this domain, we legally purchased and registered at dream host. If it were taboo for us to purchase this domain name, I believe that there would have been a red light indication from Dreamhost or WHOIS negating this purchase".

Respondent states that he will not take down his "domain name" as he is the legally registered owner, with a receipt of purchase. He requests immediate transfer of the "domain name" back to the Registrar.

6. Discussion and Findings

Paragraph 4(a) of the UDRP requires Complainant to make out all three of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) Respondent has registered and is using the disputed domain name 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

Complainant has provided evidence establishing that it has trademark rights in the GUNBROKER.COM mark through registrations in the United States. Complainant thereby satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. See WIPO Overview on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.1.

In comparing Complainant's marks with the disputed domain name, the Panel finds that the disputed domain name is confusingly similar to Complainant's mark, as it contains Complainant's GUNBROKER.COM mark, followed by the term "llc". It is the consensus view of UDRP panels that, where a domain name incorporates the entirety of a trademark, the domain name will normally be considered confusingly similar to that mark. Moreover, where the relevant trademark is recognizable within the disputed domain names, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. See [WIPO Overview 3.0](#), sections 1.7 and 1.8.

Accordingly, the Panel finds that Complainant has established the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

The Panel finds that the evidence submitted by Complainant establishes a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name. Respondent is not authorized by Complainant and has no rights in the GUNBROKER.COM mark. The disputed domain name comprises

Complainant's mark together with the term "llc". The disputed domain name previously resolved to a website that included a logo that dropped the "llc" and copied the text of the GUNBROKER.COM mark exactly, *i.e.*, "GUN Broker.com" with the latter portion stacked below the word gun, which mimics the way Complainant displays its registered mark on its website.

Pursuant to [WIPO Overview 3.0](#), section 2.1, and cases thereunder, where Complainant makes out a *prima facie* case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

Respondent states that his business is called "Gun Broker LLC", which could, according to established UDRP practice, provide a basis for a claim of rights or legitimate interests. See [WIPO Overview 3.0](#), section 2.3. However, Respondent has not provided any information to support Respondent's assertion that a business called "Gun Broker LLC" exists or that it predates the establishment of Complainant's rights in the GUNBROKER.COM mark. The screen shots of Respondent's website reveal that Respondent has identified the operator of the website as "Gun Broker.com", which is identical to Complainant's mark and domain name, and which mimics the way Complainant displays its registered mark on its website. There is no evidence of a disclaimer describing the lack of a relationship between Respondent and Complainant. The disputed domain name consists of Complainant's well-established GUNBROKER.COM mark plus the term "llc". In this case, noting the nature of the disputed domain name, and the prior use of Complainant's mark on Respondent's website, the Panel finds that the Complainant has made out a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name, which Respondent has not successfully rebutted.

Accordingly, the Panel finds that Complainant has established the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Complainant has demonstrated Respondent's bad faith registration and use of the disputed domain name. Complainant's rights in its GUNBROKER.COM mark predates the registration of the disputed domain name by more than 20 years. The disputed domain name reflects Complainant's GUNBROKER.COM mark in its entirety, together with the term "llc". UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith on the part of Respondent. See [WIPO Overview 3.0](#), section 3.1.4.

In this case, the record shows that Respondent deliberately targeted Complainant in incorporating Complainant's mark in the disputed domain name. The disputed domain name resolved to a website operated by "Gun Broker.com", with the latter portion stacked below the word gun, which mimics the way Complainant displays its registered mark on its website, and which offers goods for sale that are substantially identical to those sold by Complainant. The Panel, in reviewing the website, noticed that it stated that the business is based in Texas, but the contact information provided did not correspond to these statements, and other information about the operator of the website was minimal or nonexistent. Accordingly, the Panel finds that Respondent attempted to impersonate Complainant for commercial gain by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website, indicating bad faith in registration and use of the disputed domain name. See [WIPO Overview 3.0](#), sections 3.1.4 and 3.2.1.

Respondent has provided no evidence of actual or contemplated good-faith use of the disputed domain name. The fact that the disputed domain name does not currently resolve to an active website does not prevent a finding of bad faith.

The Panel therefore finds that Complainant has established the third element under paragraph 4(a) 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 <gunbrokerllc.com> be transferred to Complainant.

/Ingrīda Kariņa-Bērziņa/

Ingrīda Kariņa-Bērziņa

Sole Panelist

Date: February 24, 2023