

ADMINISTRATIVE PANEL DECISION

TRP Brands, LLC v. Xiuying Iv

Case No. D2023-0709

1. The Parties

The Complainant is TRP Brands, LLC, United States of America (“United States”), represented by Thompson Coburn LLP, United States.

The Respondent is Xiuying Iv, China.

2. The Domain Name and Registrar

The disputed domain name <apt2bshop.com> is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 15, 2023. On February 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 16, 2023, 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 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 March 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 22, 2023.

The Center appointed Miguel B. O’Farrell as the sole panelist in this matter on March 28, 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

The Complainant is a retailer of furniture, home décor, and interior design furnishings identified with the APT 2B mark.

The Complainant owns the following trademark registrations:

- United States Trademark Registration No. 5,579,104 APT 2B, registered on October 9, 2018, in class 35; and
- United States Trademark Registration No. 4,122,693 APT 2B and Design, registered on April 3, 2012, in class 35.

In addition, the Complainant's website "www.ap2b.com" displays a range of furniture, home décor, and interior design furnishings with the APT 2B trademark.

The disputed domain name was registered on June 18, 2022, and resolves to a webpage that offers for sale furniture, home décor, and interior design furnishings that compete with those offered for sale by the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant claims that the disputed domain name is confusingly similar to its trademark APT 2B in which the Complainant has rights and that the Respondent has no rights or legitimate interests in the disputed domain name, which was registered and is being used in bad faith.

More specifically, the Respondent is not a licensee of the Complainant and has never been affiliated with, connected to, or sponsored by the Complainant and the disputed domain name was registered more than ten years after the Complainant first used and registered with the United States Patent and Trademark Office ("USPTO") the APT 2B mark in commerce in connection with furniture, home décor, and interior design furnishings.

A search of current USPTO records reveals no application or registrations for marks incorporating the APT 2B mark in the name of the Respondent.

The Respondent is taking unfair advantage of the goodwill associated with the Complainant's APT 2B mark to offer furniture, home décor, and interior design furnishings that are competitive with the Complainant.

The disputed domain name includes the well-known and distinctive trademark APT 2B. Consequently, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark.

Finally, the Complainant has requested the Panel to issue a decision ordering the transfer of the disputed domain name to the Complainant.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove each of the following, namely that:

- (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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

As set forth in section 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name to determine whether the disputed domain name is confusingly similar with the trademark. The test involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Panel considers that the disputed domain name is confusingly similar to the Complainant's APT 2B trademark.

The disputed domain name incorporates the Complainant's trademark APT 2B in its entirety with the addition of the term "shop", which certainly does not prevent a finding of confusing similarity. Section 1.8 of [WIPO Overview 3.0](#) provides that when the relevant trademark is recognizable within the disputed domain name – as it occurs in this case- the addition of other terms would not prevent a finding of confusing similarity under the first element.

The ".com" generic Top-Level Domain ("gTLD") is viewed as a standard registration requirement and is generally disregarded under the first element confusing similarity test, as set forth in section 1.11.1 of [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademark APT 2B in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy are fulfilled.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a domain name by demonstrating any of the following non-exclusive defenses:

- (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) 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.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established, as it is put in section 2.1 of [WIPO Overview 3.0](#), that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate

interests in the domain name. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

There is no evidence in the present case that the Respondent has been commonly known by the disputed domain name, enabling it to establish rights or legitimate interests therein.

Furthermore, there is no evidence in the file to prove any of the circumstances mentioned in paragraph 4(c) of the Policy, nor any other circumstances to suggest that the Respondent has rights or legitimate interests in the disputed domain name.

Likewise, and as further discussed under section 6.C of this Decision, it does not seem that the Respondent is making any legitimate noncommercial or fair use of the disputed domain name, but rather that it intends to use the disputed domain name for the purpose of deriving unfair monetary advantage by confusing Internet users and leading them to believe that the site to which the disputed domain name relates is an official site of the Complainant.

As established in section 2.5 of [WIPO Overview 3.0](#): “Fundamentally, a respondent’s use of a domain name will not be considered ‘fair’ if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant’s mark is often central to this inquiry”. Here, the nature of the disputed domain name carries a risk of implied affiliation.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the disputed domain name (*Telstra Corporation Limited. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

The Panel finds that the Respondent has no rights nor legitimate interests in the disputed domain name and that the requirements of 4(a)(ii) of the Policy are fulfilled.

C. Registered and Used in Bad Faith

The Panel is satisfied that the Respondent must have been aware of the Complainant’s trademark APT 2B mentioned in paragraph 4 above (“Factual Background”) when it registered the disputed domain name on June 18, 2022, ten years after the Complainant had registered and used the APT 2B trademark.

In accordance with section 3.1.4 of [WIPO Overview 3.0](#), the Panel considers that the inclusion of the Complainant’s APT 2B trademark in the disputed domain name creates a presumption of bad faith.

The Respondent when registering the disputed domain name has targeted the Complainant’s trademark APT 2B and added the term “shop” to confuse Internet users and lead them to believe that the website to which the disputed domain name resolves is the official website of the Complainant, and thereby capitalize on the fame of the Complainant’s trademark for its own monetary benefit.

The clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent’s choice of the disputed domain name is also a significant factor to consider that the disputed domain name was registered in bad faith (as stated in section 3.2.1 of [WIPO Overview 3.0](#)).

Furthermore, the fact that the website to which the disputed domain name resolves offers for sale goods competing with those offered by the Complainant is evidence of bad faith use.

The Panel finds that the Respondent has registered and uses the disputed domain intentionally to attempt to attract for commercial gain, Internet users to its website by creating a likelihood of confusion with the

Complainant's APT 2B trademark as to the source, sponsorship, affiliation, or endorsement. This amounts to bad faith under paragraph 4(b)(iv) 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, <apt2bshop.com> be transferred to the Complainant.

/Miguel B. O'Farrell/

Miguel B. O'Farrell

Sole Panelist

Date: April 11, 2023