

ADMINISTRATIVE PANEL DECISION

CREATIVE CO-OP, INC. v. Manlidy, GNN

Case No. D2023-1394

1. The Parties

The Complainant is CREATIVE CO-OP, INC., United States of America (“United States” or “US”), represented by Nolan Heimann LLP, United States.

The Respondent is Manlidy, GNN, Singapore.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 31, 2023. On March 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 1, 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 (Whoissecure, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 6, 2023 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 amendment to the Complaint on April 6, 2023.

The Center verified that the Complaint together with the amendment to the 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 April 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 17, 2023.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on May 26, 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 company for home interior designs. It results from the Complainant's undisputed allegations that it had been trading under the BLOOMINGVILLE brand for nearly twenty years.

It further results from the allegations and evidence provided by the Complainant, which remain undisputed, that the Complainant holds trademark registrations containing or consisting of the word element BLOOMINGVILLE, in particular US Trademark BLOOMINGVILLE (verbal), registered on May 29, 2018 with No. 5479309 for goods in classes 20, 21, 22, 24, and 27.

The disputed domain name was registered on February 15, 2023. The language of the Registration agreement is English.

Finally, the Complainant has provided – undisputed – evidence demonstrating that the disputed domain name resolves to a website that uses the BLOOMINGVILLE trademark on each page and purporting to offer only BLOOMINGVILLE-branded products for an allegedly highly discounted price.

5. Parties' Contentions

A. Complainant

The Complainant asserts that the disputed domain name is confusingly similar to its trademark BLOOMINGVILLE.

Secondly, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. In particular, the Complainant has not granted a license, consented to, or otherwise authorized the Respondent to use its BLOOMINGVILLE trademark. Furthermore, the Respondent cannot assert any right or interest in the trademark BLOOMINGVILLE that existed prior to the Respondent having actual knowledge of the Complainant's exclusive rights in that name. There is no indication that the Respondent is commonly known under the disputed domain name.

Thirdly, the Complainant finds that the Respondent's registration and use of the disputed domain name constitutes bad faith. According to the Complainant, the only reason the Respondent selected the disputed domain name was because it was substantially similar to the Complainant's registered BLOOMINGVILLE trademark and would cause consumers to believe the Respondent is affiliated with the Complainant. The Respondent is therefore using the disputed domain name to create the consumer impression that it is an outlet authorized by the Complainant. It can thus be concluded that the Respondent is using the Complainant's registered trademark to capitalize off of the success and reputation of the Complainant and to cause consumers to purchase inferior goods from the Respondent's website under the disputed domain name instead of authentic goods from the Complainant.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to "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".

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements in order to obtain an order that the disputed domain name should be transferred or cancelled:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainants have 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 and is being used in bad faith.

The Panel is satisfied that the registrant of record for the disputed domain name is the Respondent and will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must first of all establish rights in a trademark or service mark and secondly establish that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

The Complainant is the owner of trademark registrations consisting of the verbal element BLOOMINGVILLE, e.g., US trademark, registered on May 29, 2018 with No. 5479309 for goods in classes 20, 21, 22, 24 and 27.

The Panel notes that the Complainant's registered trademark BLOOMINGVILLE is fully included in the disputed domain name and merely followed by the term "home". It is the view of this Panel that the combination of the trademark BLOOMINGVILLE with the term "home" placed after the mark does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademarks. In fact, in accordance with the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8, where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element of the Policy.

The Top-Level Domain ".com", which is a technical requirement, is generally disregarded for the purpose of the analysis of confusing similarity ([WIPO Overview 3.0](#), section 1.11.1).

In the light of the above, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests in a disputed domain name. In the Panel's view, based on the undisputed allegations stated above, the Complainant has made a *prima facie* case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

First, it results from the Complainant's uncontested evidence that the disputed domain name resolves to a website that uses the BLOOMINGVILLE trademark on each page and purporting to offer only BLOOMINGVILLE-branded products for an allegedly highly discounted price. In this Panel's view, such use cannot be qualified as a *bona fide* offering of goods or services in accordance with paragraph 4(c)(i) of the Policy, since such use is likely to mislead Internet users. In addition, the Respondent did not submit any evidence of *bona fide* pre-Complaint preparations to use the disputed domain name. In particular, the Complainant's uncontested allegations demonstrate that it has not authorized or licensed the Respondent's use of the BLOOMINGVILLE trademark for registering the disputed domain name which is confusingly similar to the Complainant's trademark.

Furthermore, the Panel notes that there is no evidence in the record or Whois information showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

Finally, the Panel notes that there is no evidence in the record either showing that the Respondent might be making a noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue pursuant to paragraph 4(c)(iii) of the Policy. In particular, the Panel considers it obvious that the Respondent wanted to mimic the Complainant's original website under the disputed domain name which entirely incorporates the trademark BLOOMINGVILLE. Noting the absence of any disclaimer, the disputed domain name's content exacerbates the confusion caused by the incorporation of the Complainant's trademark in the construction of the disputed domain name by further impersonating the Complainant. Accordingly, further to section 2.8 of the [WIPO Overview 3.0](#), the Respondent's use of the disputed domain name to host an impersonating webstore excludes any *bona fide* offering, noncommercial, or fair use of the disputed domain name from the outset.

It is acknowledged that once the Panel finds a *prima facie* case has been established, the burden of production shifts to the Respondent to come forward with relevant and concrete evidence demonstrating rights or legitimate interests in the disputed domain name. Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

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

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith. One of these circumstances that the Panel finds applicable to the present dispute is that the Respondent by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

It is the view of this Panel that these circumstances are met in the case at hand:

It results from the documented and undisputed evidence provided by the Complainant that the disputed domain name resolves to a website that uses the BLOOMINGVILLE-trademark on each page and purporting to offer only BLOOMINGVILLE-branded products for an allegedly highly discounted price. However, the Complainant has not given any authorization for such use and is not linked to the Respondent or its website. For the Panel, it is therefore evident that the Respondent positively knew the Complainant's trademarks and products. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain name included the Complainant's trademark BLOOMINGVILLE entirely when it registered the disputed domain name. Registration of a domain name which contains a third party's trademark, in awareness of said trademark and in the absence of rights or legitimate interests is suggestive of registration in bad faith (see *e.g. Vorwerk International AG v. ayoub lagnadi, Lagnadi LTD*, WIPO Case No. [D2022-1592](#) with further references). While the ability to purchase the goods is not known to the Panel, the alleged commercial offering and impersonation of the Complainant is sufficient to establish the Respondent's bad faith intent to mislead Internet users.

In addition, the finding of bad faith registration and use is supported by the following further circumstances resulting from the case at hand:

- (i) the trademark BLOOMINGVILLE is fully and identically incorporated in the disputed domain name. At the date the Respondent registered the disputed domain name, the Complainant had been using that designation in commerce for roughly 20 years;
- (ii) the Respondent's failure to submit a formal Response;
- (iii) the Respondent's failure to provide any evidence of actual or contemplated good-faith use;
- (iv) the implausibility of any good faith use to which the disputed domain name may be put; and

In the light of the above the Panel finds that the disputed domain name has been registered and is being used in bad faith pursuant to 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, <bloomingtonhome.com>, be transferred to the Complainant.

/Tobias Malte Müller/

Tobias Malte Müller

Sole Panelist

Date: June 9, 2023