

## ADMINISTRATIVE PANEL DECISION

NHA, Inc. v. aaron fitness  
Case No. D2024-4392

### 1. The Parties

The Complainant is NHA, Inc., United States of America (“United States”), represented by Caesar Rivise, PC, United States.

The Respondent is aaron fitness, Germany.

### 2. The Domain Name and Registrar

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

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 25, 2024. On October 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 25, 2024, 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 (JOHN DOE REGISTRANT / Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 29, 2024, 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 November 1, 2024.

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 6, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 26, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 4, 2024.

The Center appointed Gustavo Patricio Giay as the sole panelist in this matter on December 17, 2024. 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 offers a wide range of products, including tobacco products (such as cigars, cigarillos, and tobacco leaves), smoker's articles (such as cigar lighters and matches), apparel (t-shirts, hooded sweatshirts, and hats), and trays for domestic purposes under the trademark BLUNTVILLE since at least 2005. The Complainant also introduced the BLUNTVILLE PINK DIVA mark for cigarettes in 2015.

The Complainant is the owner of the trademark BLUNTVILLE in many jurisdictions, including, United States Patent and Trademark Office (USPTO) Registration No. 3206773 for class 34, registered on February 6, 2007, and USPTO Registration No. 5761233 for classes 21, 25, and 34, registered on May 28, 2019; Canadian Intellectual Property Office (CIPO) Registration No. TMA718862 for class 34, registered on July 18, 2008; European Union Intellectual Property Office (EUIPO) Registration No. 004788212 for class 34, registered on October 17, 2006; and Instituto Mexicano de la Propiedad Industrial (IMPI) Registration No. 1295938 for class 34, registered on July 10, 2012. Also, the Complainant is the owner of the trademark BLUNTVILLE PINK DIVA in the USPTO Registration No. 5110566 for class 34, registered on December 27, 2016; and trademark PINK BERRY in the USPTO Registration No. 3818793 for class 34, registered on July 13, 2010.

The Complainant maintains a strong online presence through its primary website, "www.bluntville.com", registered since 2005.

Lastly, the disputed domain name was registered on February 2, 2024, and resolves to an active website that displays prominently the same stylized version of the Complainant's trademark BLUNTVILLE as that used by the Complainant and offers cigars for sale under the Complainant's trademarks BLUNTVILLE, BLUNTVILLE PINK DIVA and PINK BERRY, inviting customers to make purchases through a Telegram application.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant states that the disputed domain name is confusingly similar to its trademark BLUNTVILLE.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name, nor is he related in any way to the Complainant. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademarks BLUNTVILLE, BLUNTVILLE PINK DIVA and PINK BERRY or apply for registration of the disputed domain name.

More specifically, the Complainant alleged that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain but rather intended to create a likelihood of confusion with the Complainant's trademark. In fact, the Complainant claims that the Respondent has selected the disputed domain name only to generate confusion among consumers as to the origin of the website for the purpose of gaining commercial profit.

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:

- (i) the disputed domain name is identical or confusingly similar with 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**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves 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 Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark BLUNTVILLE is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, the terms "cigar" and "store", may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

The Complainant has claimed it has not authorized, licensed, or permitted the Respondent to register or use the disputed domain name or to use the trademarks BLUNTVILLE, BLUNTVILLE PINK DIVA and PINK

BERRY nor is there any other evidence in the file suggesting that the Respondent has or could have rights or legitimate interests in the disputed domain name. Also, the Complainant has prior rights in the BLUNTVILLE, BLUNTVILLE PINK DIVA and PINK BERRY trademarks which clearly precede the Respondent's registration of the disputed domain name.

Likewise, it does not seem that the Respondent is making any legitimate noncommercial or fair use of the disputed domain name. On the contrary, based on the evidence provided by the Complainant in Annex 8, the Respondent's use of the disputed domain name appears to be merely intended to benefit from the Complainant's reputation by confusing Internet users and leading them to believe that the site to which the disputed domain name relates is operated or endorsed by the Complainant. Hence, 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."* In this regard, the composition of the disputed domain name incorporating the Complainant's trademark BLUNTVILLE together with the terms "cigar" and "store" associated with the Complainant's business carries a risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Panel finds the second element of the Policy has been established.

### **C. Registered and Used in Bad Faith**

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In this connection, the Complainant has submitted evidence to support that the trademarks BLUNTVILLE, BLUNTVILLE PINK DIVA and PINK BERRY are widely known and were registered and used many years before the Respondent registered the disputed domain name. When registering the disputed domain name, the Respondent has targeted the Complainant to create confusion among the Internet users and benefit from the Complainant's reputation.

In particular, the Panel is satisfied that the Respondent must have been aware of the Complainant and the Complainant's trademarks BLUNTVILLE, BLUNTVILLE PINK DIVA and PINK BERRY when it registered the disputed domain name.

The Panel notes in this regard, based on the evidence provided by the Complainant in Annex 8, the disputed domain name resolves to an impersonating website that displays prominently the same stylized version of the Complainant's trademark BLUNTVILLE as the one used by the Complainant on its official website, offers for sale cigars under the Complainant's trademarks BLUNTVILLE, BLUNTVILLE PINK DIVA and PINK BERRY using the photographs of the genuine Complainant's products and generally imitates the look and feel of the Complainant's official website "www.bluntville.com". Clearly, the Respondent should have known the existence of the Complainant when registering the disputed domain name.

The Panel finds therefore that the Respondent's use of the disputed domain names was intended to attract and mislead Internet users when searching for the Complainant's website and to redirect them to a website from which the Respondent presumably derives commercial revenue by creating a likelihood of confusion with the Complainant's trademarks.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel finds that the Complainant has established the third element 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 <bluntvillecigarstore.com> be transferred to the Complainant.

*/Gustavo Patricio Giay/*

**Gustavo Patricio Giay**

Sole Panelist

Date: December 30, 2024