

## **ADMINISTRATIVE PANEL DECISION**

Boot Barn, Inc. v. LUS SHA

Case No. D2025-1538

### **1. The Parties**

The Complainant is Boot Barn, Inc., United States of America (“United States” or “US”), represented by Sisun Law, United States.

The Respondent is LUS SHA, China.

### **2. The Domain Name and Registrar**

The disputed domain name <bootbarnsales.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 April 16, 2025. On April 16, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (unknown respondent / 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 April 22, 2025, 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 April 29, 2025.

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 May 7, 2025. In accordance with the Rules, paragraph 5, the due date for Response was May 27, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 30, 2025.

The Center appointed Jane Lambert as the sole panelist in this matter on June 4, 2025. 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 Delaware corporation, its principal place of business is in Irvine, United States. It has carried on business as a retailer of Western-style clothing, footwear and home furnishings under the BOOT BARN mark since 1996. It is now the largest retailer of Western clothing and workwear in the United States.

It registered the domain name <bootbarn.com> in 1996. It has used that domain name as its main web site for its retail services. Screen prints of pages from that web site accompany the Complaint as Annex 5. Between May 2024 and March 2025, the web site attracted an average of 3 million views per month. During March 2025, it received 150,000 or more visitors every day.

Through its sales and marketing, the Complainant has acquired substantial goodwill in the BOOT BARN mark. Consumers of Western clothing, footwear and home furnishings in the United States associate the BOOT BARN mark with the Complainant and none other.

The Complainant is also the proprietor of the word mark BOOT BARN which it registered as US service mark number 2,307,397 for retail store services featuring Western wear in class 35 on January 11, 2000.

The Respondent registered the disputed domain name on March 5, 2025 and has used it to resolve to an active web site. Screen prints of pages from that web site accompany the Complaint as Annex 9. The Respondent has reproduced the Complainant's BOOT BARN service mark and logo on the home page of that web site and has reproduced photographs of its merchandise in many cases, at greatly reduced prices.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to US service mark number 2,307,397 of which it is the registered proprietor. The disputed domain name combines the mark with the word "sales". Relying on *Future Motion, Inc. v. Super Privacy LTD c/o Dynadot / nnin17 nnin17*, WIPO Case No. [D2022-0230](#), the Complainant contends that when a disputed domain name fully incorporates a complainant's registered mark, it is confusingly similar to the registered mark. It adds that the inclusion of the word "sales" after BOOT BARN does nothing to alter the overall commercial impression of the marks. Specifically, "boot barn" is the distinctive part of the Complainant's mark and constitutes the core element of the domain name, whereas "sales" is a descriptive word. It cites *GA Modelfine S.A. v. Mark O'Flynn*, WIPO Case No. [D2000-1424](#) and *Hoffmann La Roche Inc. v. Wei Chun Hsia*, WIPO Case No. [D2008-0923](#), in support of that contention.

The Complainant denies that the Respondent has any rights or legitimate interests in the disputed domain name. None of the circumstances in paragraph 4 (c) of the Policy applies to the Respondent. The Complainant submits that once it has made a prima facie case that the Respondent does not have any rights or legitimate interests, the burden shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name. In support of its contention that it has the exclusive right to use the BOOT BARN mark, the Complainant relies on its service mark registration and the Respondent's use of the disputed domain name to operate a website that purports to provide goods and services identical to and competing

with those of the Complainant in an attempt to pass itself off as the Complainant . In the Complainant's submission, the Respondent has done nothing to discharge that burden.

While emphasizing that the circumstances in paragraph 4 (b) of the Policy are not exclusive, the Complainant submits that when a respondent's web site uses a domain name that is identical or highly similar to the complainant's mark, and the web site is used to profit from diversionary tactics, the respondent is assumed to have registered and to use the domain name in bad faith.

The Complainant further submits that the registration of a domain name when the Respondent had actual or constructive notice of the registered trade or service mark is of itself an act of bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

The agreement for the registration of the disputed domain name incorporates by reference paragraph 4 (a) of the Policy:

**"Applicable Disputes.** You are required to submit to a mandatory administrative proceeding in the event that a third party (a 'complainant') asserts to the applicable Provider, in compliance with the Rules of Procedure, that

- (i) your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) you have no rights or legitimate interests in respect of the domain name; and
- (iii) your domain name has been registered and is being used in bad faith.

In the administrative proceeding, the complainant must prove that each of these three elements are present."

### **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 is reproduced within the disputed domain name. Accordingly, the Panel finds the mark is recognizable within the disputed domain name and 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, "sales" may bear on assessment of the second and third elements, the Panel finds the addition of such term 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.

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 evidence provided by the Complainant shows that the disputed domain name resolves to a website featuring the Complainant’s trademark and product images. Noting the lack of any authorization by the Complainant and the lack of any disclaimer as to the relationship between the Respondent or the Complainant (or the lack thereof), the Respondent’s use of the disputed domain name does not amount to a bona fide offer. In the Panel’s view, the most likely reason for the use of the Complainant’s service mark, logo and photographs is to lead visitors to believe that they are on the Complainant’s site.

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.

One of those circumstances is set out in paragraph 4 (b) (iv):

“by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

The Respondent has used the disputed domain name intentionally to attract for commercial gain Internet users to the web site mentioned in the Factual Background (screen prints of which are attached to the Complaint as Annex 9). As the Panel has already found that the disputed domain name is confusingly similar to the Complainant’s US service mark and noting the use of the disputed domain name as described above, it follows that the Respondent has created a likelihood of confusion with the Complainant’s mark as to the source of that web site and/or of products or services on that web site.

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 <bootbarnsales.com> be transferred to the Complainant.

*/Jane Lambert/*

**Jane Lambert**

Sole Panelist

Date: June 18, 2025