

ADMINISTRATIVE PANEL DECISION

Executive Branch, LLC v. Terance Bonecky
Case No. D2025-2129

1. The Parties

The Complainant is Executive Branch, LLC, United States of America (the “United States”), represented by Binnall Law Group, United States.

The Respondent is Terance Bonecky, United States.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 30, 2025. On May 30, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 2, 2025, the Registrar transmitted by email to the Center its verification response, disclosing registrant and contact information for the disputed domain name that differed from the named Respondent (Redacted for Privacy Purposes, Privacy service provided by Withheld for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 10, 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 amendment to the Complaint on June 11, 2025.

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 June 27, 2025. In accordance with the Rules, paragraph 5, the due date for Response was July 17, 2025. The Respondent did not submit any response.¹

¹Given the absence of a Response, the Panel carefully reviewed the record to ensure that the Respondent received the opportunity for fair notice of this proceeding. See *Nicole Kidman v. John Zuccarini, d/b/a Cupcake Party*, WIPO Case No. [D2000-1415](#). The Center

Accordingly, the Center notified the Respondent's default on July 24, 2025.

The Center appointed David H. Bernstein as the sole panelist in this matter on July 30, 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 Executive Branch, LLC is a recently founded limited liability company organized under the laws of the state of Wyoming. The Complainant states that it plans to operate a private, members-only social and dining club in Washington, D.C. under the name, "Executive Branch." It currently maintains a website for the club at "https://www.executivebranch.com". According to an image submitted by the Complainant, the website consists of a landing page with the club's logo and a tab that reads "Membership." Users who click on the "Membership" tab are informed that membership in the club is by invitation only and that the waitlist to join the club is closed.² The Complainant held a "launch party" for the club on April 26, 2025. According to the news articles that the Complainant submitted with the Complaint that reported on the launch party, the club was not opened and providing services at the time of the launch party; rather, the Complainant intended to open the club in the following months. The Complainant did not submit evidence that the club in fact opened in the month between the launch party and when it filed the Complaint.

The Complainant owns a pending application with the United States Patent and Trademark Office ("USPTO") to register the trademark EXECUTIVE BRANCH for use in connection with private members dining club services and private members drinking club services. U.S. Serial No. 99/097,564. The Complainant filed the application on March 21, 2025, on an intent-to-use basis. The Complainant owns a second application to register the trademark EXECUTIVE BRANCH for use in connection with clothing, social club services, private residence club services and concierge services, which it filed on May 15, 2025, also on an intent-to-use basis. U.S. Serial No. 99/186,341. It also owns a series of applications to register design marks for these various goods and services, each of which was also filed on May 15, 2025, on an intent-to-use basis. One of the applied-for design marks includes the term "EXECUTIVE BRANCH" and an "EB" logo, U.S. Serial No. 99/186,357; the other three include only the EB logo. U.S. Serial Nos. 99/186,354, 99/186,349, and 99/186,346. All of these applications are awaiting examination.³

The Respondent registered the disputed domain name on May 1, 2025. At the time the Complaint was filed, the disputed domain name resolved to a website purportedly operated by an entity known as The Executive Branch Club. The website offered prospective members of "The Executive Branch Club" the opportunity to support, and connect with others who support or are associated with, the administration of President Donald Trump. The website also featured a "Contact" page, which solicited cryptocurrency donations from visitors in exchange for information about membership in "The Executive Branch Club." At present, it says: "Website Expired [and] This account has expired. If you are the site owner, click below to login."

sent notification of the Complaint to the Respondent by email and courier (a fax number was not available for the Respondent). Although one of the emails (to the postmaster address) bounced back as being undeliverable, the email sent to the email address provided by the Registrar for the Respondent appears to have been received. The Written Notice sent by courier was not deliverable. It thus appears that the Respondent received actual notice of the Complaint by email, but regardless, the Panel finds that the Center discharged its obligation to provide fair notice to the Respondent as required by the Rules, paragraph 2(a).

²The Panel notes that, as of the date of its decision, the landing page of the Complainant's website no longer featured the "Membership" tab.

³Although the Complainant did not introduce its May 15, 2025, application to register EXECUTIVE BRANCH or its four applications to register related design marks, the Panel may consider those applications in assessing the merits of this case. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.8.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy to cancel the disputed domain name.

i. Identical or Confusingly Similar

The Complainant asserts common law rights in the EXECUTIVE BRANCH trademark. The Complainant states that it has been using the EXECUTIVE BRANCH mark in trade since it filed its application to register the mark with the USPTO on March 21, 2025. The Complainant further asserts that the club's founding and launch party garnered substantial attention in traditional media and on social media, which demonstrates that the EXECUTIVE BRANCH mark has acquired distinctiveness.

The Complainant contends that the disputed domain name, <theexecutivebranchclub.com>, is confusingly similar to the EXECUTIVE BRANCH mark because it incorporates the mark in its entirety, with the addition of only the nondistinctive terms "the" and "club." It argues that the confusing similarity of the disputed domain name and mark is exacerbated by the Registrant's efforts to pass itself off as the Complainant and defraud individuals hoping to gain membership in its club.

ii. Rights or Legitimate Interests

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. In particular, the Complainant asserts that there is no evidence that the Respondent is a valid or existing legal entity, that the Respondent is known by the name The Executive Branch Club, or that the Respondent is engaged in the bona fide sale of goods or offering of services through the disputed domain name. Instead, the Complainant asserts, the Respondent has used the disputed domain name to defraud consumers by falsely claiming association with the Complainant and Trump administration.

iii. Bad Faith

The Complainant asserts that the Respondent registered and is using the disputed domain name in bad faith. It argues that, given the media coverage that the Complainant's club has received, the Respondent must have been aware of the Complainant's club prior to registering the disputed domain name. The Complainant argues further that the Respondent has appropriated the Complainant's mark in the disputed domain name and on its website in order to mislead consumers into believing that the Respondent is the Complainant and to perpetuate a fraudulent cryptocurrency scheme. The Complainant contends, based on those allegations, that the Respondent has sought to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's EXECUTIVE BRANCH mark as to the source, sponsorship, affiliation, or endorsement of its website.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy requires that the Complainant prove the following elements by a preponderance of the evidence in order to obtain transfer or cancellation of the disputed domain name: (1) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (2) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and (3) the disputed domain name has been registered and is being used in bad faith.

Pursuant to paragraph 5(f) of the Rules, in the absence of a Response, the Panel is directed to proceed to decision based upon the Complaint and may rely on supported and nonconclusory allegations in the Complaint. [WIPO Overview 3.0](#), section 4.3. The Panel need not, however, credit conclusory allegations that are not supported by allegations of fact or other evidence. *Id.*, section 4.2. Notwithstanding the Respondent's default, the Complainant bears the burden to establish each element of the Policy. *Id.*, section 4.3.

A. Identical or Confusingly Similar

The first element of the Policy functions primarily as a standing requirement. The standing test for confusing similarity requires, first, that the Complainant show rights in a trademark, and then involves a reasoned but relatively straightforward comparison between the Complainant's mark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant fails to satisfy this threshold test because it has not proven that it has rights in its claimed mark.

The Complainant acknowledges that it does not own a trademark registration for EXECUTIVE BRANCH. Although the Complainant owns three intent-to-use applications to register the EXECUTIVE BRANCH mark with USPTO, all three applications are pending and awaiting examination. Thus, they do not constitute proof of trademark rights within the meaning of UDRP paragraph 4(a)(i). [WIPO Overview 3.0](#), section 1.1.4; see also *Universal Remanufacturing Co. LLC d/b/a Phoenix Chassis v. Super Privacy Service LTD c/o Dynadot and Domain Sales (expired domain caught by auction winner c/o Dynadot)*, WIPO Case No. [D2022-3700](#).

The fact that these applications are all intent-to-use applications, and that the Complainant has not filed statements of use, also suggests that the EXECUTIVE BRANCH mark is not in use in commerce. In the absence of use in commerce, there can be no common law trademark rights. See *Capital Bay Funding, LLC v. Capital Bay Funding LLC*, *Capital Bay Funding LLC*, WIPO Case No. [D2025-1080](#) ("Unregistered trademark rights can only be established through use in commerce."). In order to claim trademark rights, the Complainant must show that it has offered goods or services under the EXECUTIVE BRANCH mark. *Am. Express Co. v. Goetz*, 515 F.3d 156, 161 (2d Cir. 2008) ("[T]here can be no trademark absent goods sold and no service mark without services rendered."); *Allard Enters. v. Advanced Programming Res., Inc.*, 146 F.3d 350, 357 (6th Cir. 1998) (citing "the longstanding principle that, in the absence of federal registration, prior ownership of a mark is only established as of the first actual use of a mark in a genuine commercial transaction"); cf. *Couture v. Playdom, Inc.*, 778 F.3d 1379, 1382 (Fed. Cir. 2015) (collecting cases and observing that "circuits have interpreted the [use-in-commerce requirement] as requiring actual provision of services").

The Complainant has not proven that it has used the EXECUTIVE BRANCH mark in commerce. The Complainant claims in conclusory fashion that "it has been using [the EXECUTIVE BRANCH mark] in trade since" it filed its trademark application on March 21, 2025, but it provides no evidence or allegations of fact demonstrating how it has allegedly used the mark in trade. Moreover, the assertion that it has been using the mark since March 21, 2025, is undermined by the fact that the Complainant filed applications on that day, and even months later in May 2025, still on an intent-to-use basis. Furthermore, the Complaint itself is contradictory on this point, as it also states that the Complainant filed its intent-to-use applications on March 21, 2025, "[p]rior to its launch" of the club. Further undermining this assertion of use in commerce is the fact that the Complainant alleges as of the date it filed the Complaint that the Complainant "is a newly established LLC that **will operate** [emphasis added] a private, members-only club in Washington, D.C.," which implies that it was not yet operating the club at the time it filed the Complaint on May 30, 2025.

Equally unpersuasive is the Complainant's submitted evidence of alleged third-party recognition of the mark. These reports do not indicate that the club is open and offering services; they only indicate that the club will open and offer services in the future. These facts do not show use of the mark in connection with an offer of services, as required to establish trademark rights.

The Panel acknowledges that the Complainant has promoted its planned future offering of club-related services, including by soliciting members and hosting a launch party. But such promotion does not itself

create trademark rights under United States law (which is the country in which the Complainant is claiming trademark rights, and is therefore the relevant law for purposes of assessing the Complainant's claim of trademark rights, see [WIPO Overview 3.0](#), section 4.15). See *In re 96 Wythe Acquisition, LLC*, 669 B.R. 238, 251 (Bankr. S.D.N.Y. 2025) (use of a mark to promote a hotel while the hotel was under construction did not establish trademark rights because the hotel had not yet opened or offered hotel services). Such promotion, if sufficiently widespread so as to create an association between the mark and the user's services among a substantial portion of the consuming public, may be considered "analogous use" under United States law, but analogous use is generally valid only for establishing priority once actual use later begins. 2 McCarthy on Trademarks and Unfair Competition ("McCarthy") § 16.14 (5th ed.). That is because analogous use does not independently create trademark rights under United States law; such rights only vest upon the actual (or "technical") use of the mark, at which time the analogous use operates to provide an earlier priority date (much like an intent-to-use trademark application in the United States). See *id.* ("While use analogous to trademark use can create priority, actual, technical trademark use must follow the use analogous to trademark use within a commercially reasonable period of time.").

Whether pre-sale activities can qualify as analogous use is a fact-dependent inquiry. *Id.* In this case, the Complainant offers little more than the conclusory assertions that it has used its alleged EXECUTIVE BRANCH mark in trade and that its anticipated club has garnered public attention. Beyond the website and launch party, it points only to three items of third-party news coverage of the anticipated club, which was published in Politico, CNBC, and Axios. The Complainant has not submitted any evidence of the reach of these three news reports or its website, or evidence of the public's recognition of its alleged EXECUTIVE BRANCH trademark. Without more, the Panel cannot conclude that the Complainant's pre-sale activities are sufficient to satisfy the test for analogous use. And, in any event, absent evidence of subsequent actual use (which the Complainant did not submit with its Complaint), analogous use is insufficient to create common law trademark rights. ⁴

Given the media attention regarding the launch of the club, and that the disputed domain name was registered after the Complainant's announcement of its new membership club, and the use of the disputed domain name described above, plainly the Respondent was aware of the Complainant's venture. While some panels have found that respondent awareness and targeting of a complainant's nascent rights would affirm (but not create) a finding of rights under the Policy, as there is no actual use in commerce shown in the record, these considerations ultimately do not assist the Complainant. The Panel would also note that even a cursory Internet search seems to indicate that news coverage of the club seems to have trailed off in May or June and there is no immediately obvious news information that would support a claim that the mark is actually being used in commerce; if there was, it would be incumbent on the Complainant to provide it.

Given the failure by the Complainant to demonstrate any use of the mark, the Panel need not consider whether the alleged EXECUTIVE BRANCH mark for services that give club members access to individuals within the executive branch of the United States government is a mark that is capable of being registered because it is inherently distinctive, or whether the Complainant will need to demonstrate secondary meaning in order to show that the mark has acquired distinctiveness. These are issues that will, in any event, be decided in due course by the USPTO when it examines the pending applications.

Because the Complainant has not proven that it had rights in the EXECUTIVE BRANCH mark at the time it filed the Complaint, it has failed to establish the first element of the Policy. [WIPO Overview 3.0](#), section 1.1.3.

⁴Certain United States courts have found that evidence of actual sales is not dispositive of whether a mark has been used in commerce and that courts may consider pre-sale activities when evaluating priority of trademark use. See, e.g., *Rearden LLC v. Rearden Commerce, Inc.*, 683 F.3d 1190, 1205 (9th Cir. 2012). However, courts that consider pre-sale activities do so as part of a fact-dependent analysis of the "totality of the circumstances." See 2 McCarthy § 16.13 (5th ed.). For the same reasons that the Panel cannot conclude that the Complainant satisfies the test for analogous use, it cannot find that the evidence submitted by the Complainant suffices to prove use in commerce based on a "totality of the circumstances" analysis.

B. Legitimate Rights or Interests and Bad Faith

Because the Complainant has not proven the first element of the Policy, the Panel need not address whether the Respondent has rights or legitimate interests in the disputed domain name or whether the Respondent registered and used the disputed domain name in bad faith.

7. Decision

For the foregoing reasons, the Complaint is denied.

/David H. Bernstein/

David H. Bernstein

Sole Panelist

Date: August 13, 2025