ARBITRATION
AND
MEDIATION CENTER

WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

ADMINISTRATIVE PANEL DECISION

Belk Stores Services, LLC v. Trish Lusk
Case No. DAI2024-0078

1. The Parties

Complainant is Belk Stores Services, LLC, United States of America ("United States"), represented by CSC Digital Brand Services Group AB, Sweden.

Respondent is Trish Lusk, United States.

2. The Domain Name and Registrar

The disputed domain name <belk.ai> is registered with 1API GmbH (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 16, 2024. On December 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 24, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on December 27, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on December 28, 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 Respondent of the Complaint, and the proceedings commenced on December 30, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 19, 2025. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on January 27, 2025. After the Response due date, Respondent sent an email communication to the Center on January 27, 2025.

The Center appointed Timothy D. Casey as the sole panelist in this matter on January 31, 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

Complainant is a department store with 293 stores in 16 states that began in 1888 and remains headquartered in North Carolina. Complainant's stores offer a wide assortment of national brands and private label apparel, shoes, accessories, cosmetics, wedding-related goods and service, and home goods. Complainant also offers a mobile app and a website through the domain name <belk.com>, with an average of more than 14 million visits between March 2024 and May 2024, and social media accounts with many thousands of followers. Complainant has been using BELK as a mark for its goods and services since at least 1968 and owns the following registrations (the "BELK Marks") as follows:

Mark	Jurisdiction	Class(es)	Registration No.	Registration Date
BELK	United States	42	1614424	September 18, 1990
BELK	United States	35	4117383	March 27, 2012

The disputed domain name was registered on January 30, 2024. At the time of filing the Complaint, the disputed domain name resolved to a pay-per-click ('PPC") website with links labeled by word combinations having to do with Complainant's goods and services, including "Gift Store," "Shopping Store," and "Dillards Dresses." The disputed domain name is also offered for sale on GoDaddy for more than GBP 3,000.

5. Parties' Contentions

A. Complainant

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

Notably, Complainant contends that it has rights in the BELK Marks and that the disputed domain name is confusingly similar to the BELK Marks because the BELK Marks are fully incorporated into the disputed domain name. Complainant notes that WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("WIPO Overview 3.0"), section 1.11.1 states that generic Top-Level Domains ("gTLDs") are disregarded under the first element test.

Complainant contends its registrations of the BELK Marks is prima facie evidence of the validity of the term "belk" as a trademark and Complainant's exclusive rights in the same. Complainant contends Respondent is not sponsored by or affiliated with Complainant, had not been licensed, authorized, or permitted to use the BELK Marks, and is not commonly known by the disputed domain name. Complainant contends that Respondent's use of a privacy service to register the disputed domain name equates to a lack of legitimate interest.

Complainant notes that the disputed domain name was registered in January 2024, significantly after Complainant's first use of the BELK Marks in 1968, making it highly unlikely that Respondent did not know of the BELK Marks at the time of registration of the disputed domain name. Complainant further contends that Respondent cannot claim fair use because of the identicality of the disputed domain name and the BELK Marks and the use of the ".ai" gTLD collectively serve to misrepresent Respondent's affiliation with Complainant.

Complainant contends that Respondent's use of the disputed domain name to redirect Internet users to a website featuring third party links related to or in competition with Complainant's business, appears to be a PPC arrangement and is therefore not a bona fide offering of goods or services that would give rise to rights or a legitimate interest in the disputed domain name. Finally, Complainant contends that Respondent's offer to sell the disputed domain name for an amount far in excess of Respondent's out-of-pocket registration expenses further evidences Respondent's lack of rights or legitimate interests in the disputed domain name.

Complainant contends that bad faith registration is evident from the fact that the disputed domain name uses the BELK Marks, which Respondent knew, or at least should have known, belonged to Complainant at the time of registration. Likewise, any Internet search would have revealed the same. It is therefore inconceivable that Respondent registered the disputed domain name in good faith. Complainant contends that the use of the '.ai" gTLD further indicates Respondent's awareness of Complainant and the BELK Marks due to Complainant's own use of generative artificial intelligence in its business. Respondent's bad faith is further evidenced by Respondent's intentional attempt to attract, for commercial gain, Internet users to Respondent's website by creating a likelihood of confusion with the BELK Marks as to the source, sponsorship, affiliation, or endorsement of the website and offering related third-party goods through PPC links. Respondent's attempt to sell the disputed domain name for significantly more than the cost of registration and Respondent's use of a privacy service to hide its identify at registration are further evidence of bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

On January 27, 2025, after the January 19, 2025, Response due date, Respondent sent an email to the Center claiming that it had previously responded and stated that it was traveling and unaware of the Complaint prior to receiving a DHL package on its porch. The Respondent did not provide a copy of its claimed prior response, nor did it submit anything further, despite being told that any response it submitted would be provided to the Panel.

6. Discussion and Findings

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 Complainant's trademark and the disputed domain name. WIPO Overview 3.0, section 1.7.

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 disputed domain name is identical to the BELK Marks for the purposes of the Policy. WIPO Overview 3.0, section 1.7.

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 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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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.

Panels have held that the use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering, as is the case here, where such links compete with or capitalize on the reputation and goodwill of complainant's marks. WIPO Overview 3.0, section 2.9.

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 the present case, the Panel found evidence of Respondent's bad faith registration and use of the disputed domain name, including: (i) registration of the disputed domain name when Respondent clearly knew or would have known of Complaint's long standing preexisting rights in the BELK Marks; (ii) Respondent's use of a privacy service when registering the disputed domain name; (iii) Respondent's effort to sell the disputed domain name at a profit; (iv) Respondent's failure to submit any arguments in response to the Complaint – notably including any denial of knowledge of the Complainant's mark; and (v) Respondent's intentionally attempt to attract, for commercial gain, Internet users by creating a likelihood of confusion with Complainant's BELK Marks.

Respondent's email of January 27, 2025, claiming that Respondent had previously responded to the Center, yet was unaware of the Complaint prior to physically receiving it, has no bearing on this decision. First, Respondent's email was after the Response due date. Second, Respondent's email contains no substantive reply or request to file a late response. Third, if Respondent had previously responded to the Center, any such response would have been the result of having been electronically notified of the Complaint by the Center, which means Respondent was fully aware of the Complaint prior to physically receiving a copy. And finally, despite claiming to have sent a Response, the Respondent did not forward or provide a copy of said claimed Response in its email stating that it had already sent a Response. Hence, Respondent's allegation lacks credibility, and the Panel does not consider it necessary to provide yet another opportunity on this point.

The Panel finds that 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 <belk.ai> be transferred to Complainant.

/Timothy D. Casey/
Timothy D. Casey
Sole Panelist
Date: February 14, 2025