

ADMINISTRATIVE PANEL DECISION

BNWHP, LLC v. 张青 (Qing Zhang)

Case No. DCC2024-0011

1. The Parties

The Complainant is BNWHP, LLC, United States of America ("United States"), represented by Fross Zelnick Lehrman & Zissu, P.C., United States.

The Respondent is 张青 (Qing Zhang), China.

2. The Domain Name and Registrar

The disputed domain name <bonobos.cc> is registered with Chengdu West Dimension Digital Technology Co., Ltd. (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on April 11, 2024. On April 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 15, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 15, 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 in English on April 15, 2024.

On April 15, 2024, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the disputed domain name is Chinese. On April 15, 2024, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant's submission.

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 in English and Chinese of the Complaint, and the proceedings commenced on April 23, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 13, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 14, 2024.

The Center appointed C. K. Kwong as the sole panelist in this matter on May 29, 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 is the registered owner of trademarks consisting of or embodying the word "Bonobos". As claimed in the Amended Complaint, these registrations include United States Trademark Registration No. 3559959 for BONOBOs, registered on January 13, 2009, in respect of goods under International Classification Class 25.

The Complainant and its predecessors in title have used the BONOBOs trademark since 2007 in connection with menswear. It has been offering products bearing the trademark BONOBOs at its website "www.bonobos.com" and its e-commerce stores known as Guide Shops throughout the United States as listed in Exhibit C to the Amended Complaint. The Complainant also advertises and promotes its products bearing the BONOBOs trademark at social media websites including Facebook, Twitter, Instagram, and YouTube as shown in Exhibit F to the Amended Complaint.

Other than the particulars shown in the printout of the database searches conducted by the Complainant on the Whois Database (Exhibit A to the Amended Complaint) and the website to which the disputed domain name resolves (Exhibit G to the Amended Complaint) as well as the offer for sale of the disputed domain name at the "sedo.com" platform (Exhibit I to the Amended Complaint), there is no evidence concerning the background, businesses, or activities of the Respondent.

The uncontradicted evidence produced by the Complainant shows that the use and registration of its BONOBOs mark occurred some 15 years, well before the registration of the disputed domain name on March 16, 2024. At the time of filing of the Complaint, the disputed domain name resolved to a website featuring the Complainant's mark, BONOBOs, at which menswear are offered for sale.

The disputed domain name was registered on March 16, 2024.

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 has made the following contentions.

The Complainant has rights in the BONOBOs mark. The disputed domain name is identical to the Complainant's registered BONOBOs trademark, incorporating the BONOBOs trademark in its entirety and adding to it only the country code Top-level Domain ("ccTLD") ".cc". The ccTLD indicator ".cc" cannot be taken into consideration when judging confusing similarity.

The fact that the contents of the website associated with the disputed domain name is copied in whole from the Complainant's website adds to the confusion. Consumers and other third parties who search the Internet for legitimate information about the Complainant and its BONOBOs branded products may be misdirected to the website to which the disputed domain name resolves.

There is no relationship between the Respondent and the Complainant that would give rise to any license, permission, or authorization by which the Respondent could own or use the disputed domain name.

The Respondent is not commonly known by the disputed domain name.

Even if the goods being sold at the website to which the disputed domain name resolves are genuine merchandise of the Complainant (this is not admitted by the Complainant), the Respondent's use of the disputed domain name will still not be bona fide as there is no disclaimer of relationship between the Complainant and Respondent.

The Respondent is trading on the fame and goodwill of the Complainant which does not constitute bona fide use.

The contents of the website to which the disputed domain name resolves shows the Respondent's familiarity with the Complainant's mark BONOBO and its products at the time of registration of the disputed domain name which was many years after the Complainant's registration of its mark BONOBO.

There is no reason for the Respondent to have chosen the disputed domain name and displayed the contents corresponding to or copied from those of the Complainant's website without its authorization unless the Respondent was seeking to create an association with the Complainant.

The Respondent is asking USD 888 for sale of the disputed domain name which is an attempt to profit from the registration of the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

Having considered the records in the case file, the Panel is satisfied that the Center has discharged its responsibility under paragraph 2(a) of the Rules to employ reasonably available means calculated to achieve actual notice to the Respondent of the Complaint.

A. Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons. These reasons include:

1. the disputed domain name is in the English language; and
2. the contents of the website to which the disputed domain name resolves is entirely in English.

The Respondent did not make any submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

B. The Three Elements

In rendering its decision, the Panel must adjudicate the dispute in accordance with paragraph 15(a) of the Rules which provides that, “[t]he Panel shall 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 14(b) of the Rules further provides that, “if a Party, in the absence of exceptional circumstances, does not comply with any provisions of, or requirement under these Rules or any requests from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate”.

The said three elements are considered below.

1. Identical or Confusingly Similar

(a) 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 3.0](#), section 1.7.

(b) The Complainant has shown rights in respect of the trademark BONOBOs for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

(c) The entirety of the mark BONOBOs is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark 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.

2. 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.

There is no legitimate explanation on the record as to why it was necessary for the Respondent to adopt the word “bonobos” in its disputed domain name.

The Complainant has also confirmed that it has not licensed or authorized the Respondent to use its trademark BONOBOs in any way.

The use of the disputed domain name for a webstore referring to the Complainant’s trademark BONOBOs and purportedly offering the Complainant’s line of products, without disclaimer as to its lack of relationship with the Complainant, reinforces the impersonating nature of the disputed domain name and cannot vest in the Respondent rights or legitimate interests per [WIPO Overview 3.0](#), sections 2.8 and 2.13.

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.

3. 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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

The Complainant has registered its BONOBO trademark as detailed in Section 4 above and has been using it for at least 15 years before the registration of the disputed domain name by the Respondent in 2024.

The incorporation of the unique BONOBO trademark entirely letter by letter as part of the disputed domain name without any explanation and the prior substantial and extensive use of the Complainant's BONOBO mark as well as use of contents which are copies of those in the Complainant's website, lead to the conclusion that the Respondent must have been aware of the existence of the Complainant and its trademark BONOBO at the time of the registration of the disputed domain name.

The Panel finds the Respondent is passing itself off as the Complainant. The contents of the website to which the disputed domain name resolved show that the Respondent is marketing at a discount, men's wear bearing or by reference to the mark BONOBO, being exactly the Complainant's mark and principle line of goods. This disrupts the business of the Complainant.

The incorporation of the BONOBO trademark entirely as part of the disputed domain name without any explanation and without any disclaimer of association with the Complainant in the Respondent's website, together with its similar look and feel can attract, for commercial gain, Internet users to that website, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of that website for the products being offered on that website.

The Panel finds that the circumstances under paragraphs 4(b)(iii) and (iv) of the Policy have been established.

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 <bonobos.cc> be transferred to the Complainant.

/C. K. Kwong/

C. K. Kwong

Sole Panelist

Date: June 17, 2024