

ADMINISTRATIVE PANEL DECISION

Borbet GmbH v. Maksym Leletskyi

Case No. D2023-0436

1. The Parties

The Complainant is Borbet GmbH, Germany, represented by Taylor Wessing LLP, Germany.

The Respondent is Maksym Leletskyi, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <borbet.live> (the “Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 31, 2023. On January 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 31, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 15, 2023, 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 February 16, 2023.

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 February 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 14, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 24, 2023.

The Center appointed Gregor Vos as the sole panelist in this matter on April 11, 2023. 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. Further Procedural Considerations

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding takes place with due expedition.

Since the Respondent's mailing address is stated to be in Ukraine, which is subject to an international conflict at the date of this Decision that may affect case notification, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

The Panel notes that the Complaint together with the amended Complaint were successfully delivered to the email address of the Respondent, as provided by the Registrar. Similarly, the Panel notes that the Registrar's Domain Holder Contact Request Form was used to communicate with the Respondent. The Panel is therefore satisfied that the Notification of Complaint has been successful and that the proceedings have come to the attention of the Respondent via email and the Registrar's Contact Form.

The Panel further notes that the Domain Name was registered on January 9, 2023, and currently resolves to a website on which a warning is displayed that the website is a phishing website. The Panel also notes that the Complainant has specified in the Complaint that any challenge made by the Respondent to any decision to transfer or cancel the disputed domain name shall be referred to the jurisdiction of the Courts of the location of the principal office of the concerned registrar. In this case, the principal office of the Registrar is in the United States of America.

The Panel concludes that the Parties have been given a fair opportunity to present their case, and so the Panel will proceed to a Decision accordingly.

5. Factual Background

The Complainant is a German company that was founded in 1962, and is active in the field of light-alloy wheels. The Complainant employs almost 5,000 people and its products are available in many countries worldwide.

The Complainant is the owner *inter alia* the following trademark registrations (hereinafter jointly referred to as the "Trademarks"):

- European Union trademark registration No. 016117211 for BORBET registered on July 28, 2017;
- United States of America trademark registration No. 2024830 for BORBET registered on December 24, 1996;
- International trademark registration No. 559551 for BORBET registered on May 23, 1990, with designation of *inter alia* China, Germany, Republic of Korea, and Türkiye.

The Domain Name was registered on January 9, 2023, and currently resolves to website on which a warning is displayed that the website is a phishing website.

6. Parties' Contentions

A. Complainant

With the Complaint, the Complainant seeks that the Domain Name is transferred to the Complainant. The Complaint is based on the following factual and legal grounds: the Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights, the Respondent has no rights or

legitimate interest in respect of the Domain Name, and the Domain Name has been registered and is being used in bad faith.

First, according to the Complainant, the Domain Name is identical to its Trademarks. The Domain Name incorporates the Trademarks, that are well-known according to the Complainant, in their entirety with the mere addition of the generic Top-Level Domain (“gTLD”) “.live”.

Second, according to the Complainant, the Respondent has received no authorization to use the Domain Name by which it is taking unfair advantage of the reputation of the Trademarks. Also, the registration and use of the Domain Name constitutes an infringement of the Complainant’s Trademarks.

Finally, according to the Complainant, the Respondent has registered and is using the Domain Name in bad faith. The mere fact that the Respondent registered the Domain Name that is identical to the Trademarks shows that the Respondent acted in bad faith by intending to mislead Internet users as to the commercial origin of the website. Further, the website has been reported as a phishing website and the Respondent has attempted to conceal its identity by using the privacy service of the Registrar without legitimate interests.

B. Respondent

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

7. Discussion and Findings

In view of the lack of a response filed by the Respondent as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs 5(f), 14(a) and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding on the basis of the Complainant’s undisputed factual presentations.

For the Complainant to succeed, it must prove, within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

- i. the Domain Name is identical or confusingly similar to a trademark or a service mark in which the Complainant has rights; and
- ii. the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- iii. the Domain Name has been registered and is being used in bad faith.

Only if all three elements have been fulfilled, the Panel is able to grant the remedies requested by the Complainant. The Panel will deal with each of the requirements in turn.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the Domain Name is (i) identical or confusingly similar to a trademark or service mark, (ii) in which the Complainant has rights.

With respect to having rights pursuant to paragraph 4(a)(i) of the Policy, it is noted that the Complainant is registered as the owner of the Trademarks. Consequently, the Panel finds that the Complainant has proven that it has rights in the Trademarks.

With regard to the assessment of identity or confusing similarity of the Domain Name with the Trademarks, it is generally accepted that this test involves a reasoned but relatively straightforward comparison between the Complainant’s Trademarks and the Domain Name (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#))). In cases where a domain

name incorporates the entirety of a trademark, the domain name will normally be considered confusingly similar to that mark (see section 1.7 of the [WIPO Overview 3.0](#)).

In the present case, the Domain Name is identical to the Complainant's Trademarks. The gTLD ".live" does not prevent a finding of confusing similarity with the Trademarks (see section 1.11 of the [WIPO Overview 3.0](#)). Consequently, the Panel finds that the requirement under paragraph 4(a)(i) of the Policy has been satisfied.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the Domain Name. The onus of proving this requirement, like each element, falls on the Complainant. Given the difficulty in proving a negative, however, it is usually sufficient for a complainant to make out a *prima facie* case that a respondent lacks rights or legitimate interests. If a complainant does establish a *prima facie* case, the burden of production shifts to the respondent (see, e.g. [WIPO Overview 3.0](#), section 2.1; *Sanofi v. Cimpress Schweiz GmbH*, WIPO Case No. [D2017-0522](#)).

With regard to the assessment of rights or legitimate interests, the Panel notes that the Domain Name resolves to a phishing website and earlier UDRP panels have categorically held that the use of a domain name for such illegal activities can never confer rights of legitimate interests on a respondent (see [WIPO Overview 3.0](#), section 2.13).

Also, in the present case, the Complainant substantiated that both the registration and the use of the Domain Name infringe the Complainant's trademark rights. By defaulting, the Respondent has failed to rebut the *prima facie* case established by the Complainant. Furthermore, based on the record before it, the Panel does not see an indication that any of the circumstances of paragraph 4(c) of the Policy is present.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name. Paragraph 4(a)(ii) is thereby fulfilled.

C. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, a complainant must show that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy lists four non-limitative circumstances which may be considered as evidence of registration and use in bad faith of a domain name.

In the present case, the Panel agrees with the Complainant that it is not conceivable that the Respondent chose the Domain Name without knowledge of the Trademarks under which the Complainant is doing business, in light of the identity of the Domain Name and the Trademarks and the fact that fraudulent activities have been reported in connection with the Domain Name on the day after the Domain Name was registered.

Further, the Complainant has substantiated that the Domain Name has been reported for hosting a fraudulent website on a scam reporting website. It is well accepted that use of a domain name for fraudulent activities constitutes use in bad faith of that domain name (see [WIPO Overview 3.0](#), section 3.1.4; *Phoenix Contact GmbH & Co. KG v. Domains By Proxy, LLC / 德胜李*, WIPO Case No. [D2022-2948](#)).

In light of the lack of any rights or legitimate interest in the Domain Name by the Respondent and in the absence of any conceivable good faith use of the Domain Name, the Panel finds from the underlying circumstances that the Respondent has deliberately sought to take unfair advantage of or otherwise abuse the Trademarks.

Accordingly, the Panel finds that the Domain Name has been registered and is being used in bad faith and that the third element of paragraph 4(a)(iii) of the Policy is fulfilled.

8. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name, <borbet.live>, be transferred to the Complainant.

/Gregor Vos/

Gregor Vos

Sole Panelist

Date: April 28, 2023