

ADMINISTRATIVE PANEL DECISION

JB IP, LLC v. Viktor Smith

Case No. D2023-2163

1. The Parties

The Complainant is JB IP, LLC, United States of America (“United States”), represented by Valauskas Corder LLC, United States.

The Respondent is Viktor Smith, Albania.

2. The Domain Name and Registrar

The disputed domain name <jungleboysstrain.com> (the “Disputed Domain Name”) is registered with Web Commerce Communications Limited dba WebNic.cc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 17, 2023. On May 17, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On May 18, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Name which differed slightly from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on May 23, 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 amendment to the Complaint May 23, 2023.

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 May 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 13, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 14, 2023.

The Center appointed Nick J. Gardner as the sole panelist in this matter on June 21, 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. Factual Background

The Complainant is a Delaware limited liability company which has carried on business in the cannabis industry since 2009. It owns and operates a number of retail stores which trade under the name JUNGLE BOYS in California and Florida. The Complainant also owns domain names incorporating the term JUNGLE BOYS mark – these comprise the domain names <jungleboys.com> registered in 2000, <jungleboysclothing.com> registered in 2016, and <jungleboysflorida.com> registered in 2020. The Complainant is the owner of California State Trademark Registration No. 02001302 for the words JUNGLE BOYS which was registered on August 28, 2019. This trademark is referred to as the JUNGLE BOYS Trademark in this decision. The domain name <jungleboys.com> resolves to the Complainant's principal website (the "Complainant's Website") which provides information about the Complainant's cannabis related products and other JUNGLE BOYS branded material including for example clothing.

The Disputed Domain Name was registered on September 28, 2019. It does not currently resolve to an active website but the filed evidence shows it has previously been linked to a website (the "Respondent's Website") offering for sale a range of cannabis related products. The Respondent's Website was prominently branded "Jungle Boys" and uses material (for instance the words Jungle Boys in a stylised font) which are identical to material on the Complainant's Website. It purports to be the Jungle Boys "official shop".

5. Parties' Contentions

A. Complainant

The Complainant's contentions can be summarized as follows.

The Disputed Domain Name is confusingly similar to the JUNGLE BOYS Trademark.

The Respondent has no rights or legitimate interests in the term "JUNGLE BOYS".

In consequence, the Complainant alleges that the Disputed Domain Name was registered and is being used in bad faith. The Complainant says the deceptive nature of the Respondent's Website is clear evidence of bad faith. It says the Respondent's motive was financial gain by attracting customers to a website which purports to be that of the Complainant

B. Respondent

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

6. Discussion and Findings

Preliminary Matters

The Panel notes that no communication has been received from the Respondent. However, given the Complaint and Written Notice were sent to the relevant addresses disclosed by the Registrar, then the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to "employ reasonably available means calculated to achieve actual notice". Accordingly, the Panel considers it is able to proceed to determine this Complaint and to draw inferences from the Respondent's failure to file any Response.

While the Respondent's failure to file a Response does not automatically result in a decision in favor of the Complainant, the Panel may draw appropriate inferences from the Respondent's default (see, e.g., *Verner Panton Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#)).

Substantive Matters

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

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

A. Identical or Confusingly Similar

The Complainant has rights in a California State Trademark Registration for the words JUNGLE BOYS. When considering UDRP standing, panels tend to carefully review certain types of automatic/unexamined registered trademarks such as United States state registrations (as opposed to United States federal registrations) as these are not accorded the same deference and typically do not on their own satisfy the UDRP's "rights in a mark" standing test. See section 1.2.2 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Notwithstanding the above, the Panel finds that the Complainant has unregistered trademark rights in the JUNGLE BOYS mark for purposes of the UDRP as the available record shows that the Complainant's mark has become a distinctive identifier, which consumers associate with its goods and/or services. The fact that the Respondent is shown to have been targeting the Complainant's mark based on the manner in which the related website has been used supports the Panel's finding that Complainant's mark has achieved significance as a source identifier.

The Panel finds the Disputed Domain Name is confusingly similar to Complainant's trademark. Previous UDRP panels have consistently held that where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of the confusing similarity test. See section 1.7 of [WIPO Overview 3.0](#).

It is also established that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. See section 1.8 of [WIPO Overview 3.0](#).

It is also well established that the Top-Level Domain ("TLD"), in this case ".com", does not affect the disputed domain name for the purpose of determining whether it is identical or confusingly similar. See section 1.11 of [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's trademark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a domain name:

(i) before any notice to the respondent of the dispute, use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) the respondent has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

None of these apply in the present circumstances. The Complainant has not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use the JUNGLE BOYS trademark. The Panel finds that the Complainant has prior unregistered trademark rights in the JUNGLE BOYS mark which precede the Respondent's registration of the Disputed Domain Name. The Complainant has therefore established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name (see section 2.1 of [WIPO Overview 3.0](#)).

The Panel finds that the Respondent has failed to produce any evidence to establish its rights or legitimate interests in the Disputed Domain Name. Accordingly, the Panel finds the Respondent has no rights or any legitimate interests in the Disputed Domain Name and the second condition of paragraph 4(a) of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

In the present circumstances, the evidence as to the extent of the reputation the Complainant enjoys in the JUNGLE BOYS trademark, and the fact that the Disputed Domain Name was linked to the Respondent's Website which masqueraded as being the Complainant's own website lead the Panel to conclude the registration and use were in bad faith.

The Panel concludes that the Respondent chose to register a name comprising the Complainant's trademark combined with the descriptive word "strain" in order to facilitate a scheme where the Respondent's website impersonated that of the Complainant.

Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(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.

In the present circumstances, the Panel agrees with the Complainant that factor (iv) applies as the Respondent was seeking to achieve commercial gain by impersonating the Complainant. The Panel also notes that the Respondent has not filed a Response and hence has not availed himself of the opportunity to present any case of good faith that he might have. The Panel infers that none exists.

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

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 <jungleboysstrain.com> be transferred to the Complainant.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: July 5, 2023