

ADMINISTRATIVE PANEL DECISION

Lowbrow Customs, LLC v. lowbrow customs
Case No. D2023-4348

1. The Parties

The Complainant is Lowbrow Customs, LLC, United States of America (“United States”), represented by Renner, Otto, Boisselle & Sklar, LLP, United States.

The Respondent is lowbrow customs, Cameroon.

2. The Domain Name and Registrar

The disputed domain name <lowbrows-customs.com> is registered with Dynadot Inc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 19, 2023. On October 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 20, 2023, 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 (John Doe) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 24, 2023, 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 October 27, 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 November 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 23, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 24, 2023.

The Center appointed Mihaela Maravela as the sole panelist in this matter on December 13, 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

According to information in the Complaint, the Complainant sells motorcycle accessories and clothing. It has continuously done business under the name LOWBROW CUSTOMS since at least as early as 2004. The Complainant has owned a trademark registration for LOWBROW CUSTOMS since 2015 with a year of first use in commerce being 2007 for motorcycle accessories and 2004 for clothing.

The Complainant is the owner of various registered trademarks that consist of or include LOWBROW CUSTOMS or LOWBROW, including the United States trademark no. 4,721,894 for LOWBROW CUSTOMS (word) registered on April 21, 2015, covering goods in class 12, or the United States trademark no. 4,961,878 for LOWBROW registered on May 24, 2016, covering goods in class 25. The Complainant has registered the domain name <lowbrowcustoms.com> since April 2, 2004, which it uses as its official website.

The disputed domain name was registered on June 24, 2023, and it resolves to a website offering for sale the same products as that of the Complainant, for example, motorcycle accessories, namely fenders, handlebar grips, seats, gas tanks, and helmets and displaying the Complainant's trademark with no disclaimer as to the relationship with the Complainant or the lack thereof.

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 contends that the disputed domain name is nearly identical to the Complainant's registered trademarks because the disputed domain name incorporates the entirety of the Complainant's LOWBROW and LOWBROW CUSTOMS trademarks.

As regards the second element, the Complainant argues that the Respondent is not authorized to use the Complainant's registered trademarks to register a domain name that consists solely of the Complainant's mark. The disputed domain name resolves to a website that appears to offer the same products as that of the Complainant, for example, motorcycle accessories, namely fenders, handlebar grips, seats, gas tanks, and helmets. The Respondent's website is nearly identical to that of the Complainant and features an embedded photograph of the Complainant's employees, thus impersonating the Complainant.

With respect to the third element, the Complainant argues that Internet users are attracted to the Respondent's website, believing that they are actually accessing the Complainant's website. The Respondent's use of the disputed domain name creates likelihood of confusion with consumers as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location. The Respondent's website features the Complainant's registered trademarks, in the same stylization that the Complainant uses on its website. Furthermore, the Respondent's website includes identical features as the Complainant's website, such as, the stylized display for types of products that consumer can select to view the product listings and orientation of the product listings.

Moreover, the Complainant argues that through the disputed domain name, the Respondent also tries to collect information of the Complainant's consumers as a phishing scheme. Such phishing activities include

requesting consumers input their email information to join their mailing list and requiring consumers to enter their information when checking out and requiring that consumers make payment by Zelle, Google Pay, Apple Pay, Bitcoin, or Paypal. If consumers have a question about the products, they are required to communicate through WhatsApp, an application used for private messaging.

B. Respondent

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

6. Discussion and Findings

No response has been received from the Respondent in this case. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules. The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is identical 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, and (iii) the disputed domain name has been registered and is being used in bad faith.

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 the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the 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.

Here the disputed domain name consists of the obvious misspelling of the LOWBROW CUSTOMS trademark of the Complainant, with the addition of the letter "s" at the end of "LOWBROW" and a hyphen. This misspelling in the disputed domain name also referred to as typosquatting, does not prevent a finding of confusing similarity (see [WIPO Overview 3.0](#), section 1.9).

Based on the available record, 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 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.

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.

In the present case, the Complainant has established a *prima facie* case that it holds rights over the trademark LOWBROW CUSTOMS and claims that the Respondent has no legitimate reason to acquire and use the disputed domain name. There is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services. Rather, according to the unrebutted evidence of the Complainant, the website at the disputed domain name is used to offer for sale spare parts goods and related services to those offered by the Complainant. It displays the Complainant's trademark LOWBROW CUSTOMS as well as pictures from the Complainant's website with no disclaimer as to the relationship or lack thereof with the Complainant, which falsely suggests to Internet users that the website to which the disputed domain name resolves is owned by the Complainant or at least affiliated to the Complainant. Such use does not in the circumstances of this case give rise to any rights or legitimate interests on the Respondent's part.

The Panel further notes that the Respondent's name appears to be "lowbrow customs". However, the Respondent did not claim it is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy. Moreover, the Panel considers that the Respondent cannot claim to have been "commonly known" by the disputed domain name under the above-mentioned paragraph of the Policy, as the circumstances of the case indicate that the Respondent most likely adopted the name "lowbrow customs" specifically to take advantage of the Complainant's rights, as discussed in Section 6C below.

Based on the available record, 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.

According to the unrebutted assertions of the Complainant, its LOWBROW and LOWBROW CUSTOMS trademarks were widely used in commerce well before the registration of the disputed domain name. Given also the typo-squatted character of the disputed domain name and the display of the Complainant's trademark on the website at the disputed domain, it is most likely that the Respondent was aware of the Complainant's trademarks at the registration date of the disputed domain name and targeted them. The Respondent provided no explanations for why it registered the disputed domain name.

The disputed domain name resolves to a web shop for the Complainant's related goods and services. It displays the Complainant's trademark LOWBROW CUSTOMS as well as pictures of the Complainant's products with no disclaimer as to the relationship or lack thereof with the Complainant. Therefore, given the circumstances in the case the Panel considers by imitating the look and feel of the Complainant's website in order to resell the Complainant's products without authorization the Respondent has intentionally created a likelihood of confusion with the Complainant's trademarks and website in order to attract Internet users for its own commercial gain, as envisaged by paragraph 4(b)(iv) of the Policy and/or to disrupt the business of the Complainant. This is supported by the Respondent's use of the Complainant's official product images.

Moreover, the Respondent has not formally participated in these proceedings and has failed to rebut the Complainant's contentions or provide any evidence of actual or contemplated good-faith use, and indeed none would seem plausible. In the Panel's view, the circumstances of the case represent evidence of registration and use in bad faith of the disputed domain name. The Respondent failed to bring evidence as to the contrary. The Respondent's bad faith is reinforced by the Respondent's use of a fake address to which the courier delivery could not be made.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 <lowbrows-customs.com> be transferred to the Complainant.

/Mihaela Maravela/

Mihaela Maravela

Sole Panelist

Date: December 22, 2023