

## **ADMINISTRATIVE PANEL DECISION**

J. P. Boden & Co Ltd v. Dumihatmy  
Case No. D2022-5046

### **1. The Parties**

The Complainant is J. P. Boden & Co Ltd, United Kingdom, represented internally.

The Respondent is Dumihatmy, China.

### **2. The Domain Name and Registrar**

The disputed domain name <bodenvipuk.shop> is registered with NameSilo, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 16, 2022. On January 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 4, 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 (PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 5, 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 January 6, 2023.<sup>1</sup>

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 January 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 31, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 1, 2023.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on February 3, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and

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<sup>1</sup> The Complainant removed one domain name <bodensale.shop> from the Complaint upon receipt of the Center’s email of multiple underlying registrants.

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 fashion retail brand that was founded in 1991 in the United Kingdom. The Complainant, in addition to the domain name <boden.co.uk>, used in connection with the Complainant's activities, is the owner, amongst many others, of the European Union trademark registration No. 000763946 for BODEN, filed on March 5, 1998, registered on June 28, 1999, subsequently renewed, in class 25.

The disputed domain name <bodenvipuk.shop> was registered on October 21, 2022 and presently resolves to an online shop purportedly offering the Complainant's products.

#### **5. Parties' Contentions**

##### **A. Complainant**

According to the Complainant, the disputed domain name is infringing on the Complainant's BODEN trademark in addition to resolving to a website that is identical to the Complainant's official website available at <boden.co.uk> and designed to confuse, deceive and defraud members of the public.

Also according to the Complainant, the Respondent is fraudulently presenting themselves as affiliated to the official BODEN trademark, purportedly selling discounted BODEN products.

The Complainant further asserts to have received several customer complaints stating that they submitted their personal data including payment details to the Respondent and have not received any products.

As to the absence of rights or legitimate interests, the Complainant argues that the Respondent is making a use of the disputed domain name for commercial gain with intent to mislead and divert consumers from the Complainant's official website and to tarnish the BODEN trademark.

Lastly, the Complainant contends that the disputed domain name was registered in bad faith with the intent to mislead and divert the Complainant's consumers for commercial gain, targeting consumers and falsely purporting to sell discounted BODEN products. In addition to that, under the Complainant's view, the website available at the disputed domain name was designed to look identical and similar to the Complainant's official website with the intention to confuse, deceive and defraud members of the public, fraudulently presenting itself as affiliated to the Complainant to promote and sell purported discounted BODEN products.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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.

The Complainant must prove in this administrative proceeding that each of the aforementioned three elements is present in order to obtain the transfer of the disputed domain name.

In accordance with paragraph 14(a) of the Rules, if the Respondent does not submit a Response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

#### **A. Identical or Confusingly Similar**

The Complainant has established rights in the BODEN trademark.

The disputed domain name includes the entirety of the Complainant's trademark, and the addition of the term "vipuk" does not prevent a finding of confusingly similarity. It is well accepted that the first element functions primarily as a standing requirement and that the threshold test for confusing similarity involves a "reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name". And, in cases "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" (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7).

The first element of the Policy has been established.

#### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a non-exclusive list of circumstances that may indicate a respondent's rights to or legitimate interests in a domain name. These circumstances are:

- (i) before any notice of the dispute, the respondent's 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 (as an individual, business, or other organization) has been commonly known by the domain name, even if it has not acquired 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.

The Respondent, in not responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights to or legitimate interests in the disputed domain name. This entitles the Panel to draw any such inferences from such default as it considers appropriate pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden of proof is still on the Complainant to make a *prima facie* case against the Respondent.

In that sense, and as the evidence submitted clearly indicates, the Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, given that the Respondent has been using the disputed domain name in connection with an online shop that impersonates the Complainant and offers purportedly the Complainant's products. Such use cannot be considered as a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name.

### **C. Registered and Used in Bad Faith**

The Policy indicates in paragraph 4(b)(iv) that bad faith registration and use can be found in respect of a disputed domain name, where, by using the disputed domain name, a respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

In this case, both the registration and use of the disputed domain name in bad faith can be found in view of the Respondent's webpage, which mimics the Complainant's website in an attempt to impersonate the Complainant and defraud the public, as various the Complainant's consumers have reported.

The Respondent's use of the disputed domain name not only clearly indicates full knowledge of the Complainant's trademark but also an attempt of misleadingly diverting consumers for its own commercial gain.

Other factors corroborate a finding of bad faith, such as the choice to retain a privacy protection service; the indication of what appears to be a false address in the Whois data and, consequently, the Center not being able to fully deliver Written Notice to the Respondent, as well as the Respondent's lack of reply to the proceeding, failing thereby to invoke any circumstance which could demonstrate good faith in the registration or use of the disputed domain name.

For the reasons above, the Respondent's conduct has to be considered, in this Panel's view, as bad faith registration and use of the disputed domain name.

### **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 <bodenvipuk.shop> be transferred to the Complainant.

*/Wilson Pinheiro Jabur/*

**Wilson Pinheiro Jabur**

Sole Panelist

Date: February 17, 2023