

ADMINISTRATIVE PANEL DECISION

Bombas LLC v. Domain Administrator, SeePrivacyGuardian.org / Linda Brewer

Case No. D2022-2980

1. The Parties

Complainant is Bombas LLC, United States of America (“United States” or “U.S.”), represented by Frankfurt Kurnit Klein & Selz, PC, United States.

Respondent is Domain Administrator, SeePrivacyGuardian.org, United States / Linda Brewer, United States.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 11, 2022. On August 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 12, 2022, the Registrar transmitted by email to the Center its verification response registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to Complainant on August 16, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on August 19, 2022.

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 Respondent of the Complaint, and the proceedings commenced on August 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 13, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on September 14, 2022.

The Center appointed Scott R. Austin as the sole panelist in this matter on September 28, 2022. 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

Without contest by Respondent, Complainant asserts in its Complaint as amended and its attached Annexes provide evidence sufficient to support that:

Complainant Bombas LLC is a U.S.-based clothing manufacturer and retailer which produces and distributes socks under the BOMBAS trademark (the “BOMBAS Mark”) that it considers to be of superior quality due to years of research and development. Founded in 2013, Complainant’s business model is centered on its core mission to help those in need by providing homeless individuals with the most requested clothing items at shelters – socks, underwear, and t-shirts. Bombas’ original business model was built on a simple premise: for every pair of socks purchased by a customer, Bombas donates a pair of socks to someone in need. Bombas has since expanded this business model to include other clothing items. For instance, Bombas now offers t-shirts and has expanded its charitable contributions to include one t-shirt donated for each t-shirt sold to customers. Through its efforts, Bombas has donated more than 50 million socks and other clothing items, in the U.S. and Canada.

In 2021, Complainant spent tens of millions of dollars in sales and marketing and had revenues in excess of that. Its efforts and success have garnered a great deal of attention in the press. The company and its business model have been featured in various publications and news media, including *The New York Times*, *Fast Company*, *CNN*, *Business Insider*, and *The Daily Mail*, and Complainant provides evidence of such press coverage in the Annexes attached to its Complaint.

To date, Complainant holds registrations for the BOMBAS Mark and related Bee Design Mark (the “Bee Design Mark”) in the U.S., including:

United States Trademark Registration No. 4,492,577, BOMBAS, registered on March 4, 2014, for socks in International Class 25 and claiming a first use date of January 1, 2012; and

United States Trademark Registration No. 5,359,406, BOMBAS and design, registered on December 19, 2017, for socks in International Class 25 and claiming a first use date of January 1, 2012; and

United States Trademark Registration No. Reg. No. 4,492,579, design mark consisting of a silhouette of a bee with its wings spread and a crown above its head., registered on March 4, 2014, for socks in International Class 25 and claiming a first use date of January 1, 2012;

Complainant has registered and maintains a domain name incorporating the BOMBAS Mark, <bombas.com>, which was created on January 12, 2000, and transferred to Complainant through purchase on July 2, 2014. Complainant’s domain name is used to access the official BOMBAS Mark website (the “Official BOMBAS Mark Website”) which Complainant launched on July 27, 2014. The Official BOMBAS Mark Website enables Complainant to promote its footwear products and its business model.

The disputed domain name was registered on June 24, 2022 and as of the filing of the Complaint resolved to a website sufficiently similar in appearance and structure to the content displayed on the Official BOMBAS Mark Website to constitute a “copycat” website (“Copycat Website”) including, without authorization, corresponding placement of Complainant’s Bee Design Mark as a favicon¹, used to advertise and sell Respondent’s products that directly compete with Complainant’s socks and other clothing items.

¹ Favicons are small square images usually 16×16 pixels which are used by web browsers to show a graphical representation of the site being visited at the left side of the browser’s address bar.

5. Parties' Contentions

A. Complainant

Complainant contends that the disputed domain name is identical or confusingly similar to Complainant's trademark, that Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

In view of Respondent's failure to submit any Response, the Panel shall decide this administrative proceeding on the basis of Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. See *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#) ("In the absence of a response, it is appropriate to accept as true all allegations of the Complaint."); see also *Microsoft Corporation v. Freak Films Oy*, WIPO Case No. [D2003-0109](#).

Where no substantive Response is filed, however, Complainant must still make out its case in all respects under paragraph 4(a) of the Policy. To succeed, Complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied.

The Panel will address its findings on each of these requirements in more detail below.

The standard of proof under the Policy is often expressed as the "balance of the probabilities" or "preponderance of the evidence" standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true. See, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.2.

A. Identical or Confusingly Similar

Ownership of a nationally registered trademark constitutes *prima facie* evidence that the complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

Complainant claims registered trademark rights in the BOMBAS Mark, and its Bee Design Mark used as source identifiers for its footwear products dating back to 2012. Sufficient evidence has been submitted in the form of electronic copies of valid and subsisting national trademark registration documents in the name of Complainant referenced in Section 4. Complainant has demonstrated, therefore, that it has rights in the BOMBAS Mark, and Bee Design Mark required under the Policy. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#).

The Panel notes here Complainant's evidence submitted of registration of the BOMBAS Mark, and Bee Design Mark in the U.S. establishes trademark rights in the country where Respondent resides, which is considered in more detail under Sections 6B and 6C below for the Panel's determination under the second and third elements.

Complainant's detailed evidence submitted in the Annex relating to the disputed domain name shows that the disputed domain name clearly and prominently encompasses Complainant's BOMBAS Mark in full, only followed by the additional term "outles" which the Panel finds it reasonable to infer is an intentional misspelling of the retail distribution term "outlets". Complainant contends that the composition of the

disputed domain name is confusingly similar to Complainant's BOMBAS Mark.

Prior UDRP panels have held that a domain name which wholly incorporates a complainant's registered mark is sufficient to establish identity or confusing similarity for purposes of the Policy despite the addition of other terms to such marks. [WIPO Overview 3.0](#), section 1.8 ("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 also *Bayerische Motoren Werke AG v. bmwcar.com*, WIPO Case No. [D2002-0615](#). Similarly, "a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element". [WIPO Overview 3.0](#), section 1.9.

Considering the circumstances present here applied to the Policy as construed under the decisions cited above, Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under the second element of the Policy, a complainant is first required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. If a complainant makes that showing, the burden of production on this element shifts to the respondent to come forward with relevant evidence of such rights or legitimate interests in the domain name. If the respondent fails to come forward with such evidence, a complainant is generally deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1. See also, *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#).

Complainant has established, *prima facie*, that Respondent lacks rights or legitimate interests in the disputed domain name. First, Complainant submits that it has not licensed, or otherwise authorized Respondent to use the BOMBAS Mark or Bee Design Mark in any manner or to register the disputed domain name, nor is Complainant in any way or manner associated with or related to Respondent. There is no evidence of record that Respondent has registered as trademarks or used unregistered marks for the terms "bombas" or the "bee design" and Complainant states that it is neither in possession of, nor aware of the existence of any evidence demonstrating that Respondent might be commonly known by the disputed domain name.

It is generally regarded as *prima facie* evidence of no rights or legitimate interests if a complainant shows that the disputed domain name is identical or confusingly similar to a complainant's trademark, that the respondent is not commonly known by the disputed domain name, and that a complainant has not authorized the respondent to use its mark (or an expression which is confusingly similar to its mark), whether in the disputed domain name or otherwise. See [WIPO Overview 3.0](#), section 2.1; see also *Wal-Mart Stores, Inc. v. WalMart Careers, Inc.*, WIPO Case No. [D2012-0285](#); *Roust Trading Limited v. AMG LLC*, WIPO Case No. [D2007-1857](#).

Complainant next contends that Respondent lacks rights or legitimate interests in the disputed domain name because the disputed domain name is actively used to impersonate Complainant to divert Complainant's potential customers to Respondent's website for its commercial gain.

As discussed under Section 6.1, Complainant has shown in the evidence submitted that the disputed domain name resolves to a Copycat Website which is substantially similar in appearance and structure to Complainant's Official BOMBAS Mark Website. Respondent's Copycat Website uses the disputed domain name incorporating Complainant's BOMBAS Mark in its entirety and incorporates the Bee Design Mark in the Respondent's website as a favicon, to falsely impersonate Complainant and purport to sell its competing footwear products under the BOMBAS Mark. The Panel notes that the record of web page printout evidence submitted in the Annex to the Complaint supports Complainant's argument because it shows Respondent's website features the use of Complainant's BOMBAS Mark, logos and images of Complainant's socks to suggest an affiliation with or sponsorship by Complainant. The Panel notes that Respondent has taken its impersonation a step further by employing an unauthorized favicon using the registered Bee Design Mark

and logotype displayed in the browser address bar when navigating to Respondent's website — in exactly the same place and manner that Complainant depicts its own design on its website.

The disputed domain name is configured to direct potential customers of Complainant to Respondent's Copycat Website by consisting of Complainant's BOMBAS Mark along with a misspelling of a term associated with Complainant's retail clothing distribution industry, thereby creating a risk of implied affiliation confusing Internet users searching for Complainant's products into thinking that they had arrived at Complainant's Official BOMBAS Mark Website. Moreover, such risk of implied affiliation was exacerbated by the impersonating nature of the content reflected at the Copycat Website, none of which provided any clarifying information as to its relation (or lack thereof) to Complainant. While prior panels have assessed the rights of distributors or resellers, Respondent here does not meet the applicable safeguards listed in section 2.8 of [WIPO Overview 3.0](#).

Prior UDRP panels have held that the use of a domain name like the disputed domain name here, attempting to attract and redirect, Internet users through intentional misspelling and misuse of a mark, and the provision of content which promote goods and services impersonating and competitive to the complainant, cannot be considered use in connection with a *bona fide* offering of goods or services under paragraph 4(c)(i). See *The Clorox Company v. WhoisGuard Protected, WhoisGuard, Inc. / Enos Villanueva, Melissa Rosenberg, Yang Ming*, WIPO Case No. [D2021-0603](#).

Prior UDRP panels have also held that the use of a domain name for illegal activity involving impersonation and fraud (e.g., phishing, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. Considering the lack of disclaiming information, the use of a third party's contact information for registration of a disputed domain name, and the potential counterfeit nature of the goods sold at the disputed domain name, the Panel finds that the use of the disputed domain name falls within this scope of illegitimate activity. See [WIPO Overview 3.0](#), section 2.13. See also, *Springer Nature Limited v. Registration Private, Domains By Proxy, LLC / Collections Springer Nature*, WIPO Case No. [D2020-0955](#).

Similarly, considering the use of the disputed domain name resolving to an active website offering third parties' competing products, including products of well-known third-party brands, UDRP panels have repeatedly found a respondent's use of a confusingly similar domain name for commercial gain cannot establish rights or legitimate interests. See [WIPO Overview 3.0](#), section 2.5.3.

By using Complainant's BOMBAS Mark as the dominant portion of the disputed domain name, Respondent operating its Copycat Website is falsely suggesting they are the trademark owner, or the website is affiliated or sponsored by the official site for the products sold by Complainant when it is not. After reviewing evidence submitted of the Copycat Website operating from the disputed domain name, there is clearly no legitimate noncommercial or fair use on the part of Respondent using its disputed domain name for such website. See *Houghton Mifflin Co. v. The Weathermen, Inc.*, WIPO Case No. [D2001-0211](#).

As stated above, considering the composition of the disputed domain name, consisting of Complainant's BOMBAS Mark, the intent of Respondent to confuse users via its registration of the disputed domain name cannot constitute fair use.

Complainant has presented a strong *prima facie* case indicating that Respondent does not have any rights or legitimate interests in the disputed domain name. Respondent has submitted no response in this proceeding, much less provided the Panel with any evidence set forth in paragraph 4(c) of the Policy from which the Panel might conclude Respondent has rights or legitimate interests in the disputed domain name. As such, Respondent has failed to rebut Complainant's strong *prima facie* case.

The Panel finds, therefore, that Complainant has successfully met its burden and that the Complaint succeeds under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Respondent's actions constitute bad faith registration and use of the disputed domain name.

Under this third element of the Policy, Complainant first contends that because almost a decade after Complainant began using its BOMBAS Mark, Respondent created and began using the disputed domain name that is confusingly similar to Complainant's BOMBAS Mark to trick consumers into believing that it sells genuine BOMBAS-branded goods or goods otherwise affiliated or approved by Complainant, it is implausible to believe that Respondent was not aware of Complainant's BOMBAS Mark when it registered the disputed domain name. This likelihood of awareness is especially true where Complainant's earliest BOMBAS Mark registration predates the registration of the disputed domain name by approximately nine years.

Complainant's BOMBAS Mark is also registered in the U.S., where Respondent is located. Prior UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith registration and use. See, [WIPO Overview 3.0](#), section 3.1.4.

Based on the foregoing and Respondent's choice of the misspelling of the term "outlets" in the disputed domain name identifying Complainant's commercial retail offerings and the retail manner in which Complainant sells its BOMBAS Mark footwear, the Panel finds that Respondent targeted Complainant through their choice of term to append to Complainant's Mark as well as the use of typographical variation of the term appended to the Mark to confuse consumers and concludes that the disputed domain name was registered in bad faith. See *LinkedIn Corporation v. Registration Private, Domains By Proxy, LLC / Sathishkumar Varatharajan, Kudo Metrics*, WIPO Case No. [D2018-1807](#); see also *Balenciaga v. liu zhixian, zhixian liu*, WIPO Case No. [D2010-1831](#).

Bad faith use is also clear from Respondent's illegitimate conduct as discussed in detail in section 6.B. Complainant has shown that the disputed domain name operated by Respondent to resolve to a Copycat Website which reproduces Complainant's registered and incontestable BOMBAS Mark as well as its stylized Bee Design Mark, as well as images copied from Complainant's main website that promotes or sells the same or similar footwear or clothing products as those available on Complainant's official website, or produced by others in competition with Complainant. It appears to the Panel that Respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to Respondent's Copycat Website by creating a likelihood of confusion with Complainant's Mark as to the source, sponsorship, affiliation, or endorsement of that Respondent's Copycat Website which the Panel finds constitutes bad faith registration and use under paragraph 4(b)(iv) of the Policy. See, [WIPO Overview 3.0](#), section 3.3. See also *Royal Bank of Canada v. China Capital Investment Limited*, WIPO Case No. [D2017-1025](#).

Complainant also submits Respondent's use of the disputed domain name clearly for impersonation of Complainant's offerings represents *per se* illegitimate activity that is manifestly considered evidence of bad faith use. See [WIPO Overview 3.0](#), section 3.1.4. See *MasterCard International Incorporated v. North Tustin Dental Associates*, WIPO Case No. [D2007-1412](#).

Accordingly, the Panel finds that the disputed domain name has been registered and used in bad faith, and that the Complaint has met its burden under paragraph 4(a)(iii) 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 <bombasoutles.com> be transferred to Complainant.

/Scott R. Austin/

Scott R. Austin

Sole Panelist

Date: October 15, 2022