

ADMINISTRATIVE PANEL DECISION

Balanced Health Botanicals, LLC v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico
Case No. D2022-3283

1. The Parties

The Complainant is Balanced Health Botanicals, LLC, United States of America (“United States”), represented by VDB Legal Group, United States.

The Respondent is Registration Private, Domains By Proxy, LLC, United States / Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

2. The Domain Names and Registrar

The disputed domain names <customersupportcbdistillery.com> and <wwwcbdistillery.com> are registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 2, 2022, in relation to the domain names <wwwcbdistillery.com>, <customersupportcbdistillery.com>, <thecbdistiller.com>, <cbdistiller.com>, <mailcbdistillerycustomer.com> and <cbdistillerycbdoil.com> registered with the Registrar and various other registrars (the “Concerned Registrars”). On September 5, 2022, the Center transmitted by email to the Concerned Registrars requests for registrar verification in connection with the abovementioned domain names. On September 5, 2022 and September 6, 2022, the Concerned Registrars transmitted by email to the Center their verification responses disclosing registrant and contact information for the abovementioned domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on September 9, 2022, providing the registrant and contact information disclosed by the Concerned Registrars, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on September 15, 2022, in relation to the disputed domain names <customersupportcbdistillery.com> and <wwwcbdistillery.com> only, and requested withdrawal of the other domain names from the proceeding. Accordingly, the Center notified the Parties on September 15, 2022, that the proceeding would continue only regarding the disputed domain names <customersupportcbdistillery.com> and <wwwcbdistillery.com>.

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 proceeding commenced on September 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 6, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 11, 2022.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on October 21, 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

A. Complainant

The Complainant is a company headquartered in the State of Colorado in the United States, and a leading provider primarily in the United States, since 2016, of hemp derived cannabidiol or “CBD” health and wellness products under the trade mark CBDISTILLERY (the “Trade Mark”).

The Complainant is the owner of United States registration No. 6,406,909 for the Trade Mark, with a registration date of July 6, 2021. The Complainant is also the owner of registrations for the Trade Mark in the European Union (registration No. 017912596, with a registration date of September 25, 2018), the United Kingdom (registration No. UK00917912596, with a registration date of September 25, 2018), Canada (registration No. TMA1107359, with a registration date of August 23, 2021), Costa Rica (registration No. 2020-005002, with a registration date of December 17, 2020), and internationally (registration No. 1486639, with a registration date of June 27, 2019).

The Complainant is the owner of the domain names <thecbdistillery.com> (registered September 12, 2016) and <cbdistillery.com> (registered September 24, 2009), both of which resolve to the Complainant’s website, used to promote and sell its hemp-derived CBD products under the Trade Mark.

B. Respondent

The Respondent is apparently an individual resident in Panama.

C. The Disputed Domain Names

The disputed domain names <customersupportcbdillery.com> and <wwwcbdillery.com> were registered on May 9, 2022 and April 12, 2022, respectively.

D. Use of the Disputed Domain Names

The disputed domain name <customersupportcbdillery.com> previously redirected to various random web pages including at one point a parking page with sponsored links. As at the date of this Decision, it is resolved to a Chinese language celebrity news website. The disputed domain name <wwwcbdillery.com> is not resolved to an active web page.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain names are identical or confusingly similar to the Trade Mark; the Respondent has no rights or legitimate interests in respect of the disputed domain names; and the disputed domain names have been registered and are being used in bad faith.

B. Respondent

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

6. Discussion and Findings

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the Trade Mark acquired through use and registration.

The disputed domain name <customersupportcbdistillery.com> incorporates the entirety of the Trade Mark, prefaced by the wording "customer support". The disputed domain name <wwwcbdistillery.com> incorporates the entirety of the Trade Mark, prefaced by the letters "www". See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

Where a relevant trade mark is recognisable within a disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element (see [WIPO Overview 3.0](#), section 1.8).

The Panel therefore finds that the disputed domain names are confusingly similar to the Trade Mark.

B. Rights or Legitimate Interests

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

- (i) before any notice to the respondent of the dispute, the respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed 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 disputed domain name even if the respondent has acquired no trade mark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

The Complainant has not authorised, licensed, or permitted the Respondent to register or use the disputed domain names or to use the Trade Mark. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that she has acquired any trade mark rights in respect of the disputed domain names or that the disputed domain names have been used in connection with a *bona fide* offering of goods or services. To the contrary:

- (i) the disputed domain name <customersupportcbdillery.com> has previously redirected to various random web pages including at one point to a parking page with sponsored links; and it is presently resolved to a Chinese language celebrity news website with no apparent connection to the Respondent; and
- (ii) the disputed domain name <wwwcbdillery.com> has not been used.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain names; and there has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain names.

The Panel finds that the Respondent has failed to produce any evidence to rebut the Complainant's *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names.

C. Registered and Used in Bad Faith

Given the notoriety of the Complainant and of its Trade Mark in particular in the hemp-derived CBD products field; the prior use and registration of the Trade Mark; the distinctiveness of the Trade Mark; and the manner of the Respondent's use of the disputed domain name <customersupportcbdillery.com> referred to above, the Panel finds, in all the circumstances, that the requisite element of bad faith has been made out pursuant to paragraph 4(b)(iv) of the Policy.

Furthermore, in all the circumstances, the Respondent's non-use or passive holding of the disputed domain name <wwwcbdillery.com> does not prevent a finding of bad faith under the Policy (see [WIPO Overview 3.0](#), section 3.3).

The Panel considers the Respondent was aware of the Complainant's Trade Mark at the time she registered the disputed domain names; and that in light of the inherently misleading nature of the disputed domain names, there cannot be any actual or contemplated good faith use of the disputed domain names by the Respondent.

For all the foregoing reasons, the Panel concludes that the disputed domain names have been registered and are being used in bad faith.

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 names <customersupportcbdillery.com> and <wwwcbdillery.com> be transferred to the Complainant.

/Sebastian M.W. Hughes/
Sebastian M.W. Hughes
Sole Panelist
Dated: November 4, 2022