

ADMINISTRATIVE PANEL DECISION

Microban Products Company v. DOMAIN ADMINISTRATOR, Buy this domain on Dan.com ---- c/o Dynadot
Case No. D2022-3747

1. The Parties

Complainant is Microban Products Company, United States of America (“United States”), represented by Nelson Mullins Riley & Scarborough, L.L.P., United States.

Respondent is DOMAIN ADMINISTRATOR, Buy this domain on Dan.com ---- c/o Dynadot, Cayman Islands, United Kingdom.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 7, 2022. On October 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same date, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the complete contact details. The Center sent an email communication to Complainant on October 10, 2022, providing the registrant and completed contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on October 14, 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 October 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 8, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on November 11, 2022.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on November 18, 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

Complainant is a company organized under the laws of the United States which is engaged in antimicrobial, disinfectant and odor control solutions.

Complainant has provided evidence that it is the registered owner of numerous trademarks relating to its company name and brand MICROBAN, *inter alia*, but not limited to the following:

- word mark MICROBAN, United States Patent and Trademark Office (USPTO), registration number: 1,141,006, registration date: November 4, 1980, status: active;
- word mark MICROBAN, USPTO, registration number: 1,464,213, registration date: November 10, 1987, status: active.

On September 7, 2022, Complainant applied for the registration of a further United States trademark, namely "FFS BY MICROBAN" (serial number: 97581635), which is still pending for registration.

Moreover, Complainant has demonstrated to own since 1995 the domain name <microban.com> which resolves to Complainant's official website at "www.microban.com", where Complainant promotes its anti-microbial technologies and related products and services worldwide.

Respondent, according to the disclosed Whois information for the disputed domain name, is residing in the Cayman Islands, United Kingdom, which registered the disputed domain name on September 10, 2022, and offers the very same on the domain name trading platform "www.dan.com" for online sale at a price of USD 1,288.

Complainant requests that the disputed domain name be transferred to Complainant.

5. Parties' Contentions

A. Complainant

Complainant submits to be a global leader in antimicrobial, disinfectant and odor control solutions and that, due to extensive, continuous and substantial investment in and use of Complainant's MICROBAN trademark, the very same has meanwhile acquired a substantial amount of reputation and goodwill.

Complainant contends that the disputed domain name is confusingly similar to its registered MICROBAN trademark, as it wholly incorporates the latter, and that the disputed domain name is even identical to its applied-for FFS BY MICROBAN trademark. Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Complainant has neither authorized nor licensed Respondent to use its MICROBAN trademark, (2) Respondent is not commonly known by the highly distinctive MICROBAN trademark, (3) Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services, but to redirect visitors to a webpage offering to sell the disputed domain name for USD 1,288, and (4) Respondent registered the disputed domain name within only a few days after Complainant applied for its FFS BY MICROBAN trademark, thereby capitalizing on the goodwill and notoriety associated with Complainant's trademark rights. Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since (1) Complainant's MICROBAN trademark has been in use since 1961 and is meanwhile well known, (2) Respondent registered the confusingly similar disputed domain name solely in order to create confusion and drive Internet traffic to

the website thereunder for Respondent's own financial gain via the resale of the disputed domain name, and (3) based on the timing of the registration of the disputed domain name, Respondent cannot legitimately claim that it did not know about Complainant's rights in the MICROBAN and FFS BY MICROBAN trademarks, and such opportunistic timing of the registration of the disputed domain name constitutes registration and use thereof in bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

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

Respondent's default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a Response as it considers appropriate.

A. Identical or Confusingly Similar

The Panel concludes that the disputed domain name is confusingly similar to the MICROBAN trademark in which Complainant has rights.

The disputed domain name incorporates Complainant's MICROBAN trademark in its entirety. Numerous UDRP panels have recognized that where a domain name incorporates a trademark in its entirety, 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 trademark (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7). Moreover, it has been held in many UDRP decisions and has become a consensus view among panels, that the addition of other terms (whether, *e.g.*, descriptive, geographical or otherwise) would not prevent a finding of confusing similarity under the first element of the UDRP (see [WIPO Overview 3.0](#), section 1.8). Accordingly, the addition of the letters "ffs" and the term "by" does not dispel the confusing similarity arising from the incorporation of Complainant's entire MICROBAN trademark in the disputed domain name.

The Panel further notes that the disputed domain name exactly corresponds to Complainant's applied-for trademark FFS BY MICROBAN.

Therefore, Complainant has established the first element under the Policy as set forth by paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Panel is further convinced on the basis of Complainant's undisputed contentions that Respondent has not made use of the disputed domain name in connection with a *bona fide* offering of goods or services, nor has Respondent been commonly known by the disputed domain name nor can it be found that Respondent has made a legitimate noncommercial or fair use thereof without intent for commercial gain.

Respondent has not been authorized to use Complainant's MICROBAN trademark, either as a domain name or in any other way. Also, there is no reason to believe that Respondent's name somehow corresponds with the disputed domain name and Respondent does not appear to have any trademark rights associated with the term "Microban" on its own or with the disputed domain name. Finally, Respondent so far obviously has neither used the disputed domain name for a *bona fide* offering of goods or services nor for a legitimate noncommercial or fair purpose, but rather to offer it for online sale at a price of USD 1,288. UDRP panels have recognized that holding a domain name for resale consisting of acronyms, dictionary words, or common phrases can be *bona fide* and is not *per se* illegitimate under the UDRP (see [WIPO Overview 3.0](#), section 2.1). However, given that the disputed domain name incorporates Complainant's undisputedly well-known MICROBAN trademark in its entirety, the disputed domain name carries, as such, a high risk of implied affiliation with Complainant and said trademark. This is why offering the disputed domain name for online sale in this case cannot constitute fair use and, thus, cannot confer rights or legitimate interests therein (see [WIPO Overview 3.0](#), section 2.5.1).

Accordingly, Complainant has established a *prima facie* case that Respondent has no rights or legitimate interests in respect of the disputed domain name. Having done so, the burden of production shifts to Respondent to come forward with appropriate evidence demonstrating such rights or legitimate interests (see [WIPO Overview 3.0](#), section 2.1). Given that Respondent has defaulted, it has not met that burden.

Therefore, the Panel finds that Complainant has also satisfied paragraph 4(a)(ii) and, thus, the second element of the Policy.

C. Registered and Used in Bad Faith

The Panel finally holds that the disputed domain name was registered and is being used by Respondent in bad faith.

The circumstances to this case, *e.g.*, that the disputed domain name not only includes Complainant's entire well-known MICROBAN trademark, but that it is even identical to Complainant's entire applied-for trademark FFS BY MICROBAN plus that the disputed domain name was registered only a few days after the application for the FFS BY MICROBAN trademark had taken place, leave no doubts that Respondent was fully aware of Complainant's rights in said trademarks when registering the disputed domain name and that the latter is clearly directed thereto. Moreover, the fact that the disputed domain name is used for no other purpose but to be offered on the Internet for online sale at USD 1,288, is a clear indication that Respondent registered the disputed domain name primarily for the purpose of selling it to Complainant or competitors of Complainant in excess of Respondent's documented out-of-pocket costs directly related to the disputed domain name. Such circumstances are evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(i) of the Policy.

Therefore, the Panel concludes that Complainant has also satisfied the third element under the Policy as set forth by paragraph 4(a)(iii).

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 <ffsbymicroban.com> be transferred to Complainant.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: November 30, 2022