

ADMINISTRATIVE PANEL DECISION

Breedon Group plc v. Alagbada Foluke
Case No. D2023-0369

1. The Parties

The Complainant is Breedon Group plc, United Kingdom, represented by SafeNames Ltd., United Kingdom.

The Respondent is Alagbada Foluke, India.

2. The Domain Name and Registrar

The disputed domain name <breedongroups.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 26, 2023. On January 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 27, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 2, 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 February 3, 2023.

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 February 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 12, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 13, 2023.

The Center appointed Nayiri Boghossian as the sole panelist in this matter on March 21, 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

The Complainant is a construction materials group and owns a number of registrations for the trademark BREEDON such as United Kingdom Trademark Registration No. 00003558021 registered on April 23, 2021, and European Union Trademark Registration No. 018341835 registered on May 22, 2021. The Complainant operates from its main website at the domain name <breedongroup.com>.

The disputed domain name was registered on June 23, 2022, and resolves to an inactive website.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the Complainant's trademark BREEDON. The Complainant has registered the trademark BREEDON in many jurisdictions. The disputed domain name contains the Complainant's trademark BREEDON. The addition of the element "groups" does not eliminate confusing similarity. In fact, combining the Complainant's trademark with the term "groups" enhances association with the Complainant. The generic Top-Level Domain ("gTLD") ".com" is a standard registration requirement.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent does not own registered trademarks or unregistered rights for BREEDON or BREEDONGROUPS and is not licensed by the Complainant to use its trademark. There is no evidence of use of or demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. The disputed domain name resolves to an inactive webpage. The Complainant submits that the Respondent is not known by BREEDON or BREEDONGROUPS. There is no evidence that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. The Complainant's trademark was first registered six years before the disputed domain name was created. The Complainant's trademark enjoys good will and recognition. A search of public databases or a general Internet search would reveal the existence of the Complainant's trademark. The Respondent must have registered the disputed domain name to target the Complainant's trademark. Bad faith can be assumed as the disputed domain name includes the Complainant's trademark BREEDON and the term "groups". Furthermore, The Respondent failed to reply to the cease and desist letter. The disputed domain name is used in bad faith as it does not resolve to an active page. Such passive holding does not preclude a finding of bad faith under certain circumstances, which are found here. The Complainant's trademark has a strong reputation and has no dictionary meaning. Lastly, an email exchange is connected to the disputed domain name, which creates a risk of phishing activities. The presence of MX records has been found to indicate bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant owns trademark registrations for the trademark BREEDON. The Panel is satisfied that the Complainant has established its ownership of the trademark BREEDON. The disputed domain name comprises the Complainant's trademark BREEDON in its entirety. The term "groups" does not prevent the fact that the disputed domain name is confusingly similar to the Complainant's trademark.

The gTLD, ".com" should generally be ignored when assessing confusing similarity as established by prior UDRP decisions.

Consequently, the Panel finds that the disputed domain name is confusingly similar to the trademark of the Complainant and that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

A complainant must make at least a *prima facie* showing that a respondent does not have any rights or legitimate interests in the disputed domain name. Once such showing is made, the burden of production shifts to the respondent. In the instant case, the Complainant asserts *inter alia* that the Respondent is not authorized by the Complainant to use its trademark. Therefore, the Complainant has established a *prima facie* case and the burden of production shifts to the Respondent to show that it has rights or legitimate interests.

The absence of a substantive response by the Respondent allows the Panel to draw inferences, and under the circumstances, the absence of a response leaves the Complainant's *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name unrebutted.

Consequently, the Panel finds that the Complainant has met the requirement under the Policy of showing that the Respondent does not have any rights or legitimate interests in the disputed domain name. Accordingly, the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered or Used in Bad Faith

The Respondent must have been aware of the Complainant's trademark as the Complainant's trademark has been registered years before the disputed domain name was created and is not a dictionary word. The disputed domain name consists of the Complainant's trademark together with the term "groups" which closely resembles the Complainant's domain name <breedongroup.com> as well as the Complainant's name. The disputed domain name resolves to an inactive website. Prior UDRP panels have found that passive holding does not prevent a finding of bad faith if the totality of circumstances supports an inference of bad faith. See section 3.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). Noting the Respondent's failure to provide any good-faith explanation for his registration and use of the inherently misleading disputed domain name and the absence of a plausible use of the disputed domain name that would be legitimate (*Johnson & Johnson v. Daniel Wistbacka*, WIPO Case No. [D2017-0709](#)), the Panel finds that the current passive holding of the disputed domain name does not prevent the Panel's bad faith finding.

Accordingly, the Panel finds that the Complainant has satisfied 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, <breedongroups.com> be transferred to the Complainant.

/Nayiri Boghossian/

Nayiri Boghossian

Sole Panelist

Date: March 30, 2023