

ADMINISTRATIVE PANEL DECISION

Baum und Pferdgarten A/S v. tangyong tang
Case No. D2023-1026

1. The Parties

The Complainant is Baum und Pferdgarten A/S, Denmark, represented by Patrade Legal ApS, Denmark.

The Respondent is tangyong tang, China.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 8, 2023. On March 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 9, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 March 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 30, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 31, 2023.

The Center appointed Mihaela Maravela as the sole panelist in this matter on April 17, 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 offers clothing items under the trademark BAUM UND PFERDGARTEN.

The Complainant has registered various trademarks consisting of BAUM UND PFERDGARTEN, such as the European Union Trade Mark registration for BAUM UND PFERDGARTEN (word), registered under No. 0902365 on May 22, 2006.

The disputed domain name was registered on July 21, 2022 and resolves to a website purporting to sale BAUM UND PFERDGARTEN branded goods at discounted prices.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain name is identical to the dominating and distinctive element of the BAUM UND PFERDGARTEN trademarks owned and heavily used by the Complainant on a global basis. The logo in the top left corner of the Respondent's website at the disputed domain name has been reproduced identically from the Complainant's main website, which causes a significant likelihood of confusion.

With respect to the second element, the Complainant argues that the Respondent has never had any commercial relations to the Complainant, and that the Complainant has at no point authorized the Respondent to use their trademarks. The goods sold via the website at the disputed domain name are counterfeit. There is no information suggesting that the Respondent has been commonly known by the disputed domain name, as all Internet searches for "pferdgarten" refers to the business of the Complainant.

As regards the third element, the Complainant argues that the disputed domain name is being used for a fraudulent webshop claiming to be the Complainant. The logo of the Complainant is reproduced identically on the Respondent's website at the disputed domain name. Further, the Respondent describes itself as being Baum Und Pferdgarten in their "About Us" section on the website at the disputed domain name. As there has never been any commercial relations between the Respondent and the Complainant, this is clearly an act of bad faith. The Respondent's website at the disputed domain name contains the Complainant's product images and product descriptions, which, apart from constituting copyright and design infringements, clearly shows that the Respondent is acting in bad faith. In addition, the fact that several consumers were led to believe that the disputed domain name and the website at the disputed domain name belongs to the Complainant confirms that the Respondent is trying to generate traffic in a fraudulent and unlawful manner from the Complainant's website to that at the disputed domain name.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Matters

No communication has been received from the Respondent in this case. However, given that the Complaint was sent to the relevant email and postal addresses disclosed by the Registrar, the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to "employ reasonably available means calculated to achieve actual notice". Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules and to draw inferences from the Respondent's failure to file any Response. While the

Respondent's failure to file a Response does not automatically result in a decision in favor of the Complainant, the Panel may draw appropriate inferences from the Respondent's default.

The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

6.2. Substantive Matters

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following elements:

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

A. Identical or Confusingly Similar

The Complainant has proved rights over the BAUM UND PFERDGARTEN trademark.

The disputed domain name is a misspelled version of one of the two dominant elements of the BAUM UND PFERDGARTEN trademark, which does not in the view of the Panel prevent the Complainant's trademark from being recognizable within the disputed domain name. Many UDRP panels have found that a disputed domain name is confusingly similar where the relevant trademark is recognizable within the disputed domain name. See section 1.7 of the [WIPO Overview 3.0](#).

It is well accepted by UDRP panels that a generic Top-Level Domain ("gTLD"), such as ".com", is typically ignored when assessing whether a domain name is identical or confusing similar to a trademark. See section 1.11.1 of the [WIPO Overview 3.0](#).

This Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademarks and therefore finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* case demonstrating that the Respondent has no rights or legitimate interests in the disputed domain name in order to shift the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

In the present case, the Complainant has established a *prima facie* case that it holds rights over the trademark BAUM UND PFERDGARTEN and claims that the Respondent has no legitimate reason to acquire and use the disputed domain name. There is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services, nor does the Respondent appear to engage in any legitimate noncommercial or fair use of the disputed domain name within the meaning of paragraphs 4(c)(i) and (iii) of the Policy. Rather, according to the un rebutted evidence of the Complainant, the website at the disputed domain name is used to offer for sale BAUM UND PFERDGARTEN goods at a discounted price – more than 50% price reduction. Under these circumstances it is reasonable to infer that the products offered on the website at the disputed domain name are counterfeit of the Complainant's products. Even if the products were genuine, the lack of any disclaimer on the website at the disputed

domain name as to the registrant's relationship with the trademark owner or the lack thereof, would falsely suggest to Internet users that the website to which the disputed domain name resolved is owned by the Complainant or at least affiliated to the Complainant (as per the Oki Data principles outlined in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)). The Respondent has used the Complainant's logo and trademark on the website to which the disputed domain name resolves to appear to be a website authorized by the Complainant in an act of passing off, which cannot be a *bona fide* use.

Also, there is no evidence that the Respondent is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy.

The Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent failed to rebut that *prima facie* case because the Respondent did not respond to the Complainant's contentions.

With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith.

The Complainant's registration and use of the relevant trademarks predate the date at which the Respondent registered the disputed domain name. The disputed domain name resolves to a website reproducing the Complainant's trademark and purportedly offering for sale the Complainant's products but at a much lower price. Given the distinctiveness of the Complainant's trademark, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademarks, and to target those trademarks.

The inherently misleading disputed domain name resolves to a website, which ostensibly offers the Complainant's products at a much lower price. As such, the disputed domain name suggests affiliation with the Complainant in order to attract consumers and offer products that appear to be counterfeit.

Moreover, the Respondent has not formally participated in these proceedings and has failed to rebut the Complainant's contentions and to provide any evidence of actual or contemplated good-faith use and indeed none would seem plausible.

In the Panel's view, the circumstances of the case represent evidence of registration and use in bad faith of the disputed domain name. The Respondent failed to bring evidence as to the contrary. Consequently, the Panel concludes that the condition of paragraph 4(a)(iii) of the Policy is fulfilled.

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 <pferdgartens.com> be transferred to the Complainant.

/Mihaela Maravela

Mihaela Maravela

Sole Panelist

Date: May 1, 2023