

## **ADMINISTRATIVE PANEL DECISION**

JB IP, LLC v. Swizz Mike, gch ghgh yt u yuc  
Case No. D2023-1077

### **1. The Parties**

Complainant is JB IP, LLC, United States of America (“United States” or “US”), represented by Valauskas Corder LLC, United States.

Respondents are Swizz Mike, United States and gch ghgh yt u yuc, Cameroon.

### **2. The Domain Names and Registrar**

The disputed domain names <jungleboysexotic.com> and <jungleboysflorida.org> are registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 10, 2023 regarding the disputed domain names and two additional domain names. On March 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On March 10, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on March 13, 2023, 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 March 13, 2023 along with a request to withdraw its Complaint regarding two additional domain names.

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 Respondents of the Complaint, and the proceedings commenced on March 14, 2023. In accordance with the Rules, paragraph 5, the due date for the Response was April 3, 2023. Respondents did not submit any response. Accordingly, the Center notified the Parties of Respondents’ default on April 11, 2023.

The Center appointed Ingrida Karina-Berzina as the sole panelist in this matter on April 18, 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**

Complainant operates online and retail outlets for cannabis products in the United States under the JUNGLE BOYS brand. It is the proprietor of a California State trademark registration and United States federal trademark applications for the JUNGLE BOYS mark.

Complainant has registered the domain names <jungleboys.com> and <jungleboysflorida.com> and uses those domains for its e-commerce businesses.

The disputed domain name <jungleboysflorida.org> was registered on July 4, 2022. At the time of this Decision, it resolved to a website containing a blank index. The disputed domain name <jungleboisexotic.com> was registered on November 20, 2020. At the time of this Decision, it resolved to a website containing content related to the almanac, such as weather and gardening information. The record reflects that both disputed domain names previously resolved to websites that mimicked the appearance of Complainant's e-commerce websites and displayed Complainant's mark and logo.

#### **5. Parties' Contentions**

##### **A. Complainant**

Complainant's contentions may be summarized as follows:

##### **1. Request to consolidate proceedings**

Complainant requests consolidation of the proceedings for the following reasons: first, the email addresses provided by Respondent each include the element "mswizz." Second, the contact information for each of the disputed domain name includes false or misleading information, including postal codes that do not match the stated locations. Third, the content at the two websites to which the disputed domain names resolve is nearly identical.

##### **2. Substantive contentions**

Under the first element, Complainant states it has continuously used the well-known JUNGLE BOYS mark in the cannabis industry since at least as early as 2009. Complainant is the owner of California State Trademark Registration No. 02001302 and US Federal Trademark Registration Applications No. 97253413, 97253477, and 90976393. Complainant owns and operates online retail stores and numerous retail stores in California and Florida under the JUNGLE BOYS mark. Complainant owns domain names incorporating the JUNGLE BOYS mark: <jungleboysclothing.com> registered in 2016, <jungleboys.com> registered in 2000, and <jungleboysflorida.com> registered in 2020. These domain names permit Internet users to find websites featuring detailed information about the goods and services offered by Complainant.

Complainant states that the disputed domain names reflect Complainant's mark in its entirety. Consumers are likely to believe that the disputed domain names are associated with Complainant.

Under the second element, Complainant states that the disputed domain names are used to operate websites that attempt to impersonate Complainant with the intent to trade on Complainant's recognition and goodwill. Complainant did not authorize Respondents to use its trademark JUNGLE BOYS. Respondents' websites illustrate content that is the same if not highly related to that which appears at Complainant's websites.

Under the third element, Complainant states that the disputed domain names utilize the dominant portion of Complainant's mark and are linked to websites claiming to provide the same or highly related goods and services offered and sold by Complainant without Complainant's permission. Respondents are attempting to profit from Complainant's recognized mark. Respondents' efforts to pass themselves off as Complainant disrupts Complainant's business and misleads consumers.

Complainant requests transfer of the disputed domain names.

## **B. Respondent**

Respondents did not reply to Complainant's contentions.

## **6. Discussion and Findings**

### **6.1 Preliminary Issue – Consolidation of Proceedings**

Pursuant to paragraph 10 of the Rules:

(a) the Panel shall conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Policy and these Rules.

(b) In all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case.

[...]

(e) A Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules.

### **Consolidation of Multiple Respondents**

The principles to assess a request to consolidate multiple respondents are set forth in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 4.11.2.

Noting the circumstances of the case, the Panel considers the disputed domain names to be under common control. While the disputed domain names were registered on separate dates under different names, the Panel notes that the disputed domain names reflect similar naming patterns, consisting of Complainant's JUNGLE BOYS mark and the terms "exotic" and "florida". Both domain names were registered using email addresses that contain the term "mswizz." The content of the websites to which the disputed domain names used to resolve is similar.

Respondents do not challenge Complainant's assertions nor offer any alternative explanation for these circumstances. Accordingly, the Panel accepts Complainant's request to consolidate the present proceedings pursuant to the Rules, paragraph 10(e). Respondents are hereinafter referred to as "Respondent."

### **6.2 Substantive Issues**

Paragraph 4(a) of the UDRP requires Complainant to make out all three of the following:

(i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which Complainant has rights; and

(ii) Respondent has no rights or legitimate interests in respect of the disputed domain names; and

(iii) Respondent has registered and is using the disputed domain names in bad faith.

Under paragraph 15(a) of the Rules, “[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

### **A. Identical or Confusingly Similar**

The Panel notes that Complainant is relying on United States state registration and pending federal trademark applications. Since pending trademark applications do not by themselves establish trademark rights within the meaning of UDRP paragraph 4(a)(i) and United States state registrations, are not always accorded the same deference as national trademark registrations, as a threshold matter, the Panel must decide whether Complainant has standing to bring a UDRP action based on unregistered trademark rights.

Based on the evidence presented, the Panel finds that Complainant has established its unregistered rights in the JUNGLE BOYS mark. It has provided evidence that its mark has, through use, become a distinctive identifier, which consumers associate with Complainant’s goods and services. The mark does not consist solely of descriptive terms. The Panel finds that Complainant has provided evidence of use of this mark in its domain names and on its websites. Such use predates the registration of the disputed domain names and supports Complainant’s assertion of acquired distinctiveness. See, for example, *UITGERVERIJ CRUX v. W. FREDERIC ISLER*, WIPO Case No. [D2000-0575](#). See also WIPO Overview of WIPO Panel Views on selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.3.

Consistent with prior UDRP panel practice, the Panel finds that Respondent has deliberately targeted Complainant’s mark, and this fact supports a finding that Complainant’s mark has achieved significance as a source identifier for purposes of the Policy. See [WIPO Overview 3.0](#), section 1.3.

Complainant thereby satisfies the requirement of having trademark rights for purposes of standing to file a UDRP case.

In comparing Complainant’s JUNGLE BOYS mark with the disputed domain names, the Panel finds that the disputed domain names are confusingly similar to this mark as the dominant part of the mark (“jungle boys”) is clearly recognizable within the disputed domain names, followed by the terms “exotic” and “florida.” It is the consensus view of UDRP panels that, where a domain name incorporates the entirety of a trademark, the domain name will normally be considered confusingly similar to that mark. Moreover, where the relevant trademark is recognizable within the disputed domain names, 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 [WIPO Overview 3.0](#), sections 1.7 and 1.8.

Accordingly, the Panel finds that Complainant has established the first element under paragraph 4(a) of the Policy.

### **B. Rights or Legitimate Interests**

The Panel finds that the evidence submitted by Complainant establishes a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain names. Respondent is not authorized by Complainant and has no rights in the JUNGLE BOYS mark. The disputed domain names comprise Complainant’s JUNGLE BOYS mark together with additional terms. Such use cannot confer rights or legitimate interests.

Pursuant to [WIPO Overview 3.0](#), section 2.1, and cases thereunder, where Complainant makes out a *prima facie* case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

Respondent has not provided any rebuttal of Complainant's *prima facie* case and has therefore not shown rights or legitimate interests in the disputed domain names. There is no evidence that Respondent is commonly known by the disputed domain names, or that there are any circumstances or activities that would establish Respondent's rights therein. The disputed domain names consist of Complainant's JUNGLE BOYS mark plus the terms "florida" and "exotic". Where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. See [WIPO Overview 3.0](#), section 2.5.1.

The disputed domain names used to resolve to websites featuring Complainant's marks in connection with sales of cannabis products. The websites displayed Complainant's JUNGLE BOYS mark and are clearly intended to mislead Internet users into believing that the purported services are offered by Complainant. Such illegitimate activity using Complainant's mark cannot confer rights or legitimate interests. See [WIPO Overview 3.0](#), section 2.13.

Accordingly, the Panel finds that Complainant has established the second element under paragraph 4(a) of the Policy.

### **C. Registered and Used in Bad Faith**

The Panel finds that Complainant has demonstrated Respondent's bad faith registration and use of the disputed domain names. Complainant's rights in its JUNGLE BOYS mark predate the registration of the disputed domain names. The disputed domain names reflect Complainant's JUNGLE BOYS mark in its entirety, together with additional industry terms. The Panel notes that the term "florida," in particular, references the location of Complainant's business and is confusingly similar to Complainant's registered domain name <jungleboysflorida.com>.

The record shows that Respondent deliberately targeted Complainant in incorporating Complainant's mark in the disputed domain names. The disputed domain names resolved to websites displaying Complainant's mark and logo and purporting to offer "Jungle Boys" cannabis products. The Panel finds that Respondent thereby attempted to impersonate Complainant for commercial gain, indicating bad faith in registration and use of the disputed domain names. See [WIPO Overview 3.0](#), sections 3.1.4 and 3.2.1.

Respondent has provided no evidence of actual or contemplated good-faith use of the disputed domain names and, under the circumstances, the Panel does not find any such use plausible.

The Panel therefore finds that Complainant has established the third element under paragraph 4(a) 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 names <jungleboysexotic.com> and <jungleboysflorida.org> be transferred to Complainant.

*/Ingrīda Kariņa-Bērziņa/*

**Ingrīda Kariņa-Bērziņa**

Sole Panelist

Date: May 2, 2023