

## **ADMINISTRATIVE PANEL DECISION**

### **Plano Molding Company, LLC v. Ming Zhang Case No. D2023-1268**

#### **1. The Parties**

The Complainant is Plano Molding Company, LLC, United States of America (“United States”), represented by Norvell IP llc, United States.

The Respondent is Ming Zhang, China.

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

The disputed domain name <caboodlesus.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 23, 2023. On March 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 28, 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 31, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 20, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 28, 2023.

The Center appointed Anna Carabelli as the sole panelist in this matter on May 5, 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 manufactures and sells worldwide a wide range of storage products, including storage

products for fishing, hunting, beauty, and crafting, under a dozen of different brand names including Caboodles.

The Complainant owns multiple trademark registrations for CABOODLES in the United States at least since as early 1988, with a first registration date of March 15, 1988, and a first use in commerce date of June 16, 1987, (registration No. 1,480,807). The Complainant also owns registrations for the CABOODLES mark in multiple jurisdictions outside the United States, including China where the Responded purportedly resides.

The Complainant maintains an active Internet website at a domain name incorporating the CABOODLES mark. The domain name <caboodles.com> was originally registered in 1996 and resolves to the Complainant official website which is actively used by the Complainant to promote and sell its Caboodles branded products to customers.

The disputed domain name was registered on July 11, 2022. The evidence in the Complaint is that the disputed domain name redirects to an active website seemingly offering CABOODLES trademarked products. The website at the disputed domain name mimics the Complainant's official website ("www.caboodles.com") by reproducing the Complainant's CABOODLES mark and logo.

## 5. Parties' Contentions

### A. Complainant

The Complainant submits and contends that:

- The Complainant's trademark CABOODLES is used globally since at least as early as 1988, and is well known and highly recognizable in the fields of storage products.
- The disputed domain name is confusingly similar to the Complainant's CABOODLES trademark. In this regard, the Complainant notes that the disputed domain name entirely incorporates the CABOODLES mark. The addition of the letters "us" that follow the CABOODLES mark in the disputed domain name does not prevent a finding of confusing similarity.
- The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent (i) is not affiliated with the Complainant, (ii) has not been authorized or somehow given consent by the Complainant to register any domain name incorporating such trademark, and (iii) is not commonly known by the by the name "caboodlesus". The Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods and services nor the Responded could claim any legitimate noncommercial or fair use of the disputed domain name. Indeed, the disputed domain name resolves to an active website seemingly offering the Complainant's products and containing countless uses of the Complainant's CABOODLES mark, in an attempt to fraudulently represent that the website is actually published or endorsed by the Complainant. In fact, the website at the disputed domain name is a near duplicate of the Complainant's official website and attempts to lure the Complainant's customers to purchase Caboodles branded products, when the Respondent is not actually offering legitimate Caboodles products. The Respondent is attempting to defraud unwitting customers by collecting their financial or payment information but never delivering authentic Caboodles products.
- The disputed domain name was registered in bad faith. The Respondent knew of and targeted the Complainant's trademark when the Respondent registered the disputed domain name. The Respondent is using the disputed domain name to create a likelihood of confusion with the Complainant's CABOODLES mark as to source sponsorship, affiliation, or endorsement of the Respondent's website, and to perpetrate a fraud scheme.

Based on the above, the Complainant requests that the disputed domain name be transferred to the Complainant.

## B. Respondent

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

## 6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the panel to decide the complaint based on the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Under paragraph 4(a) of the Policy, the Complainant must prove each of the following:

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

Paragraph 4(b) of the Policy sets out four illustrative circumstances, which for the purposes of paragraph 4(a)(iii) of the Policy, shall be evidence of registration and use of a domain name in bad faith.

Paragraph 4(c) of the Policy sets out three illustrative circumstances any one of which shall be evidence of the respondent's rights to or legitimate interests in a disputed domain name for the purpose of paragraph 4(a)(ii) of the Policy above.

### A. Identical or Confusingly Similar

The Panel finds that the Complainant has established rights over the trademark CABOODLES based on the evidence submitted in the Complaint.

The disputed domain name consists of the Complainant's trademark CABOODLES in its entirety with addition of the letters "us", followed by the generic Top-Level Domain ("gTLD") ".com".

As highlighted in section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the addition of the generic gTLD such as ".com" is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test.

Therefore, the relevant comparison to be made is with the second-level portion of the disputed domain name, *i.e.*, "caboodlesus". As highlighted in section 1.7 of the [WIPO Overview 3.0](#), the threshold test for confusing similarity typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The disputed domain name entirely incorporates the Complainant's mark CABOODLES and this is a sufficient element to establish confusing similarity, as held by previous UDRP panels (*e.g.*, *Banca Mediolanum S.p.A. v. Domains By Proxy, LLC / Marzia Chiarello*, WIPO Case No. [D2020-1955](#); *Virgin Enterprises Limited v. Domains By Proxy LLC, Domainsbyproxy.com / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2020-1923](#); and *Patagonia, Inc. v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2019-1409](#)).

As recorded in section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the 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.

Accordingly, the Panel finds that disputed domain name is confusingly similar to a mark in which the Complainant has rights. Therefore, the Complainant has established paragraph 4(a)(i) of the Policy.

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

Under paragraph 4(c) of the Policy, a respondent may demonstrate its rights or legitimate interests in a domain name by showing any of the following circumstances, in particular but without limitation:

- (i) before any notice to it of the dispute, its use of, or demonstrable preparation to use the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods and services; or
- (ii) it has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) it is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name, based on the following: (a) the Complainant holds prior rights in the registered and well known CABOODLES mark, (b) the Respondent has not been authorized to use the Complainant's mark in any way and is not commonly known by the disputed domain name, and (c) the Respondent cannot demonstrate any legitimate noncommercial or fair use of the disputed domain name. In this connection, the Complainant has provided evidence that the disputed domain name resolves to a website seemingly offering the Complainant's Caboodles branded products, that mimics the Complainant's official website by reproducing the Complainant's CABOODLES mark and logo. Given the confusing similarity of the disputed domain name to the Complainant's trademark and the absence of any relationship between the Respondent and the Complainant, such a use of the disputed domain name is neither a *bona fide* use nor a legitimate noncommercial or fair use of the disputed domain name.

According to section 2.1 of the [WIPO Overview 3.0](#), while the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

Here the Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. By not submitting a response, the Respondent has failed to invoke any circumstance, which could have demonstrated any rights or legitimate interests in the disputed domain names under paragraph 4(c) of the Policy. Moreover, the website at the disputed domain name mimics the Complainant's website content and reflect no information concerning the website's relationship (lack thereof) to the Complainant. See sections 2.8 and 2.13.2 of the [WIPO Overview 3.0](#). Further to the so-called "Oki Data test" enshrined in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), even if the goods offered at the websites to which the disputed domain name resolves were of a genuine nature, such use of the disputed domain name cannot constitute fair use given the lack of a disclaimer. The Panel also finds that the disputed domain name is inherently misleading. See section 2.5.1 of the [WIPO Overview 3.0](#).

Furthermore, the Panels notes that given the impersonating nature of the website, it is more likely than not that the disputed domain name is engaged in a fraudulent scheme to masquerade as the Complainant in a phishing scheme meant to collect payment information, rather than actually provide any goods for sale (be they genuine Caboodles-labelled goods or not). Use of a domain name to illegitimately collect confidential account information cannot constitute a *bona fide* offering of goods or services (see *Lockheed Martin Corporation v. NBPro Hosting*, WIPO Case No. [D2003-0859](#)).

Therefore, the Panel finds that the Complainant has established paragraph 4(a)(ii) of the Policy.

### **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. Paragraph 4(b) provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, which includes: “(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

The disputed domain name fully incorporates the Complainant’s CABOODLES mark and is inherently misleading. The impersonating nature of the website at the disputed domain name, which reproduces the Complainant’s CABOODLES mark and logo, indicates that the Respondent targeted the Complainant’s trademark when registering the disputed domain name, with the deliberate intent to confuse the public into believing that the disputed domain name is associated with the Complainant in order to benefit from the reputation of the Complainant’s trademark and to attract for commercial gain Internet users. Use of the disputed domain name by the Respondent to pretend that it is the Complainant or someone acting under the Complainant’s authority was clearly intended to divert Internet users by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the website at the disputed domain name, thereby disrupting the Complainant’s business.

All the above supports a finding of bad faith registration and use of the disputed domain name.

Therefore, the Panel concludes that the requirement of paragraph 4(a)(iii) of the Policy is also satisfied.

### **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 <caboodlesus.com> be transferred to the Complainant.

*/Anna Carabelli/*

**Anna Carabelli**

Sole Panelist

Date: May 16, 2023