

## **ADMINISTRATIVE PANEL DECISION**

JB IP, LLC v. Barney Bash

Case No. D2023-1863

### **1. The Parties**

The Complainant is JB IP, LLC, United States of America, represented by Valauskas Corder LLC, United States of America.

The Respondent is Barney Bash, United States of America.

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

The disputed domain name <jungleboyoofficials.com> is registered with Web Commerce Communications Limited dba WebNic.cc (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 26, 2023. On April 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 26, 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 May 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 21, 2023. The Respondent did not submit a formal response, however the Respondent sent an email communication to the Center on May 15, 2023. The Center informed the Parties that it will proceed with panel appointment on May 22, 2023.

The Center appointed Evan D. Brown as the sole panelist in this matter on May 25, 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 in the cannabis business, operating dispensaries at multiple retail stores in California and Florida. It is the proprietor of a California State trademark registration (No. 02001302) and United States federal trademark applications (Nos. 97253413, 97253477, and 90976393) for the JUNGLE BOYS mark. It uses the mark JUNGLE BOYS, particularly in a stylized manner in connection with its goods and services. 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. According to the Whois records, the disputed domain name was registered on August 21, 2020. The Respondent has used the disputed domain name to set up a website that purports to offer cannabis products for sale, which prominently displays the Complainant's stylized JUNGLE BOYS mark, and features images of products appearing to be the Complainant's products for sale.

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

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

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

##### **B. Respondent**

The Respondent did not formally reply to the Complainant's contentions. It did, however, send an email communication to the Center on May 15, 2023, asking only "WHY IS THAT DOMAIN A PROBLEM IF I MAY ASK ?"

#### **6. Discussion and Findings**

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (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. The Panel finds that all three of these elements have been met in this case.

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

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. The Complainant apparently does not own any trademark registrations for its JUNGLE BOYS mark within the meaning of the Policy, since pending trademark applications do not 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 and thus do not by themselves provide evidence of distinctiveness to support trademark rights. [WIPO Overview 3.0](#), sections 1.1.4 and 1.2.2.

However, the Complainant has provided some limited evidence demonstrating the use of its JUNGLE BOYS mark in commerce and in various domain names. Further, the Panel has conducted some limited online investigation (which under the general powers accorded to the Panel under Rules, paragraphs 10 and 12, may be undertaken if a panel considers such information useful to assessing the case merits and

reaching a decision) to determine that the Complainant's JUNGLE BOYS mark is well-recognized online as indicating the source of the Complainant's goods and services. For example, a search of the Wayback Machine shows use of the mark going back to at least 2018. The Complainant's Instagram account – with content prominently featuring the mark – has more than one million followers. The Instagram account has posts going back several years, certainly predating the registration of the disputed domain name. Lastly, the Respondent's actions themselves demonstrate the source identifying function of the JUNGLE BOYS mark given that the website content found on the disputed domain name also reflects the JUNGLE BOYS mark and trades off the Complainant's reputation in an alleged offering of the Complainant's JUNGLE BOYS-branded products. [WIPO Overview 3.0](#), sections 1.7 and 1.15.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the addition of the word "officials" to the mark appearing in the disputed domain name does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

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

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

The Panel considers that the record of this case reflects that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods and services. Instead, the Respondent has set up a website that imitates the Complainant in a way that is likely to deceive Internet users. It is clear that the Respondent is not using the disputed domain name in a noncommercial manner or in a way that should be protected by fair use.

Accordingly, based on the available record, the Panel finds the second element of the Policy has been established.

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

The Policy requires a complainant to establish that the disputed domain name was registered and is being used in bad faith. The Policy describes several non-exhaustive circumstances demonstrating a respondent's bad faith registration and use. Under paragraph 4(b)(iv) of the Policy, a panel may find bad faith when a respondent "[uses] the domain name to intentionally attempt to attract, for commercial gain, Internet users to [respondent's] website or other online location, by creating a likelihood of confusion with complainant's mark

as to the source, sponsorship, affiliation, or endorsement of [respondent's] website or location or a product or service on [the respondent's] website or location.”

Given that the Respondent set up a website that copies and displays the Complainant's JUNGLE BOYS mark and purports to offer the very same kinds of products for sale that the Complainant sells, it is implausible to believe that the Respondent was not aware of the Complainant and its mark when it registered the disputed domain name. In the circumstances of this case, such a showing is sufficient to establish bad faith registration of the disputed domain name.

Bad faith use is clear from the Respondent's activities of using the disputed domain name to set up a website that imitates the Complainant in a way that, in the Panel's mind, is calculated to deceive Internet users and potential customers.

For these reasons, the Panel finds that the Complainant has successfully met this third UDRP element.

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

*/Evan D. Brown/*

**Evan D. Brown**

Sole Panelist

Date: June 16, 2023