

ADMINISTRATIVE PANEL DECISION

Caffè Borbone S.r.l. v. Ata Olori, Tagandlocate
Case No. D2023-2330

1. The Parties

The Complainant is Caffè Borbone S.r.l., Italy, represented by Società Italiana Brevetti, Italy.

The Respondent is Ata Olori, Tagandlocate, Senegal.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 30, 2023. On May 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 31, 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 June 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 27, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 4, 2023.

The Center appointed Nayiri Boghossian as the sole panelist in this matter on July 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

The Complainant was founded in 1996 and is a leader in the Italian coffee industry.

The Complainant owns a number of trademark registrations for the trademark CAFFE BORBONE such as, European Union trademark registration No. 015670541 registered on November 23, 2016, International trademark registration No. 902614 registered on January 11, 2006.

The Respondent registered the disputed domain name on January 30, 2023, and the disputed domain name resolves to a website displaying the message “the nginx web server is successfully installed and working”, and invite users to visit two other websites.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant’s trademark CAFFE BORBONE. The disputed domain name reproduces the Complainant’s trademark in its entirety. The generic Top-Level Domain (“gTLD”) “.com” does not eliminate confusing similarity nor does the geographical term “EGYPT”. The Complainant has registered many domain names with its trademark.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant did not authorize the Respondent to use its trademark. There is no evidence showing that the Respondent has applied for or registered the trademark.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. The Respondent is not making a fair use of the disputed domain name. By the time the disputed domain name was registered, the Complainant’s business had been well-established. As such, the Respondent must have been aware of the Complainant’s trademark. Additionally, there is no connection between the Respondent and the Complainant’s trademark, company name or domain name. The Complainant’s trademark is not a common or descriptive term. The Complainant’s trademark had a wide reputation before the registration of the disputed domain name. The disputed domain name reproduces the Complainant’s trademark. The disputed domain name resolves to an inactive website, which encourages Internet users to visit another website.

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 CAFFE BORBONE. The Panel is satisfied that the Complainant has established its ownership of the trademark CAFFE BORBONE.

The disputed domain name incorporates the Complainant’s trademark CAFFE BORBONE in its entirety. The geographical term “Egypt” does not prevent a finding of confusing similarity. The gTLD “.com” can be ignored when assessing confusing similarity as it is viewed as a standard registration requirement.

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

Under paragraph 4(a)(ii) of the Policy, 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 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 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. Also, the disputed domain name displays a website with messages inviting users to visit other websites. Such use of the disputed domain name does not confer upon the Respondent rights or legitimate interests. (See *Canva Ptd Ltd v. Domain Administrator*, WIPO Case No. [D2020-1208](#))

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 and Used in Bad Faith

The Respondent must have been aware of the Complainant's trademark CAFFE BORBONE as it had been registered years before the disputed domain name was created. Furthermore, the disputed domain name resolves to an inactive website, which include links inviting Internet users to visit other websites.

The Panel is of the view that the current case meets the requirement of paragraph 4(b)(iv) because, by using the disputed domain name, the Respondent is attempting to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's CAFFE BORBONE trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location. The Panel has reached such conclusion on the basis that there would be little benefit for the Respondent in promoting third-party commercial websites. Even if those messages were to be "automatically" generated, the Respondent cannot disclaim responsibility for content appearing on the website associated with its disputed domain name. Neither the fact that such links lead to what seems to be a third party website, nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of bad faith.

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, <caffeborbonegypt.com> be transferred to the Complainant.

/Nayiri Boghossian/

Nayiri Boghossian

Sole Panelist

Date: July 20, 2023