

ADMINISTRATIVE PANEL DECISION

The Body Shop International Limited v. Hurikane Media Case No. D2023-2579

1. The Parties

The Complainant is The Body Shop International Limited, United States of America, represented by Studio Barbero, United States of America.

The Respondent is Hurikane Media, Nigeria.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 15, 2023. On June 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On June 15, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Name 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 the Complainant on June 16, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on June 19, 2023.

The Center verified that the Complaint together with the amendment to 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 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 13, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 18, 2023.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on July 24, 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, The Body Shop International Limited, is a manufacturer and retailer of beauty and cosmetic products.

The Complainant holds various registered trade marks consisting of, or including, the terms “the body shop”, including the following:

- European Union Trade Mark (“EUTM”) registration No. 001436583 depicted below, registered on May 24, 2002 in classes 3, 21 and 42:



- THE BODY SHOP, EUTM registration No. 001980416 registered on April 16, 2003 in classes 3, 21 and 42;
- International trade mark registration No. 841798 depicted below, registered on August 24, 2004 in classes 3, 21 and 35:

THE BODY SHOP

The Complainant operates globally through its network of stores and official website available through its domain name <thebodyshop.com>.

The Disputed Domain Name was registered on February 22, 2018. According to the Complainant’s undated evidence, the Disputed Domain Name resolved to a website which appeared to sell products similar to the Complainant’s products. On February 2, 2023, the Disputed Domain Name appeared to resolve to an “Under Construction” page mentioning “TheBodyShopNig”. The Disputed Domain Name currently resolves to an error page.

5. Parties’ Contentions

A. Complainant

The Complainant considers the Disputed Domain Name to be confusingly similar to a trade mark in which it claims to have rights.

The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. According to the Complainant, the Respondent is not a licensee, authorized agent of the Complainant or in any other way authorized to use the Complainant’s trade marks. Also, according to the Complainant, there is no evidence that the Respondent is commonly known by the Disputed Domain Name, or evidence of *bona fide* or fair use of the Disputed Domain Name.

Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. According to the Complainant, its THE BODY SHOP mark is well-known and the Respondent could not have been unaware of its existence when it registered the confusingly similar Disputed Domain Name. The

Complainant contends that by offering for sale products bearing the Complainant's trade marks, the only purpose of the Respondent was to use the Disputed Domain Name to intentionally attempt to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with Complainant's trade marks as to the source, sponsorship, affiliation or endorsement of Respondent's website according to paragraph 4(b)(iv) of the Policy and taking unfair advantage from the well-known character of Complainant's trade marks. The Complainant adds that in view of i) the confusing similarity of the Disputed Domain Name with the Complainant's well-known trade mark, ii) the Respondent's lack of any right or legitimate interests in the Disputed Domain Name, iii) the Respondent's concealing of its contact details in the public Whois records and iv) the implausibility of any good faith use to which the Disputed Domain Name may be put, the Respondent's passive holding should not prevent a finding of bad faith use.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out his case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer the Disputed Domain Name. The standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

- (i) The Disputed Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (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 will therefore deal with each of these requirements.

A. Identical or Confusingly Similar

To prove this element, the Complainant must first establish that there is a trade mark or service mark in which it has rights. The Complainant has clearly established that there is a trade mark in which it has rights. The Complainant's THE BODY SHOP trade mark has been registered and used in connection to its beauty and cosmetics business.

The Disputed Domain Name matches the Complainant's THE BODY SHOP trade mark except for the addition of the term "nig". Where the relevant trade mark is recognizable within the disputed domain name, 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 section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Additionally, it is well established that generic Top-Level Domains, here ".com", may be disregarded when considering whether a disputed domain name is confusingly similar to a trademark in which a complainant has rights.

In light of the above, the Panel considers the Disputed Domain Name to be confusingly similar to the Complainant's THE BODY SHOP trade mark.

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* showing that the Respondent has no rights or legitimate interests in the Disputed Domain Name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

The Panel observes that the Respondent does not appear to be commonly known by the Disputed Domain Name and that the Respondent does not seem to have acquired trade mark or service mark rights (there being no Response or evidence of any such rights). According to the information confirmed by the Registrar, the Respondent is named "Hurikane Media". There are no indications that a connection between the Complainant and the Respondent exists or existed.

Where a domain name consists of a trade mark 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 trade mark owner (see section 2.5.1 of the [WIPO Overview 3.0](#)). The Disputed Domain Name incorporates the Complainant's THE BODY SHOP trade mark in its entirety and simply adds the term "nig". The Panel finds that in the circumstances of this case as further addressed below, this term can be interpreted as an abbreviation for the country "Nigeria". Therefore, the Panel finds that the Disputed Domain Name carries a risk of implied affiliation with the Complainant.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, such as the content of the website linked to the disputed domain name and the absence of a response, support a fair use or not (see sections 2.5.2 and 2.5.3 of the [WIPO Overview 3.0](#)).

According to the Complainant's evidence, the Disputed Domain Name appeared to refer to a website purporting to sell products similar to the Complainant's products and all mentioning the Complainant's word mark, without any disclaimer of non-affiliation with the Complainant. This website also included the figurative elements of the Complainant's figurative marks as shown above under section 4 and the general look and feel of the Complainant's official website. Finally, the website mentioned "The Body Shop Nigeria" and a physical address in Nigeria. The Panel finds that the above elements all falsely suggest that the website linked to the Disputed Domain Name was operated by the Complainant or an affiliated entity based in Nigeria and are therefore indications of illegal activity using the Disputed Domain Name. UDRP panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods, phishing, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent (see section 2.13 of the [WIPO Overview 3.0](#)).

The Respondent had the opportunity to demonstrate rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the *prima facie* case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the Disputed Domain Name. In light of the above, the Complainant succeeds on the second element of the Policy.

C. Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the Disputed Domain Name was registered in bad faith and that it is being used in bad faith (see section 4.2 of the [WIPO Overview 3.0](#) and,

for example, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) and *Control Techniques Limited v. Lektronix Ltd*, WIPO Case No. [D2006-1052](#)).

Paragraph 4(b) of the Policy provides a non-exclusive list of factors, any one of which may demonstrate bad faith. Among these factors demonstrating bad faith registration and use is the use of a domain name to intentionally attempt to attract, for commercial gain, Internet users to a 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 the website or location or of a product or service on the website or location.

In the present case, the Panel finds that it is inconceivable that the Respondent was unaware of the Complainant and its trade mark rights when it registered the Disputed Domain Name. The Disputed Domain Name matches the Complainant's distinctive trade mark in its entirety with the sole addition of the term "nig", and the website linked to the Disputed Domain Name included (elements of) the Complainant's word and figurative trade marks displayed in a similar way as on the Complainant's official website. In the Panel's view, the Respondent's awareness of the Complainant's trade mark rights at the time of registration suggests bad faith (see *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#)).

The Respondent appears to have used the Disputed Domain Name to resolve to a website which clearly suggested it was operated by the Complainant or an affiliated entity based in Nigeria. As mentioned above, the products offered for sale on this website all mentioned the Complainant's word mark and even elements of the Complainant's figurative marks were displayed in the same way as on the Complainant's official website. The Respondent's website appeared to offer for sale products similar to the Complainant's products. In the Panel's view, this indicates that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trade mark (see section 3.1.4 of the [WIPO Overview 3.0](#)).

The Panel observes that the Disputed Domain Name currently resolves to an error page. In the Panel's view, the Respondent's passive holding of the Disputed Domain Name does not prevent a finding of bad faith given i) the confusing similarity of the Disputed Domain Name with the Complainant's distinctive trade mark, ii) the Respondent's lack of any right or legitimate interests in the Disputed Domain Name, and iii) the implausibility of any good faith use to which the Disputed Domain Name may be put (see section 3.3 of the [WIPO Overview 3.0](#)).

By failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

Therefore, the Panel finds that, on the balance of probabilities, it is established that the Disputed Domain Name was registered and is being used in bad faith. In light of the above, the Complainant also succeeds on the third and last element 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 <thebodyshopnig.com> be transferred to the Complainant.

/Flip Jan Claude Petillion/

Flip Jan Claude Petillion

Sole Panelist

Date: August 7, 2023