

ADMINISTRATIVE PANEL DECISION

MAGELLAN v. yangyang

Case No. D2023-3120

1. The Parties

The Complainant is MAGELLAN, France, represented by Inlex IP Expertise, France.

The Respondent is yangyang, China.

2. The Domain Name and Registrar

The disputed domain name <codebonobo.com> is registered with Gransy, s.r.o. d/b/a subreg.cz (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 20, 2023. On July 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 21, 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 (Registration Private Gransy,s.r.o./ My Domain Provider) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 2, 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 amended Complaint on August 4, 2023.

The Center verified that the Complaint 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 the Respondent of the Complaint, and the proceedings commenced on August 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 12, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 18, 2023.

The Center appointed Zoltán Takács as the sole panelist in this matter on September 29, 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 founded in 2006 is a French simplified joint-stock company doing business in retail clothing.

The Complainant's BONOBO branded products are sold via more than 400 stores in France and abroad, as well as at its website "www.bonoboplanet.com". The corresponding domain name <bonoboplanet.com> was registered on September 1, 2006.

The Complainant's extensive portfolio of trademark registrations for the mark BONOBO includes by way of example the International Trademark Registration No. 919816, registered on January 12, 2007 for among others clothes, bags, shoes and beauty products.

The disputed domain name was registered on June 1, 2023 and redirected to a website displaying explicit pornographic content. Currently the disputed domain name resolves to a blank web page displaying a security message, warning that the connection with the website is not safe or that is dangerous.

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.

Notably, the Complainant contends that:

- the disputed domain name is confusingly similar to its BONOBO trademark, since it incorporates the trademark with the addition of the term "code";
- the Respondent has no rights or legitimate interests in respect of the disputed domain name, and
- the Respondent registered the disputed domain name in order to unlawfully benefit from the goodwill built up by the Complainant in the BONOBO trademark. In addition, linking of the disputed domain name to a website with pornographic content is harmful for the Complainant's brand image and could tarnish its trademark and reputation.

The Complainant requests that the disputed domain name be transferred from the Respondent 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 requires that the Panel's decision be made “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 complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely that:

- (i) the 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 domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

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 entirety of the Complainant's trademark is reproduced in the disputed domain name and the only difference between the trademark and the disputed domain name is the addition of the term “code” to the trademark in the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds that 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 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 that 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:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has made demonstrable preparations to use the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2;
- the Respondent (as an individual, business, or other organization) has not been commonly known by the disputed domain name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3;
- the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4, and
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

The Respondent's use of the disputed domain name in connection with a website of explicit pornographic content or a blank web page that is not safe, or that is dangerous to access does not correspond to any of the circumstances set forth in paragraph 4(c) of the Policy.

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 Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel considers that the record of this case reflects that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line locations, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

The Respondent has incorporated the Complainant's distinctive trademark in the disputed domain name, pairing it with the term "code" that is often used in fashion retail, the Complainant's core business. Hence, in that Panel's view it is not at all plausible that the Respondent registered the disputed domain name without knowledge and intent of targeting the Complainant and its trademark.

In addition, the Respondent's use of the disputed domain name that is confusingly similar to the Complainant's trademark to divert Internet users to a website of explicit pornographic content is a conduct that UDRP panels have found constituting bad faith registration and use, by attracting for commercial gain users to a website by creating a likelihood of confusion as to sponsorship or affiliation (see *National Football League Properties Inc. and Chargers Football Company v. One Sex Entertainment Co., a/k/a Chargergirls.net*, WIPO Case No. [D2000-0118](#) and *CCA Industries, Inc. v. Bobby R. Dailey*, WIPO Case No. [D2000-0148](#)).

As mentioned above, at the time of rendering of this administrative decision the disputed domain name was resolving to a blank web page, warning that the connection with the website is not safe or that is dangerous.

The fact that the offending use of the disputed domain name, that is to resolving to a website containing explicit pornographic content appears to have ceased prior to the issuance of the Panel's decision "does not alter the fact that the disputed domain name has been registered and is being used in bad faith, since the bad faith act had occurred during the period following registration of the disputed domain name" (see *Ingersoll-Ran Co. v. Frank Gully, d/b/a Advcomren*, WIPO Case No. [D2000-0021](#)).

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

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 <codebonobo.com> be transferred to the Complainant.

/Zoltán Takács/

Zoltán Takács

Sole Panelist

Date: October 10, 2023