

## **ADMINISTRATIVE PANEL DECISION**

**Backpack Boyz LLC v. Ada Ada, Brian Cole, Lanez Lesley, anthony brighton, wilson Bradley, Domain Owner, and BPW**

**Case No. D2023-3636**

### **1. The Parties**

The Complainant is Backpack Boyz LLC, United States of America (“United States” or “US”), represented by Pillsbury Winthrop Shaw Pittman LLP, United States.

The Respondents are Ada Ada, Nigeria; Brian Cole, Lanez Lesley, anthony brighton, wilson Bradley, Domain Owner, all United States; and BPW, Russian Federation.

### **2. The Domain Names and Registrars**

The disputed domain names <backpackboyz.co>, <backpackboyzofficial.store>, and <backpackboyzstore.org><sup>1</sup> are registered with NameCheap, Inc. (the “First Registrar”).

The disputed domain name <backpackboyzshop.com> is registered with Key-Systems GmbH (the “Second Registrar”).

The disputed domain name <backpackboyzofficial.co> is registered with 1API GmbH (the “Third Registrar”).

The disputed domain name <backpackboyzpacks.com> is registered with NameSilo, LLC (the “Fourth Registrar”).

The disputed domain name <backpackboyz420.org> is registered with Nicenic International Group Co., Limited (the “Fifth Registrar”).

All disputed domain names are hereinafter referred to collectively as the “Domain Names” or individually as the “Domain Name”. The First to Fifth Registrars are hereinafter referred to collectively as the “Registrars”.

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<sup>1</sup> The Domain Name <backpackboyzstore.org> expired on September 27, 2023. On October 6, 2023, the Complainant confirmed that it did not renew this Domain Name, and the Panel may proceed without this Domain Name. At the time of this decision, this Domain Name is under “autoRenewPeriod”, and is not available for registration. Therefore, the Panel has decided to include this Domain Name in this decision because once the Domain Name is deleted and becomes available for registration, it may be registered by any third party for any use including the use infringing the Complainant’s trademark rights in the BACKPACK BOYZ mark.

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 29, 2023. On August 30, 2023, the Center transmitted by email to the Registrars requests for registrar verification in connection with the Domain Names. On August 30, 2023, and August 31, 2023, the Registrars transmitted by email to the Center their verification responses disclosing registrant and contact information for the Domain Names which differed from the named Respondent (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf / On behalf of backpackboyzshop.com OWNER, c/o whoisproxy.com / Redacted for Privacy, See PrivacyGuardian.org) and contact information in the Complaint.

The Center sent an email communication to the Complainant on September 1, 2023, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrars, requesting the Complainant to either file separate complaint(s) for the Domain Names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity and/or that all Domain Names are under common control. The Complainant filed an amended Complaint on September 5, 2023. In response to the Center's email regarding the registrar information, the Complainant filed another amended Complaint on September 14, 2023.

The Center verified that the Complaint together with the amended Complaints 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 Respondents of the Complaint, and the proceedings commenced on September 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 4, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on October 5, 2023.

The Center appointed Marina Perraki as the sole panelist in this matter on October 9, 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 a limited liability company organized and operating under the laws of the State of California active in the field of legal cannabis product sales. The Complainant's predecessor has been using the BACKPACK BOYZ brand since 2017. The Complainant maintains its main website at "www.backpackboyz.com".

The Complainant owns trademark registrations for BACKPACK BOYZ including but not limited to the United States trademark registration no. 6548517, BACKPACKBOYZ (figurative), filed on May 6, 2020, and registered on November 2, 2021, for goods in international class 34 and the United States trademark registration no. 6761060, BACKPACK BOYZ (word), filed on April 21, 2020, and registered on June 14, 2022, for goods in international class 34.

The Domain Names were registered as follows:

<backpackboyz.co> was registered on August 7, 2022;  
<backpackboyz420.org> was registered on March 8, 2021;  
<backpackboyzofficial.store> was registered on February 5, 2023;  
<backpackboyzshop.com> was registered on November 29, 2022;  
<backpackboyzstore.org> was registered on September 27, 2021;  
<backpackboyzofficial.co> was registered on December 19, 2021; and  
<backpackboyzpacks.com> was registered on July 10, 2022.

At the time of filing of the Complaint all Domain Names led to websites prominently displaying the Complainant's marks, purportedly selling the Complainant's goods, and offering to ship cannabis products across different states in the United States or internationally, an activity illegal under the US federal law and various foreign laws (the "Websites"). On most of the Websites, it was prominently advertised that they accepted or even offered discounts for payments by cryptocurrency.

Currently all Domain Names lead to the Websites, apart from the Domain Name <backpackboyzzpacks.com> which leads to an inactive website.

## **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 Domain Names.

### **B. Respondents**

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

## **6. Discussion and Findings**

### **6.1 Procedural Issue: Consolidation of Multiple Respondents**

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the registrants are the same entity or mere alter egos of each other, or under common control. The Complainant requests the consolidation of the Complaint against the multiple registrants pursuant to paragraph 10(e) of the Rules.

The Respondents did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.11.2.

As regards common control, the Panel notes the following main arguments of the Complainant:

- all Domain Names have similar naming patterns, including the BACKPACK BOYZ mark of the Complainant or intentional misspelling thereof and other non-distinctive elements;
- all Domain Names direct to the Websites which have similar content and layouts;
- all Domain Names use the same language, which is the same as of the BACKPACK BOYZ mark of the Complainant and its website (English);
- all Domain Names target the Complainant's sector / industry and its brand, namely the legal cannabis industry and the BACKPACK BOYZ brand;
- some of the Domain Names share the same Registrars and privacy services; and
- all Websites offer for sale similar or identical products, namely the Complainant's products, or counterfeits thereof.

Furthermore:

- two of the Domain Names feature the word “official,” which suggests falsely that they are authentic websites owned and operated by the Complainant;
- all Websites prominently display the Complainant’s BACKPACK BOYZ mark, including current or former versions of the stylized BACKPACK BOYZ logos;
- all Websites include images of the Complainant’s actual product packaging;
- all Websites offer for sale cannabis within different states in the United States or internationally;
- all Websites provide information about the Complainant, including that it is from California;
- all Domain Names were registered within a period of about 23 months between March 8, 2021, and February 5, 2023.

As the Complainant demonstrates, all or most of the Domain Names use apparently false registrant details:

- <backpackboyz.co>, <backpackboyzofficial.store>, and <backpackboyzstore.org> share the same postal address in the US.<sup>2</sup> Per the Complaint, that address is associated with other named respondents in at least one prior UDRP decision, while <backpackboyzstore.org> lists a phone number that is not a US number and an email address that features a typo variation of a third-party website.

- <backpackboyz420.org> lists a mailing address that was identified for a different respondent in another UDRP proceeding, and provides false information for the Respondent, with the name “BPW” and a phone number that appears to be false.

- <backpackboyzshop.com> lists false address information, identifying an apartment that the leasing company identifies as vacant.

- <backpackboyzofficial.co> provided false information for the Respondent, listing the name as “Domain Owner”. Public records show that the provided address is the address of a third party. It also lists a false email address, and a phone number that has too many digits to be a US number.

- <backpackboyzpacks.com> has an incomplete mailing address, stating only a city in Nigeria, but identifying a ZIP code in Arizona, US.

Moreover, many of the Domain Names were registered and became operational shortly after the Complainant filed a previous UDRP proceeding concerning other similar domain names, see *Backpack Boyz LLC v. Privacy service provided by Withheld for Privacy ehf / Legend Killer, Domain Administrator, See PrivacyGuardian.org / Max Ngassa, Cockatoo Parrots store, Domain Administrator, See PrivacyGuardian.org / rich man corps, Privacy service provided by Withheld for Privacy ehf / ANIL KUHLMAN, Kevin Peyton, WIPO Case No. [D2022-2509](#)* (the “Prior UDRP Case”).

Last, the Panel takes also into account that:

- <backpackboyz.co> was registered one month after the Complainant initiated the Prior UDRP Case and within two months of the registration of two domain names at issue in that case;
- <backpackboyz420.org> was registered four months before the registration of the domain name at issue in the Prior UDRP Case;
- <backpackboyzofficial.store> was registered less than five months after the Complainant prevailed in the Prior UDRP Case;
- <backpackboyzshop.com> was registered six months after the registration of a nearly identical domain name at issue in the Prior UDRP Case and two months after the Complainant prevailed in that case;

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<sup>2</sup> The Panel notes that the street name related to the contact details of the registrant of the Domain Name <backpackboyz.co> was inadvertently omitted in the Center’s email regarding the registrants information of September 1, 2023.

- <backpackboyzstore.org> was registered two months after a nearly identical domain name was transferred to the Complainant in the Prior UDRP Case;
- <backpackboyzzofficial.co> was registered within three weeks of the one domain name in the Prior UDRP Case; and
- <backpackboyzzpacks.com> was registered one day before the Complainant filed the Prior UDRP Case and less than two months after the registration of two domain names at issue in the Prior UDRP Case.

Considering the above, the Panel finds that it is most likely that the Domain Names are subject to common control.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as “the Respondent”) in a single proceeding.

## **6.2 Substantive Issues: Three Elements**

### **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 Domain Names. [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 Panel finds the entirety of the mark is reproduced and therefore recognizable within the Domain Names. Accordingly, the Domain Names are identical or confusingly similar to the Complainant’s mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms (here “shop”, “store”, “official”, “zpacks”, “420”, “zofficial”) may bear on assessment of the second and third elements, the panel finds the addition of such terms does not prevent a finding of confusing similarity between the Domain Names 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 Domain Names. 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 Domain Names such as those enumerated in the Policy or otherwise.

The Domain Names lead to the Websites prominently displaying the Complainant's marks, offering to ship cannabis products across different states in the United States or international borders and purportedly offering for sale the Complainant's goods without any prominent and accurate disclaimer regarding the relationship between the Complainant and the Respondent.

The Websites also display information about the Complainant, including its strain names and that it is based in California, and show images of its products or product packaging. Some of the Websites claim to be the official websites of the Complainant.

Panels have held that the use of a domain name for illegal activity (e.g., impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

In the present case, the Panel notes that the Respondent used the entirety of the Complainant's registered BACKPACK BOYZ trademark or with the addition of the other term in the Domain Names. Although two of the Domain Names were registered before the registration of the Complainant's trademarks, the use of the Complainant's trademarks dates back to 2017 and they were all filed before the registration of the Domain Names. Moreover, the Respondent has used the Complainant's registered trademarks and its logos prominently on the Websites. Hence, the Panel finds that the Respondent knew about the Complainant before registering the Domain Names.

In addition, the Websites prominently display some other trademarks (registered or pending for registration) which the Complainant holds: "1. White Cherry Gelato, 2. Black Cherry Gelato, 3. Apple Gelato, 4. Algorith, 5. Apricot Gelato, 6. Apple Mintz, 7. Banana Gelato, 8. Blue Tomyz, 9. Bubblegum Gelato." They also feature unauthorized copies of the Complainant's copyrighted product packaging, and copyrighted promotional photos of the Complainant's goods are reproduced and displayed by the Respondent without the Complainant's permission. Further, the Websites include information about the Complainant, including elements of its origin story and the fact that it is based in California. Moreover, some of the Websites claim to be the official websites of the Complainant. Therefore, the Panel finds that by using the Domain Names, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its websites, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's websites.

Having reviewed the record, the Panel finds the Respondent's registration and use of the Domain Names constitute bad faith under the Policy.

Based on the available record, the Panel finds 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 Domain Names, <backpackboyz.co>, <backpackboyzofficial.store>, <backpackboyzshop.com>, <backpackboyzstore.org>, <backpackboyzofficial.co>, <backpackboyzshops.com>, and <backpackboyz420.org>, be transferred to the Complainant.

*/Marina Perraki/*

**Marina Perraki**

Sole Panelist

Date: October 23, 2023