

## **ADMINISTRATIVE PANEL DECISION**

### **ABG Hunter LLC v. Client Care, Web Commerce Communications Limited Case No. D2023-4636**

#### **1. The Parties**

The Complainant is ABG Hunter LLC, United States of America, represented by Authentic Brands Group, United States of America.

The Respondent is Client Care, Web Commerce Communications Limited, Malaysia.

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

The disputed domain name <hunterbootoutlet.com> is registered with Alibaba.com Singapore E-Commerce Private Limited (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 8, 2023. On November 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 10, 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 (John Doe) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 15, 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 November 15, 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 November 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 11, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 14, 2023.

The Center appointed Roger Staub as the sole panelist in this matter on January 2, 2024. 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 part of the Authentic Brand Group and owns rights in the shoe brand HUNTER. According to the brand's website <hunterboots.co.uk>, its roots go back to 1856, when North British Rubber Co., which later became known as Hunter Boot Ltd., was incorporated. The brand HUNTER has become renowned for its iconic Original Wellington boot.

The Complainant owns various trademark registrations consisting of, or containing, the word "HUNTER" in the United States of America, in Europe and in many other jurisdictions worldwide. The Complainant's portfolio of HUNTER trademark registrations includes, *inter alia*, the following trademark registrations:

- United States of America service mark and trademark No. 6172175 HUNTER, registered on October 13, 2020, in Classes 3, 5, 9, 14, 16, 18, 20, 21, 24, 25 and 35 (claiming first use in commerce back in 1999);
- International trademark No. 993373 HUNTER, registered on January 23, 2009, in Classes 3, 9, 14, 18, 20, 21, 24, 25 and 35, covering the following jurisdictions: Australia, Azerbaijan, Bosnia and Herzegovina, Belarus, Switzerland, China, Egypt, European Union, Georgia, Greece, Croatia, Iceland, Japan, Kyrgyzstan, Republic of Korea, Kazakhstan, Morocco, Monaco, Montenegro, Norway, Oman, Serbia, Russian Federation, Singapore, San Marino, Syrian Arab Republic, Eswatini, Turkmenistan, Türkiye, Ukraine, United States of America, Uzbekistan and Viet Nam.

The disputed domain name was registered on July 29, 2023.

The disputed domain name redirects to a website offering, *inter alia*, HUNTER boots for sale at reduced prices, thereby using the Complainant's logo device mark. The Complainant submits that this use has not been authorized by the Complainant.

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

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

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

First, the disputed domain name is identical or confusingly similar to the Complainant's trademark HUNTER. The disputed domain name consists of the "www." prefix, the Complainant's brand "Hunter" followed by the descriptive terms "boot" and "outlet", and the generic suffix ".com". Since the Complainant's trademark is recognizable within the disputed domain name, the addition of these other terms would not prevent a finding of confusing similarity.

Second, the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has not been permitted by the Complainant in any way to use the HUNTER trademarks or to apply for any domain name incorporating the HUNTER trademarks. Nor has the Complainant acquiesced in any way to such use. There is no evidence that "Hunter Boot Outlet" is the name of the Respondent's corporate entity, nor is there any evidence of fair use or of plans to use the HUNTER trademarks or the disputed domain name for a bona fide offering of goods or services. On the contrary, the Respondent has been actively using the HUNTER trademarks in the disputed domain name and on its physical website to promote its website for illegitimate commercial gains.

Third, the disputed domain name was registered and is being used in bad faith. The Respondent was well aware of the Complainant's trademark at the time the Respondent registered the disputed domain name, as the Complainant's trademarks are well-known around the world. A simple Google search would have disclosed the Complainant's marks and business. The Respondent registered the disputed domain name decades after the Complainant had established registered trademark rights in the HUNTER mark, which is an indication for bad faith. The Respondent is trying to pass off the website accessible under the disputed domain name as the Complainant's website to sell competing and unauthorized goods. On the website to which the disputed domain name redirects, the Respondent uses the Complainant's HUNTER trademarks as well as images of products bearing the HUNTER trademarks without any authorization.

## **B. Respondent**

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

## **6. Discussion and Findings**

According to the Policy, to qualify for a cancellation or transfer, the Complainant must prove each of the following:

First, the disputed domain name is identical or confusingly similar to a trademark or service mark to which the Complainant has rights.

Second, the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Third, the disputed domain name has been registered and is being used in bad faith.

Since the Respondent did not submit a reply, the Panel may choose to accept the reasonable contentions of the Complainant as true. This Panel will determine whether those facts constitute a violation of the Policy that is sufficient to order the cancellation of the disputed domain name (see *Joseph Phelps Vineyards LLC v. NOLDC, Inc., Alternative Identity, Inc., and Kentech*, WIPO Case No. [D2006-0292](#)).

### **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 Panel finds the entirety of the mark is reproduced within 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.

Although the addition of other terms, here "boot" and "outlet" may bear on the 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 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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available 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 such as those enumerated in the Policy or otherwise.

The Panel notes that the disputed domain name redirects to a website where goods are promoted under the Complainant’s HUNTER trademarks, including the Complainant’s HUNTER logo. The Complainant submits that it has not authorized this use of its HUNTER trademarks. Visitors of the website, to which the disputed domain name redirects, are likely to believe that the website is run by the Complainant or with its authorization. Panels have held that a respondent’s use of a domain name will not be considered “fair” if it falsely suggests affiliation with the trademark owner, which is the case here. [WIPO Overview 3.0](#), section 2.5.

The Panel further notes that some of the products offered for sale on the website, to which the disputed domain name redirects, bear the Complainant’s HUNTER trademarks. This raises the question whether the Respondent’s use may qualify as fair use by a reseller. Such use can be fair if it meets the following four cumulative requirements applied by panels in the “Oki Data test”:

- (i) the respondent must actually be offering the goods or services at issue;
- (ii) the respondent must use the site to sell only the trademarked goods or services;
- (iii) the site must accurately and prominently disclose the registrant’s relationship with the trademark holder; and
- (iv) the respondent must not try to “corner the market” in domain names that reflect the trademark.

The Complainant submits that the Respondent is selling competing and unauthorized goods on the website, to which the disputed domain name redirects. Further, the site does not disclose any relationship of the Respondent to the Complainant. Hence, the Panel finds that the requirements of the “Oki Data test” are not met. [WIPO Overview 3.0](#), Section 2.8.

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 Complainant submits as evidence screenshots of the website accessible under the disputed domain name showing that the Respondent has been using the Complainant's HUNTER trademarks, including the Complainant's HUNTER logo, on the website to sell products. The Complainant submits, and the Respondent has not disputed, that these are competing and unauthorized products. This suggests that the Respondent is using this disputed domain name as a tool to attract, for commercial gain, Internet users to its website. Hence, circumstance 4(b)(iv) is given and suggests bad faith intentions of the Respondent.

Based on the available record, the Panel finds that the Complainant has established the third 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 <hunterbootoutlet.com> be cancelled.

*/Roger Staub/*

**Roger Staub**

Sole Panelist

Date: January 16, 2024