

ADMINISTRATIVE PANEL DECISION

ABG Hunter LLC v. Client Care, Web Commerce Communications Limited Case No. D2023-4756

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 <huntersnederland.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 15, 2023. On November 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On November 16, 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 17, 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 17 and 20, 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 21, 2023.

The Center appointed Mireille Buydens as the sole panelist in this matter on December 27, 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

Founded in 1856, the Complainant is a company producing footwear, outerwear, bags, and accessories. The Complainant's Wellington boot is renowned worldwide.

The Complainant owns a vast trademark portfolio of more than 250 trademark filings worldwide for HUNTER ("the Trademark"). This portfolio notably includes the following registrations, covering mostly clothing, shoes and accessories:

- The United States Registration No. 6172175, registered on October 13, 2020 in classes 3, 5, 9, 14, 16, 18, 20, 21, 24, 25, and 35;
- The United States Registration No. 2740877, registered on July 29, 2003 in class 25.
- The European Union Registration No. 003700788 registered on August 4, 2009 in classes 3, 18, 25
- The International trademark registration No. 1363278, registered on 20/07/2017, in classes 9 and 14

The Complainant offers its products (mainly boots) on its official website <hunterboots.com>.

The Disputed Domain Name was registered on June 8, 2023. The Disputed Domain Name resolves to a website offering goods that are similar or even identical to those offered by the Complainant on its own website, and bearing the Complainant's logo and Trademark.

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.

First, the Complainant asserts that it owns a vast global trademark portfolio of more than 250 trademark filings worldwide for the Trademark. The Complainant considers that the Disputed Domain Name is confusingly similar to the Complainant's Trademark as the latter is recognizable within the Disputed Domain Name. The Disputed Domain Name consists of the "www." prefix, a plural version of the Complainant's Trademark HUNTER, followed by the geographically descriptive term "nederland", and the generic Top-Level Domain ("gTLD") ".com".

Second, the Complainant asserts that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Respondent has not been licensed, contracted, or otherwise permitted by the Complainant in any way to use the Trademark or to apply for any domain name incorporating the Trademark. Additionally, there is no evidence that "Hunters Nederland" is the name of the Respondent's corporate entity, nor is there any evidence of fair use. Furthermore, there is no evidence that the Respondent is using or plans to use the Disputed Domain Name for a *bona fide* offering of goods or services. On the contrary, the Respondent uses the Disputed Domain Name for offering its own illegitimate products on its website and misleads consumers into erroneously believing that the Respondent is affiliated with the Complainant or that the Complainant endorses its commercial activities.

Third, the Complainant asserts that the Disputed Domain Name was registered and is being used in bad faith. The Complainant submits that the Trademark (which predates the registration of the Disputed Domain Name) is so well-known worldwide that it is inconceivable that the Respondent ignored the Complainant and

its earlier rights when it registered the Disputed Domain Name. A simple Google search would have disclosed the Complainant's Trademark and business. The Complainant further points out that the Respondent is trying to pass off the website under the Disputed Domain Name as the Complainant's website in order to sell competing and unauthorized goods. On the Disputed Domain Name website, the Respondent uses the Trademark as well as images of products bearing the Trademark without any authorization. The Respondent is intentionally trying to create a likelihood of confusion with the Complainant's Trademark as to the source, sponsorship, affiliation, or endorsement of the products.

B. Respondent

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

6. Discussion and Findings

Dealing with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under these Rules, the panel shall be entitled to draw such inferences from this omission, as it considers appropriate.

Paragraph 4(a) of the Policy provides that the Complainant proves each of the following three elements to succeed in its Complaint:

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark 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.

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. See [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of the Trademark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the Trademark is recognizable within the Disputed Domain Name (as it contains the Trademark with the addition of the letter "s" and the descriptive term "nederland"). Accordingly, the Disputed Domain Name is confusingly similar to the Trademark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here the addition of the letter "s" to the Trademark and the descriptive word "nederland", which is the Dutch word for The Netherlands) may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the Disputed Domain Name and the Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The gTLD ".com" is a standard registration requirement and as such is disregarded under the confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1.

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 Respondent is not licensed by or affiliated with the Complainant in any way. There is no evidence that the Respondent would be commonly known under the Disputed Domain Name, nor is there any evidence of use or demonstrable plans to use the Disputed Domain Name for a *bona fide* offering of goods or services. There is no evidence of legitimate noncommercial or fair use of the Disputed Domain Name, either.

In the present case, the Panel notes that the Disputed Domain Name resolves to a website which is highly similar to the Complainant’s official website and offers products (boots) that bear the Complainant’s logo and Trademark. The Complainant claims that the products offered on the Respondent’s website are counterfeited. The Panel notes that these products are offered disproportionately below market value (e.g., boots for women, identical to those of Complainant, are offered for sale at EUR 81 while the same product on the Complainant’s official website is offered for sale at EUR 161). While the evidence provided by the Complainant is not determinative to be counterfeited, the circumstances of this case points towards the products are likely counterfeited. In addition, noting the Respondent’s website is highly similar to the Complainant’s official website and in view of the composition of the Disputed Domain Name, the Panel perceives that the users will be expected to find the Complainant’s Dutch website. Panels have held that the use of a domain name for illegal activity (here, the sale of counterfeit goods and impersonation/passing off) 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 not 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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel notes that, given the content of the Disputed Domain Name and that it incorporates the Complainant’s well-known Trademark, which predates the registration of the Disputed

Domain Name, with the addition of the term “nederland” (which is a geographical term as it refers to The Netherlands), the Respondent was more likely than not aware of the Complainant’s Trademark at the time of the registration of the Disputed Domain Name. [WIPO Overview 3.0](#) section 3.1.4.

The Disputed Domain Name is also ideally suited to mislead the public. The composition of the Disputed Domain Name together with its content suggests that it is linked with the Complainant, being the Complainant’s Dutch website. The Respondent has sought to create a misleading impression of association with the Complainant, which is a well-known company founded in 1856, active on the shoe market for decades, and thereby inspiring confidence on the part of Internet users. The Disputed Domain Name resolves to a website which is highly similar to the Complainant’s official website and offers products (boots) that bear the Complainant’s logo and Trademark. The Panel concludes that, by using the Disputed Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant’s Trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website. [WIPO Overview 3.0](#), section 3.1.

Lastly, the Panel finds that the Disputed Domain Name appears to be the latest in a long line of bad faith registrations on part of the Respondent, construing a pattern of bad faith registrations that further reinforces the finding of bad faith. The Respondent has been involved in many disputes under the Policy involving shoes which have similar fact patterns to the present case. Examples include *Alpargatas S.A., Alpargatas Europe, S.L.U. v. Quinton Baker, Jovin Lim, Web Commerce Communications Limited, Client Care*, WIPO Case No. [D2022-1500](#). Actually, the Respondent has been involved in more than 130 decisions having decided to transfer the disputed domain name registered by 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 <huntersnederland.com> be transferred to the Complainant.

/Mireille Buydens/

Mireille Buydens

Sole Panelist

Date: January 10, 2024