

ADMINISTRATIVE PANEL DECISION

MTD Products Inc v. yassine maknoui
Case No. D2023-5080

1. The Parties

The Complainant is MTD Products Inc, United States of America (“US”), represented by Stanley Black & Decker, United Kingdom.

The Respondent is yassine maknoui, Morocco.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 5, 2023. On December 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 6, 2024, 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 December 12, 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 December 13, 2023.

The Center verified that the Complaint together with the 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 December 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 3, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 9, 2024.

The Center appointed Ganna Prokhorova as the sole panelist in this matter on January 23, 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 an American manufacturer of outdoor power equipment.

Since 1952, the Complainant has been one of the market leaders in the design, manufacture, and sale of outdoor power equipment worldwide. One of its famous brands, TROY-BILT, has been used in conjunction with the manufacture and sale of outdoor power equipment dating back to 1967.

The Complainant is the owner of multiple trademark registrations for the mark TROY-BILT in multiple jurisdictions worldwide including:

- US trademark for TROY-BILT, no. 850181, registered on June 4, 1968, for goods in class 7;
- International Registration for trademark TROY-BILT, no. 1046343, registered on July 14, 2010, for goods in classes 07 and 12.

The Complainant also owns the domain name <troybilt.com> registered and used by the Complainant in connection with its activity.

The disputed domain name was registered on April 09, 2023, and resolves to an inactive web page.

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:

(1) The Complainant and its trademark TROY-BILT enjoy a worldwide reputation. All of the goods offered by the Complainant under the mark TROY-BILT carry the mark prominently on both the product and all associated packaging. Furthermore, all advertising of product also carries the brand prominently. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

(2) The Respondent does not have any legitimate interests in using the disputed domain name since the Complainant has not licensed or otherwise authorized any third party to trade as "troy-bilts" and so asserts there is no commercial or legal connection of any sort with the Respondent. Registration by the Respondent of the disputed domain name only results in the Respondent purporting to be the genuine TROY-BILT entity, or to be in some way associated with TROY-BILT, neither of which is the case. *Bona fide* use would require the Respondent to offer genuine TROY-BILT products for sale.

(3) The Respondent has registered the disputed domain name primarily for the purpose of trying to gain unfair benefit of the Complainant's goodwill and reputation by using the disputed domain name, which suggests an effort to create a likelihood of confusion with the Complainant's trademarks and domain name as to the source, sponsorship, affiliation. Passive holding does not preclude a finding of bad faith in the circumstances of the case.

The Complainant requests transfer the disputed domain name.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied, as following:

- (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.

The Panel will further analyze the potential concurrence of the above circumstances.

Moreover, the Panel has taken note of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") and, where appropriate, will decide consistent with the consensus views captured therein.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The threshold test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of its TROY-BILT trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name with mere eliminating hyphen and adding the letter "s" at the end. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

It is well accepted by UDRP panels that a generic Top-Level Domain ("gTLD"), such as ".com", is typically ignored when assessing whether a domain name is identical or confusingly similar to a trademark. See section 1.11.1 of the [WIPO Overview 3.0](#).

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.

The Panel notes that the Respondent is not commonly known by the disputed domain name, whereas the Complainant has prior rights in the trademarks, which precede the Respondent's registration of the disputed domain name by years.

According to the unrebutted evidence provided by the Complainant, the Respondent is not affiliated with the Complainant in any way. The Respondent has not been authorized by the Complainant to register or use the disputed domain name or to seek the registration of any domain name incorporating the Complainant's mark. The Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or to register the disputed domain name incorporating its trademarks.

There is no evidence that the Respondent is conducting any bona fide business in connection with the disputed domain name under the circumstances where it resolves to a website without content. There is no evidence that the Respondent has used or made demonstrable preparations to use the disputed domain name in connection with a legitimate noncommercial or fair use or a bona fide offering of goods and services.

The disputed domain name resolves to an inactive webpage. According to this Panel, the Complainant also proved that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name nor is it using the disputed domain name in connection with a bona fide offering of goods or services, so as to confer a right or legitimate interest in it in accordance with paragraph 4(c)(i) of the Policy.

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 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, considering the longstanding use of the Complainant's TROY-BILT trademark, the Panel notes that the Respondent could not be unaware of the Complainant's trademark when registering the disputed domain name. The Respondent is likely to have had, at least, constructive, if not actual notice, as to the existence of the Complainant's marks at the time it registered the disputed domain name. . Hence, the Panel finds that the Respondent knew or should have known of the Complainant's trademark and deliberately registered the confusingly similar disputed domain name (see section 3.2.2, [WIPO Overview 3.0](#)).

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although UDRP panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness and reputation of the Complainant's trademark, and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy. Previous panels have consistently found that the mere registration of a domain

name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

The Respondent has provided no evidence of actual or contemplated good-faith use of the disputed domain name and the Panel does not find any such use plausible.

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 <troybilts.com> be transferred to the Complainant.

/Ganna Prokhorova/

Ganna Prokhorova

Sole Panelist

Date: February 2, 2024