

ADMINISTRATIVE PANEL DECISION

MTD Products Inc v. Mohamed Setri

Case No. D2023-5085

1. The Parties

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

Respondent is Mohamed Setri, United States.

2. The Domain Name and Registrar

The disputed domain name <troybillt.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (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 7, 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 (Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to Complainant on December 12, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. 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 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. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on January 4, 2024.

The Center appointed Scott R. Austin as the sole panelist in this matter on January 31, 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

Since 1952 Complainant has operated its business in the design, manufacture, and sale of a range of outdoor power equipment worldwide, including walk-behind lawnmowers, riding lawnmowers, hand-held equipment, and related parts distributed under the trademark TROY-BILT (the “TROY-BILT Mark”) which use by Complainant and its predecessor companies dates back to at least as early as 1967.

Complainant shows that the TROY-BILT Mark has been continually used in commerce for more than 50 years. Complainant owns a number of registrations around the world for the TROY-BILT Mark for outdoor power equipment products, including the following:

United States Registration No. 0850181, TROY-BILT, registered on June 4, 1968, for “Self-propelled rotary tillers for use in cultivating gardens and the like” in International Class 7, claiming a first use date of August 23, 1967; and

United States Registration No. 1392978, TROY-BILT, registered on May 13, 1986, for “Chippers/shredding machines for lawn and garden use” in International Class 7, claiming a first use date of June 6, 1985;

United States Registration No. 1503610, TROY-BILT, registered on September 13, 1988, for “Rotary lawn mowers” in International Class 7, claiming a first use date of December 22, 1987; and

Australia Trademark Registration No. 886972, TROY-BILT, registered on August 24, 2001, for a range of outdoor power equipment products in International Classes 7 and 8.

Complainant also shows it incorporates the TROY-BILT Mark into its official domain name <troy-bilt.com>, registered to Complainant since April 24, 1998, used to promote its outdoor power equipment products on its official website at “www.troybilt.com” (the “Official TROY-BILT Mark Website”).

Respondent registered the disputed domain name on September 23, 2023, and it resolves to what is generally referred to as a “copycat” website which displayed a landing page essentially identical to the content on the Official TROY-BILT Mark Website, including Complainant’s logo, the landing page content, Complainant’s color scheme, font styles, graphics, store addresses and locations, infringing copies of Complainant’s copyright protected digital images and videos, as well as fraudulent contact data allowing Respondent to phish confidential personal and financial data from unsuspecting consumers visiting Respondent’s copycat website used to impersonate Complainant.

5. Parties’ Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name: that the disputed domain name is confusingly similar to Complainant’s trademark; that Respondent has no rights or legitimate interests in respect of the disputed domain name used as Respondent’s copycat website through which Respondent conducts a fraudulent, illegal phishing scheme; and that the disputed domain name was registered and is being used in bad faith based on Respondent’s illegal conduct.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The onus is on Complainant to make out its case and it is apparent from the terms of the Policy that Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are administrative, the standard of proof under the Policy is often expressed as the "balance of the probabilities" or "preponderance of the evidence" standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.2.

Thus, for Complainant to succeed it must prove within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

1. The disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
2. Respondent has no rights or legitimate interests in respect of the disputed domain name; and
3. The disputed domain name has been registered and is being used in bad faith.

The Panel finds that Complainant has met its burden in all three elements of the Policy and will deal with each of these elements in more detail below.

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 Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

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.

Ownership of a nationally registered trademark constitutes prima facie evidence that the complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. Complainant claims trademark rights in the TROY-BILT Mark for its outdoor power equipment products in its registrations for the TROY-BILT Mark dating back to 1968. Sufficient evidence has been submitted in the form of electronic copies of valid and subsisting trademark registration documents in the name of Complainant and therefore, Complainant has demonstrated it has rights in the TROY-BILT Mark. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#).

The Panel finds the mark is recognizable 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. Prior UDRP panels have held "in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing." See, *L'Oréal, Lancôme Parfums et Beauté & Cie v. Jack Yang*, WIPO Case No. [D2011-1627](#); see also, *Wal-Mart Stores, Inc. v. MacLeod d/b/a/ For Sale*, WIPO Case No. [D2000-0662](#).

A side-by-side comparison between the disputed domain name and Complainant's Mark shows the disputed domain name is confusingly similar if not essentially identical to the TROY-BILT Mark as well as the official domain name <troybilt.com> used for Complainant's Official TROY-BILT Mark Website. Complainant's TROY-BILT Mark is incorporated in its entirety except for a second "l" added to the "bilt" portion of Complainant's well-known TROY-BILT Mark. Complainant's registered TROY-BILT Mark is incorporated into and remains recognizable in the disputed domain name, followed only by the Top-Level Domain ("TLD") ".com". Prior UDRP panels have found the TLD, being viewed as a standard registration requirement, may typically be disregarded under the paragraph 4(a)(i) analysis. See, [WIPO Overview 3.0](#), section 1.11; see also *L'Oréal v. Tina Smith*, WIPO Case No. [D2013-0820](#).

Notably, Complainant also contends that the disputed domain name is configured as a purposeful misspelling of Complainant's TROY-BILT Mark because the duplicate "l" added to the well-known TROY-BILT Mark to confuse consumers could be overlooked as a typo. As noted above, however, Complainant's mark is plainly recognizable. Prior panels have held that a deliberate misspelling of a trademark registered as a domain name signals an intention on the part of the respondent to confuse Internet users, and must be confusingly similar by design. See [WIPO Overview 3.0](#), section 1.9.; See also *Allstate Insurance Company v. Rakshita Mercantile Private Limited*, WIPO Case No. [D2011-0280](#).

Based on the above, this Panel finds that neither the addition of a second letter "l" to Complainant's registered TROY-BILT Mark nor the gTLD ".com" would prevent a finding of confusing similarity between the disputed domain name and Complainant's trademark, which other than the typo/added "l" remains identical as incorporated into the disputed domain name.

Accordingly, the Panel finds the disputed domain name confusingly similar to the TROY-BILT Mark in which Complainant has rights and Complainant has satisfied its burden under the first element of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which 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.

Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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.

First, Complainant asserts that Respondent is not sponsored by or affiliated with Complainant in any way, nor is Respondent licensed, or otherwise authorized, be it directly or indirectly, to register or use, the TROY-BILT Mark in any manner whatsoever, including in, or as part of, a domain name. Prior UDRP panels have held in appropriate circumstances that in the absence of any license or permission from Complainant to use its trademark, no actual or contemplated bona fide or legitimate use of the disputed domain name could reasonably be claimed. See, e.g., *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#).

Second, Complainant contends Respondent is not commonly known by the disputed domain name, which evinces a lack of rights or legitimate interests under Policy paragraph 4(c)(ii). The Registrant is “Mohamed Setri”, which shows that Respondent is not commonly known by the disputed domain name because Respondent’s name clearly bears no resemblance to the TROY-BILT Mark or the disputed domain name. Prior UDRP panels have held where no evidence, including the Whois record for the disputed domain name, suggests that Respondent is “commonly known by” the disputed domain name, then Respondent cannot be regarded as having acquired rights to or legitimate interests in the disputed domain name within the meaning of Policy paragraph 4(c)(ii). See *Moncler S.p.A. v. Bestinfo*, WIPO Case No. [D2004-1049](#).

Most importantly, Complainant contends Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services because, as Complainant’s Annex evidence of the web page connected to the disputed domain name shows, the disputed domain name resolved to a carefully crafted “copycat” version of Complainant’s Official TROY-BILT Mark Website to create a false association with Complainant. Respondent’s fraudulent activities therefore undermine any claim of rights and legitimate interests. The Panel notes that evidence submitted in the Annexes to the Complaint persuasively supports Complainant’s argument because it shows Respondent’s website prominently features sale of competing products unauthorized use of Complainant’s TROY-BILT Mark for the sale of ostensibly competing products or more likely the illegitimate purpose of furthering an illegal phishing scheme for Respondent’s commercial benefit. Respondent, therefore, is using the disputed domain name to confuse Internet users and suggest an affiliation with or sponsorship by Complainant to resolve Internet users to its website for its commercial gain. Based on these facts the Panel finds Respondent’s actions are clearly not legitimate and clearly are misleading. Respondent, therefore, cannot establish rights or legitimate interests pursuant to paragraph 4(c)(iii) of the Policy. See *Six Continents Hotels v. “m on”*, WIPO Case No. [D2012-2525](#).

Respondent configured the disputed domain name as part of a fraudulent scheme to attract unsuspecting consumers searching for Complainant and its outdoor power equipment products identified by the TROY-BILT Mark create the false impression that products for sale at Respondent’s website accessed through the disputed domain name are authorized or affiliated with Complainant and thereby unlawfully extract financial and personal information from unsuspecting third parties believing Respondent to be Complainant. Prior UDRP panels have held that impersonating a complainant by using a disputed domain name as part of copycat website in furtherance of a fraudulent purposes constitutes evidence of a lack of rights or legitimate interests. See [WIPO Overview 3.0](#), section 2.13.

Essentially it is a well-established principle according to a consensus of UDRP Panels that the use of a domain name for illegal activity such as the fraudulent purposes found here, 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 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 also 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.

Complainant contends that Respondent has demonstrated a knowledge of and familiarity with Complainant’s brand and business by registering a domain name that incorporates the TROY-BILT Mark in its entirety with the addition of an extra “l” to the trailing term of the trademark turning “bilt” into “billt”. Respondent has thereby created a domain name that is confusingly similar to Complainant’s trademark, as well as its official domain name. Prior UDRP panels have found a domain name was registered in bad faith where the respondent registered the domain name for the purpose of intentionally attempting to impersonate or mislead in order to commit fraud. See, e.g., *Houghton Mifflin Co. v Weatherman Inc.*, WIPO Case No. [D2001-0211](#); *Marlink SA v. Sam Hen, Elegant Team*, WIPO Case No. [D2019-1215](#); *Beam Suntory Inc. v. Name Redacted*, WIPO Case No. [D2018-2861](#).

Prior UDRP panels have also held where the disputed domain name is configured in a manner to wholly incorporate a complainant's mark, as Complainant's Mark is incorporated here with an additional letter, the disputed domain name can only sensibly refer to Complainant; thus, there is no obvious possible justification for Respondent's selection of the disputed domain name other than bad faith.

Complainant also argues that the disputed domain name constitutes typosquatting based on the redundant "I" misspelling of Complainant's TROY-BILT Mark, as well as its <troybilt.com> domain name, which added "I" Respondent has inserted to capitalize on typing errors made by Complainant's customers searching for Complainant on the Internet. Typosquatting has been accepted as evidence of bad faith registration and use by numerous past UDRP panels. See [WIPO Overview 3.0](#) at 3.1.4; see also *Long's Drug Stores Cal., Inc. v. Shep Dog*, WIPO Case No. [D2004-1069](#); *Wal-Mart Stores, Inc. v. Longo*, WIPO Case No. [D2004-0816](#).

As discussed in greater detail in Section 6B above, Complainant shows in evidence in the Annexes to its Complaint that Respondent used the disputed domain name to configure a copycat website to impersonate Complainant attempted to fraudulently extract money from Internet users seeking Complainant's products through a fraudulent phishing scheme which constitutes evidence of bad faith under the well-established principles in the cases decided under the Policy. See [WIPO Overview 3.0](#), section 3.4 and *The Coca-Cola Company v. PrivacyProtect.org/ N/A, Stephan Chukwumaobim*, WIPO Case No. [D2012-1088](#); *Ropes & Gray LLP v. Domain Administrator, c/o DomainsByProxy.com / Account Receivable*, WIPO Case No. [D2020-0294](#).

Having reviewed the record, the Panel finds Respondent's registration and use of the disputed domain name constitutes bad faith registration and use under the Policy. The Panel finds that the evidence presented here, Respondent's copycat website selling unauthorized copies of Complainant's products under its TROY-BILT Mark to further a fraudulent phishing scheme is sufficient for the Panel to find bad faith registration and use. Accordingly, 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 <troybillt.com> be transferred to Complainant.

/Scott R. Austin/

Scott R. Austin

Sole Panelist

Date: February 16, 2024