

ADMINISTRATIVE PANEL DECISION

BB Simon, Inc. v. Yonghuan Wang

Case No. D2023-5372

1. The Parties

The Complainant is BB Simon, Inc., United States of America (the “United States”), represented by Knobbe, Martens, Olson & Bear, LLP, United States.

The Respondent is Yonghuan Wang, China.

2. The Domain Name and Registrar

The disputed domain name <bb-belt.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 28, 2023. On December 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 28, 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 (Unknown Registrant) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 5, 2024, 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 January 10, 2024.

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 January 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 30, 2024. The Respondent sent an email communication to the Center on January 19, 2024.

The Center appointed Marilena Comanescu as the sole panelist in this matter on February 12, 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, located in the United States, is a designer of fashion products and accessories. In 1987 the Complainant launched a signature “B.B. Simon” belt, with an unique design and bold incorporation of rare Swarovski crystals.

The Complainant promotes its goods on various social media networks where it has gained substantial recognition, such as the TikTok where a search for “bb simon belts” results to 71.3 million views.

The Complainant is the holder of the United States trademark registration number 3183372 for B.B.SIMON (word), filed on December 8, 2005, registered on December 12, 2006, covering goods in the International classes 18 and 25.

The Complainant owns and promotes its goods on the domain name <bbsimononline.com>.

The disputed domain name was registered on February 1, 2023, and, at the time of filing the Complaint, it was used in relation to a commercial website copying the look-and-feel of the Complainant’s official website, and promoting, at discounted prices, belt products similar to those manufactured by the Complainant. Also, at the upper left side of the webpage was listed “b.b.belt” sign with a font similar to the Complainant’s logo.

The Panel visited the website under the disputed domain name and the section “About us” presented a story of the purported “mastermind behind the BB Belt”, *i.e.*, a person named “Frank”. However no further details were available about the Respondent or how to contact the disputed domain name holder besides sending an email on an online form.

5. Parties’ Contentions

A. Complainant

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

Notably, the Complainant contends that: (i) the disputed domain name is confusingly similar to its trademark B.B.SIMON since it incorporates the distinct, repeating “b” letters and substitutes the word “Simon” for the Complainant’s most famous product category, “belt”; (ii) the Respondent is using the disputed domain name to pass itself off as the Complainant in order to sell counterfeit versions of the Complainant’s famous belt products; (iii) on the website under the disputed domain name the Respondent is using, without any authorisation, the Complainant’s distinctive lowercase sign “b”, logo and official marketing images.

B. Respondent

The Respondent sent an informal communication on January 19, 2024 contesting the Complainant’s submissions and alleging mainly the following: (i) it acquired the disputed domain name to represent “belts”, not to draw inspiration from the Complainant; (ii) it’s goal is to provide products and services related to belts; (iii) it is a manufacturer that holds its own factory, dedicated to independently designed and quality belt products; (iv) its design style, market position, and target customer demographics is significantly different from that of the Complainant. No supporting evidence was provided.

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in 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. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

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 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.

Although the removal of the term "simon" from the Complainant's trademark and the addition of the term "belt", may bear on assessment of the second and third elements, the Panel finds that the deletion and/or addition of such terms do 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.

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.

In its communication, the Respondent alleges merely that it registered the disputed domain name particularly for its generic meaning. Although, in certain cases, the Respondent's registration of a dictionary term as a domain name may support a legitimate interest in a domain name, in this present matter, the Panel does not accept the Respondent's assertions for the main following reasons: the disputed domain name also comprises, as prefix, the distinctive double "b" letter, corresponding to the Complainant's trademark, trade name and domain name; and the content on the website under the disputed domain name does not amount to a bona fide use since it promotes goods very similar to the Complainant's iconic products, blatantly copies the look-and-feel of the Complainant website, and displays the Complainant's official marketing images. [WIPO Overview 3.0](#), section 2.10.

According to the evidence provided in the Complaint, the Respondent has used the disputed domain name in connection with a website promoting and offering for sale goods identical to those of the Complainant with significant price reductions, reproducing the Complainant's product images, without providing any disclaimer or clear information regarding the disputed domain name holder. Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or 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.

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 registered the disputed domain name in bad faith because it is confusingly similar to the Complainant's trademark registered since at least 2006, trade name, and domain name. Furthermore, the use of the disputed domain name enhances such finding.

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.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt "to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location" is evidence of registration and use in bad faith.

Given that the disputed domain name includes the beginning of the Complainant's trademark together with a non-distinctive term related to the Complainant's signature goods, and the website operated under the disputed domain name copies the look-and-feel of the Complainant's website, promotes goods very similar to the Complainant's crystal covered products, displays the Complainant's marketing images, reproduces its logo, and does not provide a disclaimer or clear information on the owner, indeed in this Panel's view, the Respondent has intended to attract unsuspecting Internet users accessing the website corresponding to the disputed domain name who may be confused and believe that the website is held, controlled by, or somehow affiliated with or related to the Complainant, for the Respondent's commercial gain. This activity may also disrupt the Complainant's business and tarnish its trademark.

According to the evidence provided in Annexes to the Complaint, the disputed domain name resolved to a webpage copying the look-and-feel of the Complainant's website, displaying goods very similar to the Complainant's products, and copying the Complainant's marketing images and logo. Panels have held that the use of a domain name for illegal activity (e.g., impersonation/passing off, selling counterfeits, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

The Respondent's allegations are vague and lack supporting evidence.

Furthermore, the Panel notes that, in the present proceedings, it appears most likely than not that the use of a privacy service was done in order merely to conceal the identity of the underlying registrant and to prevent or to delay being notified of a UDRP proceeding filed against it, since, except for using the privacy service, the Respondent signed his informal communication with "bb-belt [dot] com"; and on the website under the disputed domain name there is no information about its owner, only a story about a person named "Frank". Having in view the other circumstances of this case, such facts constitute further evidence of bad faith.

[WIPO Overview 3.0](#), section 3.6.

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 <bb-belt.com> be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: February 26, 2024