

ADMINISTRATIVE PANEL DECISION

Julius Blum GmbH v. Moshood Olatunji, Sunminers Nigeria Limited
Case No. D2024-0199

1. The Parties

The Complainant is Julius Blum GmbH, Austria, represented by Torggler & Hofmann Patentanwälte GmbH & Co KG, Austria.

The Respondent is Moshood Olatunji, Sunminers Nigeria Limited, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <blumnigeria.com> is registered with Whogohost Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 17, 2024. On January 18, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 19, 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 (Name not available) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 19, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On January 21, 2024, the Respondent sent a communication to the Center by which it referred to the company Blum Nigeria Limited, Nigeria, as the relevant entity behind the registration and use of the disputed domain name. The Complainant filed an amendment to the Complaint on January 23, 2024.

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 January 29, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 18, 2024. The Response was filed with the Center on February 16, 2024, on behalf of Blum Nigeria Limited, represented by Arthur Nylander Chambers, Nigeria.

The Center appointed Assen Alexiev as the sole panelist in this matter on February 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 a manufacturer of furniture fittings, founded in 1952. It is active internationally and has more than 9,000 employees in various countries.

The Complainant is the owner of various trademark registrations for the sign BLUM (the “BLUM trademark”), including the following:

- the International trademark BLUM (word) with registration No. 598611, registered on February 16, 1993 for goods and services in International Classes 6, 7, 20, and 26;
- the International trademark BLUM (combined) with registration No. 1171363, registered on April 29, 2013 for goods and services in International Classes 6, 7, 9, and 20;
- the Nigerian trademark BLUM (word) with registration No. 92305, registered on December 3, 2008 for goods in International Class 9;
- the Nigerian trademark BLUM (word) with registration No. 92304, registered on December 3, 2008 for goods in International Class 11; and
- the Nigerian trademark BLUM (word) with registration No. 105993, registered on December 3, 2008 for goods in International Class 20.

The Complainant is also the owner of the domain name <blum.com>, which resolves to its official website.

The Response was submitted by the company Blum Limited, Nigeria. According to the Response, it was registered in Nigeria on September 12, 2008. The same company registered the Nigerian trademark PERFECTING MOTION BLUM (combined) with registration No. 89162, registered on November 7, 2008 for goods in International Class 6. According to the Response, Blum Limited distributes and installs luxury furnishings for kitchens, living rooms, bedrooms, staircases and bathrooms in newly built homes in Nigeria. As discussed in section 6.1 below, the Panel accepts that Blum Limited is under the control of the Respondent Moshood Olatunji, and for the ease of reference will refer to them jointly as the “Respondent” in this decision.

The disputed domain name was registered on December 13, 2022. The record shows it has been resolving to a webpage which displays the brand BLUM, and contains the texts “WELCOME TO BLUM NIGERIA” and “SITE IS CURRENTLY UNDERDEVELOPMENT (sic)”.

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.

The Complainant states that the disputed domain name is confusingly similar to its BLUM trademark, because it fully incorporates this trademark, and the addition of the geographical term “Nigeria” has no trademark significance and does not eliminate the likelihood of confusion with the BLUM trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name, because the Complainant has never authorized it to register or use the BLUM trademark. According to the Complainant, by creating the disputed domain name that uses the BLUM trademark

together with a geographical term, the Respondent is improperly confusing consumers that the associated website is the Complainant's website for Nigeria or that the Respondent is affiliated with the Complainant. According to the Complainant, customers seeking spare parts or support for the Complainant's products may be attracted to the disputed domain name expecting to contact the Complainant's Nigerian subsidiary.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to it, the Respondent must have been aware of the Complainant which had been doing business in Nigeria since at least July 2007. In the Complainant's submission, the Respondent has registered and is using the disputed domain name with the fraudulent intent to confuse Internet users that the Respondent is affiliated with the Complainant, and intentionally attempts to attract Internet users for financial gain to the website at the disputed domain name by creating a likelihood of confusion with the Complainant's BLUM trademark.

B. Respondent

The Respondent contends that the Complainant has not satisfied any of the elements under the Policy for a transfer of the disputed domain name.

The Respondent states that it commenced business in Nigeria before 2008 and was established as Blum Nigeria Limited, a limited liability company distributing and installing luxury furnishings.

The Respondent maintains that its Nigerian trademark PERFECTING MOTION BLUM (combined) with registration No. 89162, registered in 2008, predates any trademark of the Complainant, and notes that it also filed several other trademark applications for BLUM in Nigeria, which have not been registered yet. The Respondent adds that it has made widespread and extensive use of the disputed domain name in distributing furniture products in Nigeria to such an extent that its Nigerian trademark has become well-known in Nigeria.

The Respondent denies that the disputed domain name is identical or confusingly similar to the Complainant's BLUM trademark, and maintains that they are being used for different goods. The Respondent states that the Complainant has no presence and has not carried on any business in Nigeria and the BLUM trademark is not associated with it in Nigeria. The Respondent adds that "Blum" is being used by various unrelated entities.

The Respondent states that its Nigerian trademark and the disputed domain name have been used for years even before the Respondent started its actual business operations of in Nigeria. According to the Respondent, due to the long-term and extensive use of its Nigerian trademark and the Respondent's substantial product sales and considerable promotion campaigns, this trademark has gained a significant reputation as a well-known mark around Africa especially in Nigeria.

The Respondent declares that the disputed domain name was not registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant as an alleged owner of the trademark or service mark, or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's out-of-pocket costs directly related to the disputed domain name. The Respondent states that the disputed domain name was created solely in the spirit of running smooth business operations in Nigeria according to the law, and denies having knowledge of the existence of the Complainant's BLUM trademark registered in Nigeria.

The Respondent adds that the disputed domain name was not registered in order to prevent the Complainant from reflecting the trademark in a corresponding domain name and denies having engaged in a pattern of such conduct. The Respondent states that the Complainant and the Respondent are not competitors and the disputed domain name was not registered by the Respondent primarily to disrupt the Complainant's business.

The Respondent further states that the disputed domain name was not registered by the Respondent in an intentional attempt to attract for commercial gain, Internet users to the website at the disputed domain name or other on-line location, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the website at the disputed domain name or location or of a product or service on the website at the disputed domain name or location. The Respondent states that the disputed domain name was registered in order to feature the Respondent's brand in major virtual advertisements and to showcase its products to the people in Nigeria and West Africa.

The Respondent submits that there are legal proceedings between the Parties pending before the Registrar of Trademarks at the Federal Ministry of Industry, Trade, and Investment of Nigeria, commenced by the Complainant for the cancellation of the Respondent's Nigerian trademark.

6. Discussion and Findings

6.1. Procedural issues

A. Identity of the Respondent

According to the information provided by the Registrar, the registrant of the disputed domain name is Moshood Olatunji, Sunminers Nigeria Limited, Nigeria. With its only communication to the Center, dated January 21, 2024, made in response to the Center's Notice of Registrant Information, the registrant made the following statement:

"Greetings,

Blum Nigeria Limited is a registered company in Nigeria with the Nigeria Cooperate Affairs Commission. It is a legal entity in Nigeria and the mark is used under the laws of Nigeria. Please provide inform about the complaint.

The registration should not be changed.

Best Regards

Moshood Olatunji"

The Response has been submitted on behalf of Blum Limited, Nigeria, and the registrant of the disputed domain name, being notified of the filing of the Response, has not objected to it.

Annex A to the Response represents a Certificate of Incorporation of the company Blum Nig Limited, issued by the Corporate Affairs Commission of the Federal Republic of Nigeria. Annex H to the Response represents a Certificate for registration of the trademark PERFECTING MOTION BLUM (combined), issued by the Trade Marks Registry of Nigeria in favor of Blum Limited, Nigeria. Annex I to the Response contains a statement that the registrant of the disputed domain name is the CEO of Blum Limited.

Considering all the above, the Panel concludes that it is more likely than not that Blum Limited, Blum Nig Limited and Blum Nigeria Limited are the same entity that is under the control of Moshood Olatunji, the registrant of the disputed domain name. Therefore, the Panel will consider them as acting in concert and will take into account the conduct of each of them, as shown by the evidence in the case file, when reaching his conclusions about the three elements of the Policy, and for the ease of reference, will refer to them jointly as the "Respondent" in this decision.

B. Request by the Respondent for the suspension of the proceeding

Under Paragraph 18(a) of the Rules, in the event of any legal proceedings initiated prior to or during an administrative proceeding in respect of a domain name dispute that is the subject of the complaint, the Panel shall have the discretion to decide whether to suspend or terminate the administrative proceeding, or to proceed to a decision.

The Respondent submits that it will be in the interest of justice to suspend the present proceeding until the conclusion of the ongoing legal proceeding for the cancellation of the Respondent's Nigerian trademark, initiated by the Complainant and before the Registrar of Trademarks, Federal Ministry of Industry, Trade and Investment of Nigeria. The subject-matter of the cancellation proceeding includes only the Respondent's Nigerian trademark, and the registration and ownership over the disputed domain name is outside of its scope. The Respondent has not advanced any arguments as to why the outcome of the cancellation proceeding could somehow be determinative to the outcome of the present dispute and as to why a suspension would be necessary and appropriate in the circumstances, and the Panel is not aware of any reasons why that would be so.

In view of the above, the Panel declines to suspend the present proceeding.

6.2. Substantive issues

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 the BLUM trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the BLUM trademark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the BLUM trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, "Nigeria") 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 BLUM trademark 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.

The Respondent's company under the name Blum Nig Limited was registered on September 12, 2008, and its Nigerian trademark 89162 PERFECTING MOTION BLUM (combined) in class 6 was registered on November 7, 2008. This by itself could potentially support a conclusion that the disputed domain name was chosen to reflect the Respondent's corporate name and trademark, which would be a legitimate reason for its registration.

As discussed in section 2.12 of the [WIPO Overview 3.0](#), Panels have recognized that a respondent's prior registration of a trademark which corresponds to a domain name will ordinarily support a finding of rights or legitimate interests in that domain name for purposes of the second element. The existence of a respondent trademark does not however automatically confer rights or legitimate interests on the respondent. For example, panels have generally declined to find respondent rights or legitimate interests in a domain name on the basis of a corresponding trademark registration where the overall circumstances demonstrate that such trademark was obtained primarily to circumvent the application of the UDRP or otherwise prevent the complainant's exercise of its rights.

Indeed, there are certain important additional aspects here. The Respondent's corporate and trademark registrations were made within three months before the Complainant registered its 92304, 92305, and 105993 BLUM trademarks in Nigeria on December 3, 2008. The composition and design of the Respondent's Nigerian trademark identically reflect all elements – the words, the arrow, the fonts and the color included in the Complainant's combined trademark BLUM and its slogan "Perfecting motion", which have appeared together on the Complainant's official website since 2004.¹ Considering this, it is inconceivable that the Respondent has independently designed its Nigerian trademark without knowledge and targeting of the Complainant. Rather, it supports the conclusion that the Respondent copied the design of the Complainant's BLUM trademark and its slogan "Perfecting motion" and registered it as a trademark in Nigeria in order to exploit the Complainant's goodwill and secure a commercial advantage in the Nigerian market and to prevent the Complainant from exercising its rights. In light of the foregoing, and in the absence of any indication to the contrary, it appears that the Respondent must have chosen its corporate name for the same reasons. This leads the Panel to conclude that the Respondent must also have chosen and registered the disputed domain name as an additional element of its strategy to target the Complainant, which cannot give rise to rights or legitimate interests in the disputed domain name.

The Panel therefore finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The disputed domain name includes the trademark BLUM and the geographical term "Nigeria", which makes it appear to be the Complainant's official website for that country. As discussed in Section 6.2.B on rights and legitimate interests, the Respondent's Nigerian trademark 89162 PERFECTING MOTION BLUM is an identical reproduction of the Complainant's combined trademark BLUM and its slogan "Perfecting motion", which have appeared together on the Complainant's official website since 2004, four years before the Respondent's trademark was registered. This supports the conclusion that the Respondent was well aware of the Complainant and its trademark BLUM when it registered the disputed domain name, and that it must have copied the design of the Complainant's trademark BLUM and its slogan "Perfecting motion" and registered them as a trademark and chosen a company name containing "Blum" in order to exploit the Complainant's goodwill and secure a commercial advantage in the Nigerian market. In light of the foregoing, and in the absence of any evidence to the contrary, the Panel finds that that the Respondent, by registering and using the disputed domain name, has intentionally attempted to attract Internet users to the disputed domain name for commercial gain by creating a likelihood of confusion with the Complainant's trademark BLUM as to the affiliation of the disputed domain name.

This disputed domain name is not being actively used. Panels have found that the non-use of a domain name (including a blank or "coming soon" page) 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 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, the composition of the disputed domain name and the copying by the Respondent of the Complainant's trademark and slogan, 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.

The Panel finds that the Complainant has established the third element of the Policy.

¹The Panel has ascertained this through limited factual research into the public records available at the Internet Archive (available at www.archive.org). See section 4.8 of the [WIPO Overview 3.0](#).

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 <blumnigeria.com> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: March 8, 2024