

## **ADMINISTRATIVE PANEL DECISION**

Build-A-Bear Workshop, Inc. v. jack somo, razor cuts barber  
Case No. D2024-0913

### **1. The Parties**

The Complainant is Build-A-Bear Workshop, Inc., United States of America (“United States”), represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is jack somo, razor cuts barber, Canada.

### **2. The Domain Name and Registrar**

The disputed domain name <buildbear.club> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 1, 2024. On March 1, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 1, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 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 March 6, 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 March 6, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 26, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 27, 2024.

The Center appointed Adam Taylor as the sole panelist in this matter on April 2, 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 started trading under the mark BUILD-A-BEAR in 1997. It offers “a teddy-bear themed retail-entertainment experience”, where customers create personalised stuffed animals through the stores’ interactive bear-making stations.

The Complainant operates some 346 stores in the United States, Canada, the United Kingdom, and Ireland, as well as franchise stores across Europe, Asia, Australia, Africa and the Middle East. In 2021, the Complainant’s revenue was some USD 411.5 million.

The Complainant’s subsidiary Build-A-Bear Retail Management, Inc., owns a number of registered trade marks for BUILD-A-BEAR including Canadian trade mark No. TMA712817, registered on April 25, 2008, in classes 9, 20, 28 and 35.

The Complainant operates a website at “www.buildabear.com”, with some eight million visits in the period from November 2023 to January 2024.

The disputed domain name was registered on June 10, 2023.

The disputed domain name formerly resolved to a website branded “Build Bear” that purported to offer for sale “Moshi Bears” and related DIY and other accessories.

As of the date of filing of the Complaint, the disputed domain name resolved to a browser page safety warning.

The Complainant sent cease-and-desist letters on October 25, November 10, and November 20, 2023 to the privacy service that appeared as the registrant in the WhoIs for the disputed domain name.

#### **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.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

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

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- 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 trade mark 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 produced evidence of registered trade marks for BUILD-A-BEAR owned by its subsidiary. In these circumstances, and in the absence of any objection from the Respondent, which has not appeared in the proceeding, the Panel thinks it reasonable to infer that the Complainant has rights in the trade mark for the purpose of standing to file the Complaint. [WIPO Overview 3.0](#), section 1.4.1. Accordingly, the Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

A domain name that consists of a common, obvious, or intentional misspelling of a trade mark (here, omission of the term "-a-") is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. This stems from the fact that the domain name contains sufficiently recognisable aspects of the relevant mark. [WIPO Overview 3.0](#), section 1.9. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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 recognised 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.

As to paragraph 4(c)(i) of the Policy, and as further discussed in section 6C below, the Panel considers that the Respondent has used the disputed domain name intentionally attempt to attract, confuse and profit from Internet users seeking the Complainant's goods and/or services. Such use of the disputed domain name could not be said to be bona fide.

Nor is there any evidence that paragraphs 4(c)(ii) or (iii) of the Policy are relevant in the circumstances of this case.

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 Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trade mark for the purpose of sale of competing products in accordance with paragraph 4(b)(iv) of the Policy.

Not only does the disputed domain name reflect an obvious misspelling of the Complainant's mark, but the Respondent has used the disputed domain name for a website that offers similar goods/services to those of the Complainant.

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 <buildbear.club> be transferred to the Complainant.

*/Adam Taylor/*

**Adam Taylor**

Sole Panelist

Date: April 16, 2024