

ADMINISTRATIVE PANEL DECISION

Brain Dead Amusements, LLC v. Client Care, Web Commerce Communications Limited

Case No. D2024-1510

1. The Parties

The Complainant is Brain Dead Amusements, LLC, United States of America (“U.S.”), represented by Stubbs Alderton & Markiles, LLP, U.S.

The Respondent is Client Care, Web Commerce Communications Limited, Malaysia.

2. The Domain Names and Registrar

The disputed domain names <braindeadaustralia.com>, <braindeadeurope.com>, <braindeadphilippines.com>, <braindeadsingapore.com> and <braindeadusa.com> are registered with Alibaba.com Singapore E-Commerce Private Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 10, 2024. On April 10, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On April 11, 2024, the Registrar transmitted by email to the Center its verification disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Alibaba.com Singapore E-Commerce Private Limited) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 15, 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 amendment to the Complaint on April 22, 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 April 23, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 13, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 28, 2024.

The Center appointed Felipe Claro as the sole panelist in this matter on June 11, 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 prominent international art and apparel company and offers clothing, accessories, and home goods for sale under the brand name BRAIN DEAD. The Complainant was founded in 2014 and has retail locations across the globe, including in Los Angeles, New York, Tokyo, and London.

The Complainant is the registered owner of the following U.S. Trademark Registrations:

1. BRAIN DEAD No. 4776421, July 21, 2015, class 25
2. BRAIN DEAD No. 6137649, August 25, 2020, class 9
3. BRAIN DEAD No. 6265118, February 9, 2021, class 18
4. BRAIN-DEAD No. 6,725,619, May 24, 2022, class 43
5. BRAIN DEAD STUDIOS No. 6755315, June 7, 2022, class 41

The Complainant also registered the domain name <wearebraindead.com> on March 24, 2015.

The disputed domain names were registered on December 11, 2023. Some resolve to websites reproducing the Complainant's BRAIN DEAD trademark and purportedly selling identical products as those sold by the Complainant, and the other resolve to inactive webpages.

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 names.

Notably, the Complainant contends that the disputed domain names are using its mark BRAIN DEAD without authorization and are trying to mislead customers for commercial gain.

Each of the disputed domain names contain the identical mark BRAIN DEAD, belonging to the Complainant, plus a descriptive indicator (country or region). The addition of common, dictionary, descriptive, negative terms in the domain name are typically regarded as insufficient to prevent threshold Internet user confusion.

B. Respondent

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

6. Discussion and Findings

In view of the lack of a response filed by the Respondent as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs 5(e), 14(a) and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding based on the Complainant's undisputed representations. In that regard the Panel makes the following specific findings.

A. Identical or Confusingly Similar

The disputed domain names consist merely of the Complainant's BRAIN DEAD mark and a geographical term. See *Horten Advokatpartnerselskab v. Domain ID Shield Service CO., Limited / Krutikov Valeriy Nikolaevich* WIPO Case No. [D2016-0205](#) (finding confusing similarity between the domain name <horten-canada.com> and complainant's HORTEN trademark).

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 names. 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 entirety of the mark is reproduced within the disputed domain names. Accordingly, the disputed domain names, which only add geographical descriptors, are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds that the mark is recognizable within the disputed domain names. Accordingly, the disputed domain names containing the Complainant's mark in its entirety are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (country or regional descriptors) may bear on an assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names 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

The Complainant has not licensed or otherwise authorized the Respondent to use the Complainant's marks or domain name. And the fact that the disputed domain names are almost visually identical to the BRAIN DEAD trademark and use the Complainant's logo in the corresponding websites, is prima facie evidence that the Respondent lacks rights or a legitimate interest in the disputed domain names. See *Harpo, Inc. and Oprah's Farm, LLC v. Robert McDaniel*, WIPO Case No. [D2013-0585](#) (finding use of the distinctive OPRAH mark in the disputed domains <oprahfarm.com> and <oprahfarm.net> was prima facie evidence that Respondent lacked rights or legitimate interest in names).

The Respondent is not using or making any demonstrable preparations to use the disputed domain names with a bona fide offering of goods or services. The Respondent is not and has never been commonly known by the disputed domain name, or the name "Brain Dead."

The Respondent is not making a legitimate noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumer or to tarnish the Complainant's marks.

The Respondent is using the disputed domain names to impersonate the Complainant and mislead consumers into believing they are on the Complainant's website. See *Ambac Assurance Corp. v. SureSupport Privacy Service / Chan Kai Man Kant*, WIPO Case No. [D2020-0680](#).

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 names. 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 names such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity (here, claimed impersonation/passing off) 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

Bad faith is found where, among other things, a respondent has registered the domain name primarily for the purpose of disrupting a competitor's business or a respondent uses the domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark. See [WIPO Overview 3.0](#), section 3.1.

Relevant to the bad faith inquiry are, among other things, the nature of the domain name, the content of any website to which the domain name directs, and a clear absence of rights or legitimate interests in the domain name. [WIPO Overview 3.0](#), section 3.2.1.

Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4. The use of a domain name for illegitimate activity such as the sale of counterfeit goods or phishing can never confer rights or legitimate interests on a respondent; such behavior is manifestly considered evidence of bad faith. [WIPO Overview 3.0](#), section 3.1.4. See, *Ambac Assurance Corporation v. Chan Kai Man Kant SureSupport Privacy, SureSupport Privacy Service* WIPO Case No. [D2020-0680](#) (ordering transfer of the domain name <ambac-international.com> where there was evidence the respondent used the domain name to host a website featuring the complainant's mark to impersonate the complainant and to "extract personal data for improper purposes or to lure Internet users into fraudulent

transactions”); *Barclays Bank PLC v. PrivacyProtect.org / Sylvia Paras*, WIPO Case No. [D2011-2011](#) (finding bad faith where the respondent used the disputed domain name to attract Internet users who mistakenly believed that the disputed domain name was affiliated with the complainant).

The Respondent was aware of the Complainant’s marks: The Respondent has copied the Complainant’s product photographs and product names and logos. “it is unconceivable that the Respondent could have registered the disputed domain name without knowledge of the Complainant’s trademark and intention of benefiting from confusion with such trademark.” *Barclays Bank PLC v. PrivacyProtect.org / Sylvia Paras*, WIPO Case No. [D2011-2011](#).

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 tried to impersonate the Complainant by copying website lookalike and offering confusingly similar products.

Panels have held that the use of a domain name for illegal activity here, (claimed impersonation/passing off) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent’s registration and use of the disputed domain names constitutes bad faith under the Policy.

In regards to the inactive disputed domain names, 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 some disputed domain names 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 or reputation of the Complainant’s trademark, and the composition of the disputed domain names, and finds that in the circumstances of this case the passive holding of the disputed domain names 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.

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 names <braindeadaustralia.com>, <braindeadeurope.com>, <braindeadphilippines.com>, <braindeadsingapore.com> and <braindeadusa.com> be transferred to the Complainant.

/Felipe Claro/

Felipe Claro

Sole Panelist

Date: June 25, 2024