

ADMINISTRATIVE PANEL DECISION

MTD Products Inc v. Zhang Qiang
Case No. D2024-2501

1. The Parties

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

The Respondent is Zhang Qiang, China.

2. The Domain Name and Registrar

The disputed domain name <troybiltdeutschland.com> is registered with Paknic (Private) Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 19, 2024. On June 20, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 21, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 June 24, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 14, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 15, 2024.

The Center appointed Reyes Campello Estebarez as the sole panelist in this matter on July 17, 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 operates internationally in the manufacture and sale of outdoor power equipment, including residential snow throwers (or snowblowers), walk-behind lawnmowers, riding lawnmowers and tractors, string trimmers, edgers, rear and front tine tillers, as well as a broad range of gardening and agricultural hand-held equipment, and related parts. The Complainant operates under the TROY-BILT brand, which has been used in conjunction with the manufacture and sale of outdoor power equipment dating back to 1967, and the first registration for this brand was in 1968 in the United States.

The TROY-BILT brand was acquired by the Complainant in 2001, and the Complainant was acquired by Stanley Black & Decker in 2021, albeit the trademark registrations for this brand are still held in the name of the Complainant. These trademark registrations include United States Trademark Registration No. 850181, TROY-BILT, word, registered on June 4, 1968, in Class 7; United States Trademark Registration No. 3168084, TROY-BILT, word, registered on November 7, 2006, in Class 7; and European Union Trademark Registration No. 011957107, TROY-BILT, word, registered on November 28, 2013, in Class 7, (hereinafter referred as the “TROY-BILT mark”).

The Complainant and its group further own various domain names corresponding to the TROY-BILT mark including <troybilt.com> (registered on April 24, 1998), which resolves to its corporate website.

The disputed domain name was registered on November 22, 2023, and it resolves to a website, in German language, that follows the design and same color combination (white and red) used in the Complainant’s website at “www.troybilt.com”. This website further reproduces the TROY-BILT mark, the Complainant’s logo and favicon. This website purportedly offers for sale various TROY-BILT gardening and outdoor products at less than half of their normal prices.

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.

Notably, the Complainant contends that the disputed domain name is confusingly similar to the TROY-BILT mark, and only differs from the Complainant’s domain name (<troybilt.com>) by the addition of the term “Deutschland” (Germany, in German language), which does not prevent the confusing similarity. The generic Top-Level Domain (“gTLD”), “.com”, is a standard registration requirement that should be disregarded in the analysis, and the TROY-BILT mark is recognizable within the disputed domain name.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not commonly known by the disputed domain name, has no relationship with the Complainant and not authorization to use the TROY-BILT mark. The Respondent’s website prominently features the TROY-BILT mark, it is a copycat of the Complainant’s corporate website, and purportedly offers for sale competing products that are likely illegitimate. The Respondent’s products are offered for very low prices and cannot be legitimate because they were not purchased from the Complainant. The Complainant has not been able to purchase any products from the Respondent’s website, so the site may have a fraudulent phishing purpose. The use of a domain name for illegal activity can never confer rights or legitimate interests.

The disputed domain name was registered and is being used in bad faith. The TROY-BILT mark enjoys extensive global reputation, due to its long-term continuous use and important promotional investments. During 2013-2023, the Complainant (and its predecessors) have spent over USD 63 million in marketing and advertising investment for the TROY-BILT mark in the United States alone. The Respondent registered the disputed domain name targeting the TROY-BILT mark in bad faith to impersonate the Complainant, mislead

and divert Internet users to a copycat website that reproduces the TROY-BILT mark for a commercial gain, in a fraudulent phishing scheme.

B. Respondent

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

6. Discussion and Findings

The Complainant has made the relevant assertions as required by the Policy and the dispute is properly within the scope of the Policy. The Panel has authority to decide the dispute examining the three elements in paragraph 4(a) of the Policy, taking into consideration all of the relevant evidence, annexed material and allegations, and performing some limited independent research under the general powers of the Panel articulated, inter alia, in paragraph 10 of the Rules.

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 TROY-BILT 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 addition of other terms here, the term "Deutschland" ("Germany" in German language), 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 mark for the purposes of the Policy, and the gTLD, ".com", is also to be disregarded for the purposes of comparison. [WIPO Overview 3.0](#), sections 1.8., and 1.11.1.

Therefore, 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.

The Panel finds no evidence in the record that may suggest the existence of rights or legitimate interests in the Respondent for the registration of the disputed domain name.

The Panel notes the terms “troy bilt” do not share any similarities with the Respondent’s name revealed by the Registrar verification, and the Respondent owns no trademark rights over these terms. In this respect, the Panel, under its general powers, has conducted a trademark search over the Global Brand Database.

Furthermore, the Panel finds the composition of the disputed domain name generates confusion or association with the Complainant’s trademark and domain name. The disputed domain name gives the impression of being owned or referred to the Complainant and/or its distributors or affiliated companies for Germany, suggesting an implied false affiliation with the Complainant and its trademark. [WIPO Overview 3.0](#), section 2.5.1.

The Panel further notes that the disputed domain name is used in connection with a website that reproduces the color combination, general design or look and feel of the Complainant’s corporate website, and that prominently includes the TROY-BILT mark as well as the logo and favicon used by the Complainant. This website generates confusion or association with the Complainant and its corporate website at “www.troybilt.com”, in an attempt of impersonating the Complainant or of giving the impression it is owned by the Complainant, its distributors, authorized suppliers, or affiliated companies for Germany. Therefore, the Panel finds that such use cannot be considered a bona fide offering of goods or services, and cannot confer rights or legitimate interests under the Policy. [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 the content of the Respondent’s website reveals a targeting to the Complainant, its TROY-BILT mark, and its products. The Panel notes that the Respondent uses the disputed domain name for the purpose of a website that impersonates the Complainant and is intended to mislead Internet users into believing that they are dealing with the Complainant, its authorized distributors or suppliers. The Respondent’s website is a copycat of that of the Complainant, and it prominently includes the TROY-BILT mark, the logo and favicon used by the Complainant in its corporate website.

The Panel further notes the disputed domain name incorporates the TROY-BILT mark followed by a geographical indicator, the word “Deutschland” (Germany), which contributes to or enhances the confusion or affiliation. The disputed domain name gives the impression of being owned or referred to the Complainant and/or one of its distributors, authorized suppliers or affiliated companies for Germany. The Panel considers this composition further reflects an intention of targeting the Complainant, its domain name and its trademark, to generate confusion and create a direct misleading inference of the Complainant. These circumstances further support a finding of bad faith.

Therefore, on the basis of the evidence presented, the Panel finds that, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant and its trademark. Such use constitutes bad faith under the paragraph 4(b)(iv) of the Policy.

It is also clearly to be inferred from the Respondent’s use of the disputed domain name that he registered the disputed domain name in the knowledge of the Complainant’s trademark TROY-BILT, and with the intention

of taking unfair advantage of the reputation and goodwill attaching to the Complainant's said trademark. The Panel finds the TROY-BILT mark is internationally notorious within the field of outdoor power equipment, due to its continuous use and promotion on the market for more than 50 years (since 1967).

The Panel further finds various circumstances of this case lead to consider the products offered for sale at the Respondent's website are likely counterfeit or illegal, particularly, taking into account their extremely reduced prices (less than half of their normal prices). The Complainant has further alleged (not challenged by the Respondent) that it was not able to effectively acquire any of these products, so the Respondent's website may be part of a fraudulent phishing scheme. Panels have held that the use of a domain name for illegal activity constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

The Panel, having reviewed the record, therefore, finds the disputed domain name has been registered and is being used in bad faith, and the Complainant has established the third element of the Policy.

The Panel finally notes the same Respondent's name revealed by the Registrar verification, has been involved in various prior cases under the Policy that were decided with the transfer of the relevant domain names, which shows, on a balance of probabilities, a pattern of bad faith on the Respondent. [WIPO Overview 3.0](#), section 3.1.2. See, i.e., *Archer-Daniels-Midland Company v. Zhang Qiang*, WIPO Case No. [D2015-1758](#); or *Compagnie Générale des Etablissements Michelin v. Zhangqiang*, WIPO Case No. [D2018-1573](#).

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 <troybiltdeutschland.com> be transferred to the Complainant.

/Reyes Campello Estebarez/

Reyes Campello Estebarez

Sole Panelist

Date: July 24, 2024