

ADMINISTRATIVE PANEL DECISION

ConexionBorn, S.L. v. Bhdhs Vhfdq
Case No. D2024-2576

1. The Parties

The Complainant is ConexionBorn, S.L., Spain, represented by Ontier España,S.L., Spain.

The Respondent is Bhdhs Vhfdq, Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <born-living-yoga.com> is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 25, 2024. On June 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 25, 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 28, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 18, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 19, 2024.

The Center appointed Geert Glas as the sole panelist in this matter on July 26, 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 since 2017 active in the field of design and distribution of a collection of yoga and fitness clothing and accessories. It has both an online presence through its “www.bornlivingyoga.com” website and an offline presence which includes points of sales in the El Corte Inglés stores.

The Complainant owns the European Union figurative trademark registration No. 018285463 for BORN BORN LIVING YOGA, filed on August 5, 2020, and registered on November 26, 2020. The upper part of this figurative trademark consists of a stylized version of the word “born” whereas the lower part of this trademark consists of the words “bornlivingyoga”. The trademark covers a variety of goods from classes 18 and 25, including wellness and fitness products, such as yoga clothing, yoga accessories and fitness equipment.

The Complainant also owns the domain name <bornlivingyoga.com> which was registered on August 17, 2017. The Complainant’s website to which this domain name directs serves as its main e-commerce channel.

The disputed domain name was registered on July 14, 2022, and the Complainant has provided evidence showing that the disputed domain name resolves to a website purportedly offering for sale yoga clothing and yoga accessories similar to the ones offered for sale by the Complainant. The name of each of these products includes the words “born living yoga” and they are offered at discounted 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 it is the owner of a European Union trademark which prominently features the words “bornlivingyoga” and is registered and used for a variety of wellness and fitness products in classes 18 and 25 of the Nice Classification. The Complainant also refers to the fact that it is the owner of the domain name <bornlivingyoga.com> which it registered already in 2017 and to the international reputation its European Union trademark has acquired.

According to the Complainant, its European Union trademark of which the words “bornlivingyoga” is a dominant feature is clearly recognizable in the disputed domain name. As a result, the disputed domain name is confusingly similar to its European Union trademark.

The Complainant also contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name because it has never (i) authorized the Respondent to register and/or use the disputed domain name, nor (ii) allowed the Respondent to include “Born Living Yoga” in any domain name. As a result, the Complainant considers the unauthorized use by the Respondent of the disputed domain name not to qualify as being made in good faith.

The Complainant contends that the disputed domain name was registered in bad faith as it was registered several years after the Complainant had established trademark rights and widespread recognition of its brand for clothing related to wellness and fitness. In view of the extensive international reputation which its brand had acquired by 2022, the Respondent’s choice of the disputed domain name cannot have been coincidental but appears to be a deliberate choice designed to create a likelihood of confusion.

The Complainant finally contends that the Respondent also has been using the disputed domain name in bad faith as the disputed domain name directs users to a commercial website which offers for sale products which are identical to the products sold on the “www.bornlivingyoga.com” website of the Complainant.

B. Respondent

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

6. Discussion and Findings

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 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. Indeed the mark consists of two elements namely a stylized version of the word "born" on the one hand and the words "bornlivingyoga" on the other hand. This second element which is a prominent feature of the mark is reproduced in its entirety in 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.

Based on the available record, 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.

There is indeed no evidence whatsoever of the Respondent using the disputed domain name with a bona fide offering of goods or services, the Respondent being commonly known by the disputed domain name, the Respondent being related to the Complainant's business or somehow authorized by the Complainant to use the disputed domain name or the Respondent making a legitimate noncommercial or fair use of the disputed domain name.

To the contrary, as the Complainant has provided evidence showing that the disputed domain name resolves to a website purportedly offering for sale at discounted prices yoga clothes and yoga accessories similar to the ones offered by sale by the Complainant. The name of each of these products offered for sale by the Respondent includes the words “born living yoga”. Further, the Complainant has submitted evidence that a consumer ordered products from the Respondent’s website but did not receive anything, nor did the consumer receive any reply from the Respondent to its inquiries. Such use does not constitute a bona fide offering of goods or services, nor can it confer rights or legitimate interests on the Respondent.

Based on the available record, 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.

As to the registration of the disputed domain name, it should be noted that panels have consistently found that the mere registration of a domain name which is confusingly similar 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.

This is clearly the case here, as the mark of the Complainant had become widely-known by the time the confusingly similar disputed domain name was registered by the Respondent. As a result, the Respondent must have had knowledge of the Complainant’s trademark when registering the disputed domain name. This finding is corroborated by the fact that the only difference between the disputed domain name and the <bornlivingyoga.com> domain name of the Complainant is the presence of hyphens between the words “born”, “living”, and “yoga”.

Based on the available record, the Panel finds that the disputed domain name has been registered in bad faith.

According to paragraph 4(b)(iv) of the Policy, the following circumstance, if found to be present, shall constitute evidence of the use of a domain name in bad faith: “by using the domain name you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location”.

In the present case, the disputed domain name resolves to a website purportedly offering for sale yoga clothes and accessories under names which each time include the words “born living yoga”, a prominent feature of the Complainant’s trademark. As a result, the disputed domain name seeks to attract Internet users to a commercial website which purportedly offers goods under the Complainant’s trademark.

This use clearly constitutes an intentional attempt to attract, for commercial gain, Internet users to the Respondent’s website by creating a likelihood of confusion with the Complainant’s trademark as to the source, affiliation, or endorsement of the Respondent’s website to which the disputed domain name resolves.

Moreover, the Respondent did not file a response to the Complaint by which these proceedings were initiated. By doing so, the Respondent failed to seize an opportunity it could have used to provide any justification for its use of the disputed domain name.

As a result, and based on the available record, the Panel finds that the Respondent’s registration and use of the disputed domain name constitute bad faith under the Policy and that the third element of the Policy has been established.

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 <born-living-yoga.com> be transferred to the Complainant.

/Geert Glas/

Geert Glas

Sole Panelist

Date: August 8, 2024