

ADMINISTRATIVE PANEL DECISION

B. Forever v. Mostow Co.

Case No. D2024-2689

1. The Parties

The Complainant is B. Forever, France, represented by Soteria LLC, France.

The Respondent is Mostow Co., United States of America.

2. The Domain Name and Registrar

The disputed domain name <agnesbstore.top> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 1, 2024. On July 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 2, 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 (No information available, REDACTED FOR PRIVACY, See PrivacyGuardian.org) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 3, 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 July 3, 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 July 4, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 24, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 25, 2024.

The Center appointed Nayiri Boghossian as the sole panelist in this matter on July 31, 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, through its exclusive licensee CMC, creates, manufactures and distributes various men's and women's ready-to-wear clothing and accessories under the AGNES B. brand.

The Complainant owns many trademark registrations for AGNES B. such as:

- 1) International Trademark Registration No. 482198, registered on January 18, 1984;
- 2) United States Trademark Registration No. 1336761, registered on May 21, 1985;
- 3) French Trademark Registration No. 1338306, registered on January 13, 1986.

The disputed domain name was registered on June 4, 2024, and resolves to a website that seems to offer clothing for sale under the AGNES B. trademark.

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 identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The disputed domain name incorporates the Complainant's trademark.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent sells counterfeit products under the Complainant's trademark.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. The Respondent is using the disputed domain name in order to attract Internet users for profit by creating the likelihood of confusion with the Complainant's trademark.

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 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 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, “store”, 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. [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.

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 notes that the disputed domain name resolves to a website using the Complainant’s mark and product images and purportedly offering for sale clothing at discounted prices. 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.

Moreover, since the disputed domain name consists of the AGNES B. trademark plus an additional term indicating an online store of the Complainant, such composition cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

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 that the Respondent is attempting to pass off as the Complainant by using the latter’s trademark on its website at the same positioning, together with the Complainant’s product images, and by replicating the overall structure and feel of the Complainant’s website.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that the use of a domain name for illegal activity here, 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 name constitutes bad faith under the Policy.

The Panel finds 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 <agnesbstore.top> be transferred to the Complainant.

/Nayiri Boghossian/

Nayiri Boghossian

Sole Panelist

Date: August 6, 2024