

ADMINISTRATIVE PANEL DECISION

Trove Brands, LLC and Runway Blue, LLC v. skyline brands GmbH / Janus Radomski

Case No. D2024-2884

1. The Parties

The Complainants are Trove Brands, LLC (the “First Complainant”), United States of America (“United States”), and Runway Blue, LLC (the “Second Complainant”), United States, represented by Knobbe, Martens, Olson & Bear, LLP, United States (referred to collectively as the “Complainant”).

The Respondent is skyline brands GmbH / Janus Radomski, Germany.

2. The Domain Name and Registrar

The disputed domain name <owala.shop> is registered with Vautron Rechenzentrum AG (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on July 16, 2024. On July 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 19, 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 (skyline brands GmbH, dba benley GmbH, dba benley distribution GmbH & Co. KG) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 22, 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 in English on July 26, 2024.

On July 29, 2024, the Center informed the Parties in German and English, that the language of the registration agreement for the disputed domain name was German. On July 31, 2024, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comments regarding the language of the proceeding.

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 in English and German of the Complaint, and the proceedings commenced on August 8, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 28, 2024. The Response was filed with the Center on August 26, 2024.

The Center appointed Jane Seager as the sole panelist in this matter on September 12, 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 First Complainant, Trove Brands, LLC, specializes in designing, creating, and selling active lifestyle products, notably beverage containers, through various brands including Owala, BlenderBottle, Avana, Whiskware, and EcoBrite.

The Second Complainant, Runway Blue, LLC, owns the trademarks associated with Owala, while Trove Brands, LLC is the exclusive licensee and grantee of all rights to these trademarks, including the ability to enforce them.

The Second Complainant has registered a number of trademarks for OWALA, including:

- United States Trademark Registration No. 6181745, OWALA, filed on August 23, 2019, registered on October 20, 2020; and
- United States Trademark Registration No. 7049270, OWALA, filed on August 23, 2019, registered on May 9, 2023.

The First Complainant also operates a website at the domain name <owalalife.com>, where Owala-branded products are offered for sale.

The disputed domain name was registered on October 7, 2020.

It appears that from 2020 onwards, the First Complainant developed its business, including expansion into the European market through European distributors.

Archived screen captures show that from as early as December 19, 2021, the disputed domain name resolved to a website offering the Complainant's products for sale, holding itself out as the Complainant's web store for European customers.¹ At that time, the website included a copyright notice at the bottom of the page stating "Copyright © BlenderBottle Europe Benley GmbH". The Company BlenderBottle Europe Benley GmbH appears to be the former name of the Respondent company, having operated under this name from February 6, 2018 to November 9, 2022, following which date it changed its name to skyline brands GmbH.²

¹Noting in particular the general powers of a panel articulated inter alia in paragraphs 10 and 12 of the UDRP Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. This may include visiting the website linked to the disputed domain name in order to obtain more information about the respondent or its use of the domain name, consulting historical resources such as the Internet Archive ("www.archive.org") in order to obtain an indication of how a domain name may have been used in the relevant past, reviewing dictionaries or encyclopedias (e.g., Wikipedia), or accessing trademark registration databases. [WIPO Overview 3.0](#), section 4.8.

²This information was located on the Federal German Commercial Register, available at "www.handelsregister.de". References to "skyline brands GmbH" in lower case reflect the identity of the company as listed on the Federal German Commercial Register.

On July 7, 2022, the First Complainant entered into an agreement titled “Trove Brands Distributor Agreement” with the German company benley distribution GmbH³ (the “Distributor Agreement”). The Distributor Agreement authorized benley distribution GmbH to acquire products from the First Complainant and to market them to customers in the European Union, United Kingdom, Norway, Iceland, and Ukraine. Under the Distributor Agreement, the First Complainant granted benley distribution GmbH a revocable, non-transferable, non-exclusive, and limited license to use the relevant trademarks solely for marketing, advertising, distributing, and selling products in a specified area. The First Complainant retained full ownership of all intellectual property rights related to its products and trademarks, and benley distribution GmbH did not gain any ownership or rights to these assets beyond what was expressly permitted. Any goodwill generated through benley distribution GmbH’s use of the trademarks belonged to the First Complainant. If any prior attempts to claim ownership of the trademarks were made, benley distribution GmbH agreed to assign those rights back to the First Complainant.

On July 20, 2023, the First Complainant’s lawyers wrote to benley distribution GmbH terminating the Distributor Agreement. In their letter, the First Complainant’s lawyers alleged that benley distribution GmbH had failed to meet its obligations under the Distributor Agreement, having refused to pay for products ordered and received from the First Complainant with overdue unpaid invoices exceeding USD 1.75 million (excluding interest). The letter also stated that on June 23, 2023, the First Complainant had filed a lawsuit in the Fourth Judicial District Court – Provo Division in and for Utah County, State of Utah against benley distribution GmbH alleging, inter alia, breach of contract. No updates as to the status of that court action have been provided to the Panel.

On February 16, 2024, the Complainant’s lawyers sent a demand letter to benley distribution GmbH, demanding that it stop using the disputed domain name. Further to the demand letter, the website at the disputed domain name was taken down; however, voluntary transfer of the disputed domain name did not occur.

At the time of this decision, the disputed domain name does not resolve to an active web page.

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.

The Complainant asserts rights in the OWALA trademark. The Complainant submits that the disputed domain name is identical to the OWALA trademark in which the Complainant has rights.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant asserts that the Respondent is an affiliate of benley distribution GmbH, and submits that the Respondent therefore had knowledge of the Complainant’s prior rights in the OWALA trademark when registering the disputed domain name. The Complainant acknowledges that benley distribution GmbH had rights to use the OWALA trademark for a time, but argues that the Respondent was not subject to the Distributor Agreement and that the Respondent registered the disputed domain name without its own rights or legitimate interests. The Complainant asserts that any authorization for benley distribution GmbH to use the OWALA trademark did not extend to the Respondent. The Complainant further argues that any rights that may have been held by the Respondent to use the disputed domain name were extinguished when the Distributor Agreement was terminated due to benley distribution GmbH’s breach of contract and bad faith conduct.

³ References to “benley distribution GmbH” in lower case reflect the identity of the company as listed on the Federal German Commercial Register.

The Complainant submits that the disputed domain name was registered and is being used in bad faith. The Complainant claims that the Respondent initially registered the disputed domain name without authorization, intending to use the disputed domain name to gain a business relationship with the First Complainant. Later, while the First Complainant had authorized affiliates of the Respondent, i.e., benley distribution GmbH, to use its marks under the Distributor Agreement, the Respondent in bad faith retained the disputed domain name and kept using it to sell the Complainant's products. The Complainant argues that even where a respondent initially registered the disputed domain name pursuant to or with authorization from an agreement with the trademark holder, if the distributor fails to hand over the domain name to the trademark owner, bad faith can be found. The Complainant argues that the Respondent has used the disputed domain name to offer the Complainant's products for sale, without authorization, and never paying the Complainant for the products. The Complainant submits that the Respondent's offering of the Complainant's goods or imitations thereof via the website at the disputed domain name, after termination of the Distributor Agreement, amounts to use of the disputed domain name in bad faith. The Complainant further argues that the disputed domain name is currently passively held by the Respondent in bad faith.

The Complainant requests transfer of the disputed domain name.

B. Respondent

The Response included the following statements:

"The Complainant identifies the Respondent in the Complaint as 'dba benley GmbH' and 'dba benley distribution GmbH & Co KG'. The Respondent wishes to clarify that it is not doing business as these entities and it is also not acting on behalf of all the listed entities."

"The Complaint is based on false factual assumptions. Respondent is not the owner of the domain."

The Response did not include any further substantive assertions or supporting materials.

6. Discussion and Findings

6.1. Consolidation: Multiple Complainants

The present dispute involves two Complainants. In assessing whether a complaint filed by multiple complainants may be brought, UDRP panels look at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.1.

Noting that the Complainant, Trove Brands, LLC, enjoys an exclusive licence for the use of trademarks owned by the Complainant, Runway Blue, LLC, notably the OWALA trademark upon which the Complaint is based, the Panel considers that the Complainants share a common grievance for purposes of the present proceeding. The Panel further notes that the Respondent has engaged in activity that has affected both Complainants. In the circumstances, the Panel is of the view that it would be equitable and procedurally efficient to permit consolidation of the Complainant in the present proceeding. Accordingly, the Panel has determined to allow the filing of the Complaint by multiple Complainants. Unless specified otherwise, the Complainants are referred to throughout jointly as the "Complainant".

6.2. Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is German. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including that the OWALA brand, owned by the Complainant, originates from English-speaking markets, and the brand is widely recognized in English-speaking regions; the Respondent and its affiliate, benley distribution GmbH, communicated in English during their business relationship with the Complainant; the disputed domain name is registered under the English-language generic Top-Level Domain (“gTLD”) “.shop”, and previously pointed to a website offering a choice between English and German, indicating that the Respondent conducted business in English. The Complainant further states that it and its representatives are based in the United States and are English-speaking, and that conducting the proceeding in German would cause significant additional expense and delay.

The Respondent did not make any specific submissions with respect to the language of the proceeding. The Panel notes that the Response was submitted in English.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties’ ability to understand and use the proposed language, time and costs. [WIPO Overview 3.0](#), section 4.5.1.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.3. Substantive Matters

In order to prevail, a complainant must demonstrate on the balance of probabilities that it has satisfied the requirements of paragraph 4(a) of the Policy:

- (i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) The disputed domain name was 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 trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of the OWALA trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the Complainant’s OWALA trademark is reproduced within the disputed domain name, without alteration. The Panel finds the disputed domain name to be identical to OWALA trademark in which the Complainant has rights. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

In light of the Panel’s findings under the third element, the Panel does not consider it necessary to enter findings in respect of the second element of the Policy.

C. Registered and Used in Bad Faith

The Complainant’s case for registration in bad faith is based on the notions that, first, the Respondent was never authorized to register the disputed domain name, and secondly, that the Respondent retained ownership of the disputed domain name subsequent to termination of the Distributor Agreement, thereby

rendering the Respondent's registration of the disputed domain name in bad faith. In doing so, the Complainant relies on prior UDRP decisions involving authorized distributors, notably *Maree Gaye Miller v. Peter Horner*, WIPO Case No. [D2008-1492](#):

"If a former distributor fails to hand over the domain name to trademark owner, bad faith registration and use can be found. The reason being that when the distributorship arrangement is terminated there is no good faith reason for the Respondent to retain the domain name. The registration of the domain name can lose its bona fide if the registrant subsequently breaches the terms on which he registered the domain name."

And *R&M Italia SpA, Tycon Technoglass Srl v. EnQuip Technologies Group, Inc.*, WIPO Case No. [D2007-1477](#):

"[...] the Respondent's capacity as the Complainant's agent had come to an end. The Respondent's non-fulfillment of a clear agreement to return the domain names may also be taken as a basis for concluding that the Respondent's original registration lacked good faith. The fact that the domain name was registered before the distribution agreement between the Complainant and the Respondent does not alter the Panel's view of the matter since the Respondent agreed to the terms of an agreement that must have foreseen the transfer of the domain name at the end of the agreement."

Taking the Complainant's first point, as set out above the Complainant entered into the Distributor Agreement with benley distribution GmbH on July 21, 2022. The Distributor Agreement granted benley distribution GmbH the right to "a revocable, non-transferable, non-exclusive, limited license to use Trove Brand's Marks solely in connection with the marketing, advertisement, distribution and sale of the Products in the Defined Area as provided in this Agreement." The Complainant acknowledges this in the Complaint, stating:

"While First Complainant was engaged in business with benley distribution GmbH & Co. KG, Respondent took advantage of this opportunity, using the Disputed Domain Name to direct consumers to an online shop that used the Owala® word marks and which offered First Complainant's products for sale. Neither the distributorship agreement nor Complainants ever authorized Respondent to register the Disputed Domain Name."

The Complainant refers to the Respondent as an "affiliate" of benley distribution GmbH and it is clear from the evidence on record that the Respondent and benley distribution GmbH are closely linked. Notably, the Party to the Distributor Agreement was benley distribution GmbH, whereas the former name of the Respondent company was BlenderBottle Europe Benley GmbH. The Distributor Agreement was signed by the managing director of benley distribution GmbH, an individual with the last name "Radomski" (not the Respondent), and the Respondent is listed as "Janus Radomski". Moreover, the termination letter sent by the Complainant's lawyers on July 20, 2023, is addressed to, amongst others, the Respondent, Janus Radomski, with an email address "[redacted]@benley.de".

The Panel is of the view that it stretches credibility for the Complainant to assert that it was unaware of the Respondent's activities in registering and using the disputed domain name in 2020, and that those activities were unauthorized. If this were the case, the Complainant would not have formalized the arrangement by entering into the Distributor Agreement with benley distribution GmbH. If the Complainant took issue with the Respondent's activities undertaken during the course of the Distributor Agreement and ostensibly to fulfil its purpose, i.e., to distribute the Complainant's goods in Europe, the Complainant ought to have taken action at that moment. Although the Distributor Agreement makes no explicit mention of domain names, it ought to have been clear to the Complainant at that time that benley distribution GmbH together with the Respondent were going to use a domain name to make sales of the Complainant's products. See in this regard *Adventure SAS v. Mike Robinson, BlackHawk Paramotors USA Inc.*, WIPO Case No. [D2019-2489](#):

“The Complainant asserts in the Complaint:

‘The website corresponding to the disputed Domain Name has been created by the Respondent, without informing, and without any authorization by, the legitimate owner of the mark ADVENTURE PARAMOTEUR’

The Panel was surprised by that assertion. The Domain Name was registered on March 14, 2018, the very same month in which the commercial arrangement between the parties commenced. It was also the month in which the parties met to discuss the arrangement, and the Respondent gave the Complainant estimates as to his monthly sales. The Panel would have expected the parties to have discussed at their meeting in March 2018 the means by which the Respondent planned to market the Complainant’s products in the United States and the support to be provided by the Complainant in the creation of the Respondent’s website. After all, the Complainant must have known that the Respondent would have an online presence and brand owners are normally concerned to ensure that a distributor’s marketing materials (including their websites) are appropriate and consistent with the image of the brand.

However, if the above quote from the Complaint is to be believed, none of that happened; the Complainant showed no interest in such matters and left the Respondent to his own devices.”

The Panel infers from the above that the Respondent operated with tacit authorization from the Complainant, an arrangement that was apparently permitted by the Complainant for the duration of the business relationship between the Complainant and the Respondent’s affiliate, benley distribution GmbH. Such circumstances do not support a finding that the disputed domain name was registered in bad faith.

As for the Respondent’s second point, the Panel does not accept that the Distributor Agreement can be read into the Policy in order to render the Respondent’s registration of the disputed domain name in bad faith upon termination of the Distributor Agreement. The Panel has considered the decisions cited by the Respondent and notes that those cases date from over 15 years ago and were decided on different facts to those that apply in the context of this proceeding. The Panel further notes that subsequent UDRP panels have taken a different approach. See in this regard *APT Advanced Polymer Technology Corp. v. Matt Arnold, Majestic Capital*, WIPO Case No. [D2019-0824](#):

“This Panel concurs with the reasoning of other UDRP panels that have closely examined the conjunctive requirement in the context of terminated distributors and have concluded that a complainant must establish bad faith at the time of registration as well in the later use of the domain name. Post-termination conduct may in some instances reflect on the respondent’s original intent, as in other contexts, but the complaint cannot succeed simply because a previously circumspect distributor behaved badly after termination. [...]

The Complainant’s argument for bad faith requires an inference that the Respondent harbored a malign intent from the outset around the time of the registration of the Domain Name to violate its limited license, retain the Domain Name, and then use it in bad faith, to disrupt the Complainant’s business and mislead Internet users for commercial gain or otherwise. The Panel finds no persuasive evidence to make such a leap of inference and accordingly does not find bad faith in the registration of the Domain Name.”

See also *Adventure SAS v. Mike Robinson, BlackHawk Paramotors USA Inc.*, *supra*:

“The email exchanges upon which the Complainant relies to support the allegation of bad faith registration and use do not criticize the Respondent for having registered the Domain Name. They only complain of the Respondent’s continued use of it following termination of the dealership on December 21, 2018. [...]

Those emails, combined with the fact that the Respondent was (or was imminently to become) an authorized dealer of the Complainant when he registered the Domain Name, satisfy the Panel on the balance of probabilities that the Respondent registered the Domain Name in good faith with a view to promoting and selling the Complainant’s products in the performance of his agreement with the Complainant.”

And *Sanosil AG v. Ammar Matouk*, WIPO Case No. [D2023-1174](#):

“The Panel rejects the Complainant’s argument that bad faith in these circumstances may be retroactive, i.e., that registration of the disputed domain name, if originally effected without malign or bad faith intent, could be considered tainted in some way by the Respondent’s behavior following alleged termination of the Joint Venture Shareholder’s Agreement.”

The Panel finds, based on the evidence on record, that the Complainant has failed to establish that the disputed domain name was registered in bad faith. Under the third element of the UDRP, registration and use in bad faith is a conjunctive requirement for a transfer order (unlike some other domain name dispute resolution policies that apply to different Top-Level Domains). Given that the Complainant has failed to establish bad faith registration, it is not necessary for the Panel to enter findings regarding bad faith use of the disputed domain name.

The Panel also notes that the relatively limited scope of the UDRP is intended to resolve clear cases of abusive domain name registration and use and is not meant as an instrument for resolving broader contractual disputes.

The Panel finds that the third element of the Policy has not been established.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Jane Seager/

Jane Seager

Sole Panelist

Date: October 8, 2024