

ADMINISTRATIVE PANEL DECISION

Orthofeet Inc. v. Dylan Briggs
Case No. D2024-3625

1. The Parties

The Complainant is Orthofeet Inc., United States of America (“United States”), represented by Friedrich Graf von Westphalen & Partner mbB, Germany.

The Respondent is Dylan Briggs, Germany.

2. The Domain Name and Registrar

The disputed domain name <orthofeetbelgië.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 September 6, 2024. On September 10, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 11, 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 (Respondent unidentified) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 16, 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 September 20, 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 September 24, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 14, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 15, 2024.

The Center appointed Miguel B. O'Farrell as the sole panelist in this matter on October 21, 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, Orthofeet Inc, is an American company manufacturing and selling orthopedic shoes.

The Complainant was established in 1984 by Ron Bar and his brother Michael Bar. In 2000, using its expertise in foot biometrics and orthotic design, the Complainant started a line of comfort orthopedic shoes.

Among others, the Complainant is the owner of European Union word mark Registration No. 018005178 ORTHOFEET, registered on June 27, 2019, covering orthopedic footwear and similar goods in classes 10 and 25.

The Complainant owns the domain name registration <orthofeet.com> which resolves to a website providing information about the Complainant and its business.

The disputed domain name was registered on May 25, 2023 and resolves to a webpage that copies the structure and design of the Complainant's online shop, as shown in the screenshots of both webpages added to the Complaint.

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 Respondent's homepage to which the disputed domain resolves only fulfills the purpose of confusing potential customers of the Complainant and misleading them as to who the operator of this alleged web shop is and that it is the Complainant itself or an authorized dealer of the Orthofeet shoes. Hence, the Respondent intentionally attempts to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, and endorsement of its web site or of a product on its website.

Finally, the Complainant requests the Panel to issue a decision ordering the transfer of the disputed domain name to 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 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 “belgië”, 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 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.

The Panel is satisfied that the Respondent must have been aware of the Complainant’s business and trademark ORTHOFEET mentioned in Section 4 above (Factual Background) and also the Complainant’s website to which its domain name resolves to when the Respondent registered the disputed domain name on May 25, 2023. By that time the Complainant had registered and used the trademark ORTHOFEET for many years.

By registering the disputed domain name, the Respondent was targeting the Complainant and its business by incorporating the Complainant’s trademark ORTHOFEET in the disputed domain name in its entirety. The addition of the country name “belgië” (the Belgian word for Belgium) contributes to enhance the confusion, since it leads Internet consumers to think that it is the Complainant’s Belgian online shop.

The fact that there is a clear absence of rights or legitimate interests coupled with no explanation for the Respondent’s choice of the disputed domain name and the nature of the disputed domain name, are indicative of bad faith (as stated in section 3.2.1 of the [WIPO Overview 3.0](#)).

The Complainant has proven that the website to which the disputed domain name resolves offers goods, counterfeit or not, which are similar to those offered by the Complainant and includes the Complainant's trademark, which leads Internet users to mistakenly think that the website is an official website of the Complainant and thereby the Respondent may capitalize on the prestige of the trademark ORTHOFEET for its own benefit.

The Panel finds that the Respondent registered and is using the disputed domain name in bad faith and that the requirements of paragraph 4(a)(iii) of the Policy have been fulfilled.

The Panel finds 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 <orthofeetbelgië.com> be transferred to the Complainant.

/Miguel B. O'Farrell/

Miguel B. O'Farrell

Sole Panelist

Date: October 31, 2024