

ADMINISTRATIVE PANEL DECISION

Boll & Branch LLC v. Atlas xr
Case No. D2024-4030

1. The Parties

The Complainant is Boll & Branch LLC, United States of America (“United States”), represented by Keating Muething & Klekamp PLL, United States.

The Respondent is Atlas xr, Morocco.

2. The Domain Name and Registrar

The disputed domain name <bolIndbranch.shop> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 1, 2024. On October 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On October 2, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 8, 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 October 9, 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 October 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 30, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 31, 2024.

The Center appointed Nicholas Smith as the sole panelist in this matter on November 5, 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 a United States luxury textile business that since at least 2014 has offered bedding products and apparel under the trademark BOLL & BRANCH (the "BOLL & BRANCH Mark"). The Complainant offers its products through various means including from its website at "www.bollandbranch.com" ("Complainant's Website").

The Complainant has held a trademark registration for the BOLL & BRANCH Mark in various jurisdictions since 2015, notably having held a United States trademark registration for the BOLL & BRANCH Mark since July 7, 2015, for textile products in class 24 (registration No. 4,769,218).

The Domain Name was registered on September 11, 2024. The Domain Name is presently inactive but prior to the commencement of the proceeding the Domain Name resolved to a website (the "Respondent's Website") that prominently reproduced the BOLL & BRANCH Mark and a logo strikingly similar to the logo on the Complainant's Website and purported to offer apparel in direct competition with the Complainant.

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 Domain Name.

Notably, the Complainant contends that:

- a) It is the owner of the BOLL & BRANCH Mark, having registered the BOLL & BRANCH Mark in various jurisdictions. The Domain Name is confusingly similar to the BOLL & BRANCH Mark as it merely replaces the ampersand with "nd" and adds the generic Top-Level Domain ("gTLD") ".shop".
- b) There are no rights or legitimate interests held by the Respondent in respect of the Domain Name. The Complainant has not granted any license or authorization for the Respondent to use the BOLL & BRANCH Mark. The Respondent is not commonly known by the BOLL & BRANCH Mark, nor does it use the Domain Name for a bona fide purpose or legitimate noncommercial purpose. Rather the Respondent is using the Domain Name to pass off as the Complainant for commercial gain by purporting to offer apparel products in direct competition with the Complainant. Such use is not a legitimate use of the Domain Name.
- c) The Domain Name was registered and is being used in bad faith. The Respondent is using the Domain Name to divert Internet users searching for the Complainant to the Respondent's Website to disrupt the Complainant's business and divert Internet users searching for the Complainant to a competing website for commercial gain. Such conduct amounts to registration and use of the Domain Name in bad faith.

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 Panel finds the mark is recognizable within the Domain Name. Accordingly, the Domain Name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. Merely replacing the ampersand element, which cannot be reproduced in a domain name, with a misspelling of the word "and" does not prevent a finding of confusing similarity. A domain name consisting of a common, obvious or intentional misspelling of a trademark is confusingly similar to that mark. [WIPO Overview 3.0](#), section 1.9.

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 record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the 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 Domain Name.

The Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a bona fide offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.

- the Respondent (as an individual, business, or other organization) has not been commonly known by the Domain Name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.

- the Respondent is not making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.

- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the Domain Name.

The Respondent's use of the Domain Name to resolve to a webpage reproducing the Complainant's BOLL & BRANCH Mark and similar logo and purporting to offer apparel products in direct competition with the Complainant does not amount to use for a bona fide offering of goods and services. This conduct amounts to the Respondent passing itself off as the Complainant. It appears that the purpose behind the Respondent's Website is to encourage visitors, under the impression that they are dealing with the Complainant, to purchase the apparel products purportedly offered by the Respondent, such conduct not being a bona fide offering of goods and services.

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 considers that the record of this case reflects that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's Website or location or of a product or service on the Respondent's Website or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

The Panel finds that the Respondent must have been aware of the Complainant and its reputation in the BOLL & BRANCH Mark at the time the Respondent registered the Domain Name. The Respondent has provided no explanation, and neither it is immediately obvious, why an entity would register a domain name that is similar to the BOLL & BRANCH Mark and almost identical to the address of the Complainant's Website and direct it to a website offering apparel products in direct competition with the Complainant under the BOLL & BRANCH Mark and a strikingly similar logo unless there was an awareness of and an intention to create a likelihood of confusion with the Complainant and its BOLL & BRANCH Mark.

The Respondent's Website purports to offer apparel products in direct competition with the Complainant. Noting the coined nature of the BOLL & BRANCH Mark, the fact that the Respondent passes off as the Complainant on the Respondent's Website and the absence of any explanation for the registration, the Panel considers that the most likely explanation is that the Respondent is using the Domain Name to intentionally attempt to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the BOLL & BRANCH Mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's Website.

The Panel finds that 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 Domain Name <bolIndbranch.shop> be transferred to the Complainant.

/Nicholas Smith/

Nicholas Smith

Sole Panelist

Date: November 11, 2024