

ADMINISTRATIVE PANEL DECISION

Boot Barn, Inc. v. t-mobile, termistotle mobile
Case No. D2024-4053

1. The Parties

The Complainant is Boot Barn, Inc., United States of America (“United States”), represented by Sisun Law, United States.

The Respondent is t-mobile, termistotle mobile, United States.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 2, 2024. On October 3, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 3, 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 (*Bootsbarn.shop Registrant*) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 4, 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 amendment to the Complaint on October 8, 2024.

The Center verified that the Complaint together with the amendment to 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 October 9, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 29, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 30, 2024.

The Center appointed Steven Auvil 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

According to the Complaint, the Complainant is the largest western and workwear retailer in the United States, offering a broad selection of cowboy boots, work boots, western wear, workwear, western-inspired fashion, and outdoor gear. According to the Complaint, the Complainant's BOOT BARN mark has acquired significant goodwill in the marketplace as the Complainant operates hundreds of stores throughout the United States.

The Complainant owns one United States service mark registration for the BOOT BARN brand, registration No. 2307397, registered January 11, 2000. Additionally, the Complainant owns the domain name <bootbarn.com>. According to the Complaint, the Complainant's website had approximately 4,581,188 visitors per month from September 2023 to August 2024. In the month of August 2024, <bootbarn.com> had roughly 128,751 or more visitors per day.

The disputed domain name was registered on February 24, 2024. According to the Complaint, the disputed domain name has been used to provide retail services identical to those of the Complainant, even including images from the Complainant's own website and including the Complainant's BOOT BARN mark logo.

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 first contends that the disputed domain name is confusingly similar to the BOOT BARN mark because it contains the entirety of the Complainant's BOOT BARN mark but for the inclusion of the letter "s" following the word "boot" and the generic Top-Level Domain ("gTLD") "shop." The Complainant alleges that the disputed domain name is nearly identical in wording and commercial impression to the Complainant's BOOT BARN mark. Specifically, the Complainant alleges that a search for "bootsbarn" – as stated in the disputed domain name – on the Internet returns results that include the Complainant's website, <bootbarn.com>.

The Complainant also alleges that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainant, it did not authorize the Respondent's use or registration of the BOOT BARN mark in any manner nor is the Respondent commonly known by the disputed domain name.

The Complainant further alleges that the Respondent registered and has used the disputed domain name in bad faith. First, the Complainant alleges that due to the Complainant's United States trademark registration of the BOOT BARN mark and its continuous and extensive use of the BOOT BARN mark, the Respondent has actual notice of the Complainant's rights in the BOOT BARN brand. Second, the Complainant alleges that the Respondent purports to offer services identical to those of the Complainant and uses the Complainant's images and logo on the disputed domain name website, further demonstrating knowledge of and familiarity with the Complainant's brand and business. Third, the Complainant alleges that the Respondent's efforts to conceal its identity by providing a false address and false name on the website at the disputed domain name further evidences bad faith.

The Complainant requests that the disputed domain name be transferred to the Complainant.

B. Respondent

The Respondent did not file a Response to the Complainant's contentions.

6. Discussion and Findings

According to paragraph 15(a) of the Rules: “[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.” Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following to obtain relief:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or a service mark in which the Complainant has rights;
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

In view of the Respondent’s failure to submit a Response, the Panel is entitled to accept as true the allegations set forth in the Complaint (unless the evidence is clearly contradictory), and to derive reasonable inferences from the evidence presented. See *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#).

Based on the foregoing guidance, the Panel makes the following findings and conclusions based on the allegations and evidence contained in the Complaint and reasonable inferences drawn from the evidence presented.

A. Identical or Confusingly Similar

It is well accepted that the first element of the Policy 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 evidence submitted by the Complainant supports the conclusion that the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. The Complainant owns a United States service mark for the BOOT BARN brand, registered in 2000. [WIPO Overview 3.0](#), section 1.2.1.

The evidence also supports the conclusion that the disputed domain name is confusingly similar to the Complainant’s BOOT BARN mark. As set forth in [WIPO Overview 3.0](#), section 1.7, when the entirety of a mark is reproduced within the disputed domain name, or “at least a dominant feature of the relevant mark is recognizable in the domain name”, the disputed domain name is deemed confusingly similar to the mark for the purposes of the Policy. Further, domain names that consist of a common, obvious, or intentional misspelling of a trademark are considered by panels to be confusingly similar to the relevant mark for purposes of the first element. See [WIPO Overview 3.0](#), section 1.9.

Here, the disputed domain name includes the entirety of the Complainant’s BOOT BARN mark interspersed with an additional letter “s”. This difference does not prevent a finding of confusing similarity. See *DNVB, Inc. d/b/a Thursday Boot Company v. Client Care, Web Commerce Communications Limited; Holm Fanny; Uwe Friedman; Iris Wallin; Kristin Muench; Wang Zhi Wen; Eric Roth; Liu Fen; Elizabeth Lawrence Brunnenstr; Feierabend Robert; Domain Administrator, Fundacion Privacy Services LTD; ACKERMAN Lea; VOGT Silke; Qiu Xiaofeng; and 徐孝忠 (xu xiao zhong)*, WIPO Case No. [D2023-3742](#); *Kimley-Horn and Associates, Inc. v. Secoo Gio*, WIPO Case No. [D2021-4189](#).

Additionally, as set forth in section 1.11.1 of [WIPO Overview 3.0](#), the applicable gTLD (e.g., “.com”, “.site”, “.info”, “.shop”) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. As such, the use of “.shop” TLD in the disputed domain name has no bearing on the confusing similarity analysis.

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. Such circumstances include:

(i) before any notice of the dispute, the respondent used, or prepared to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services;

(ii) the respondent (as an individual, business, or other organization) is commonly known by the disputed domain name, even if the respondent has acquired no trademark or service mark rights; or

(iii) the respondent is 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.

[WIPO Overview 3.0](#), section 2.1.

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.” 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 evidence of record, the Panel finds that the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The evidence demonstrates that the Respondent is using the disputed domain name to attempt to pass itself off or impersonate the Complainant, including through use of the Complainant’s trademark and logo and copying some content from the Complainant’s official website. Panels have held that the use of a domain name for illegitimate activity, such as impersonation/passing off, can never confer rights or legitimate interests on a respondent; this is true even though the term “boot” is disclaimed in the relevant mark. [WIPO Overview 3.0](#), section 2.13.1.

The Respondent, moreover, has not rebutted the Complainant’s prima facie showing; in fact, the Respondent 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 no evidence that the Complainant has licensed or otherwise authorized the Respondent’s use of the BOOT BARN mark as a domain name, nor is there evidence that the Respondent has any affiliation, association, sponsorship, or connection with the Complainant.

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 that, if found by the Panel to be present, is evidence of the registration and use of a domain name in bad faith. Such circumstances include, among others, where “the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor,” and where “by using the domain name, 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.” [WIPO Overview 3.0](#), section 3.1.

Additionally, section 3.2.1 of the [WIPO Overview 3.0](#) provides that “[p]articular circumstances panels may take into account in assessing whether the respondent’s registration of a domain name is in bad faith include: (i) the nature of the domain name (e.g., a typo of a widely-known mark, or a domain name incorporating the complainant’s mark plus an additional term such as a descriptive or geographic term, or one that corresponds to the complainant’s area of activity or natural zone of expansion); [...] (vi) a clear absence of rights or legitimate interests coupled with no credible explanation for the respondent’s choice of the domain name, or (viii) other indicia generally suggesting that the respondent had somehow targeted the complainant.”

In the present case, the Panel concludes that the Respondent registered and is using the disputed domain name in bad faith. First, the disputed domain name incorporates the entirety of the Complainant’s registered and well-known BOOT BARN mark with the exception of including the letter “s” following the word “boot.” Second, the Panel finds that the Respondent has engaged in using the disputed domain name to impersonate the Complainant in order to purportedly provide identical and competing services without the Complainant’s authorization, which together with its composition constitutes evidence of bad faith.

Considering this and other circumstances, including the failure of the Respondent to respond to the Complaint, the Panel finds that the Respondent knew of the Complainant’s BOOT BARN mark at the time of registering the disputed domain name and endeavored to unfairly capitalize on the mark for commercial gain. The Panel therefore concludes that the disputed domain name was registered and is being used in bad faith.

The Panel therefore 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 disputed domain name <bootsbarn.shop> be transferred to the Complainant.

/Steven Auvil/

Steven Auvil

Sole Panelist

Date: November 19,2024