

PANEL DECISION

Trove Brands, LLC, Runway Blue, LLC, Trove Brands Ireland Limited v. Jan Radomski

Case No. DEU2024-0022

1. The Parties

The Complainants are Trove Brands, LLC, United States of America (“United States”), Runway Blue, LLC, United States, and Trove Brands Ireland Limited, Ireland, represented by Knobbe, Martens, Olson & Bear, LLP, United States.

The Respondent is Jan Radomski, Germany, self-represented.

2. The Domain Name, Registry and Registrar

The Registry of the disputed domain name <blenderbottle.eu> is the European Registry for Internet Domains (“EURid” or the “Registry”). The Registrar of the disputed domain name is IONOS SE.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 17, 2024. On July 17, 2024, the Center transmitted by email to the Registry a request for registrar verification in connection with the disputed domain name. On July 17, 2024, the Registry 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 (benley GmbH dba benley distribution GmbH & Co. KG dba skyline brands GmbH) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 19, 2024, providing the registrant and contact information disclosed by the Registry, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on July 26, 2024.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .eu Alternative Dispute Resolution Rules (the “ADR Rules”) and the World Intellectual Property Organization Supplemental Rules for .eu Alternative Dispute Resolution Rules (the “Supplemental Rules”).

In accordance with the ADR Rules, Paragraph B (2), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on July 29, 2024. In accordance with the ADR Rules, Paragraph B(3)(a), the due date for Response was August 18, 2024. The Response was filed with the Center on August 18, 2024.

The Center verified that the Response satisfied the formal requirements of the ADR Rules and the Supplemental Rules.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on August 23, 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 ADR Rules, Paragraph B(5).

On August 29, 2024, the Complainant submitted a supplemental filing. On the same date, the Panel issued Procedural Order No. 1, in which it invited the Respondent to provide comments on the Complainant's supplemental filing (if any) on or before September 3, 2024, and extended the due date for the Decision to September 17, 2024. The Respondent filed a supplemental filing on September 3, 2024.

On September 19, 2024, at the Panel's request, the Center requested clarification regarding the Registry's verification response relating to the date on which the current registrant registered or acquired the disputed domain name. The Registry responded to such request on September 20, 2024.

4. Factual Background

The First Complainant, Trove Brands, LLC ("Trove Brands") is a Utah, United States, limited liability company. It is the exclusive licensee of all rights in the BLENDERBOTTLE trademark owned by the Second Complainant, Runway Blue LLC, also a Utah, United States, limited liability company. The Third Complainant, Trove Brands Ireland Limited, is an Irish limited company, registered on May 1, 2024, which was created to manage the brands of Trove Brands, LLC in the European Union. The Complainants have requested consolidation of their respective complaints against the Respondent as discussed below. Unless the context shows otherwise and for convenience, the Panel refers to the Complainants collectively as "the Complainant".

The Complainant operates a website at "www.blenderbottle.com," a recent screenshot of which states that "the BlenderBottle company" was founded in 2000 by a husband-and-wife team following the discovery that a wire whisk termed a "BlenderBall" could be inserted in a container in order to mix supplements before they are consumed via the container. Said website claims that the company's products are in 60,000 retail stores and 90 countries.

Runway Blue LLC is the owner of European Union Registered Trademark Number 11577442 for the word mark BLENDERBOTTLE, registered on January 14, 2014 in Classes 21, 30, and 35.

According to the Registry's verification, the disputed domain name was registered on March 15, 2010. The Respondent and current registrant is a private individual, based in Germany. It may be noted that the registration of the disputed domain name predates the Complainant's BLENDERBOTTLE registered trademark. As of November 29, 2023, the website associated with the disputed domain name promoted and sold the Complainant's products, with shipping available predominantly to European Union countries, and some others such as Norway and Switzerland. As of May 29, 2024, said website had been replaced by a parking page displaying pay-per-click ("PPC") links not directly associated with the Complainant's line of business.

The disputed domain name has been used until recently in connection with the distribution of the Complainant's products in the European Union and certain other countries. The Respondent appears to have been involved in this endeavor, albeit exclusively or at least predominantly via various corporate entities rather than in any direct personal capacity. One of the companies that has been involved on the Respondent's side is a German limited liability company named benley GmbH.¹ This company is mentioned in the registrant contact address for the disputed domain name but, crucially, is not itself listed as the registrant. A further apparent link between the disputed domain name and benley GmbH is the fact that the

¹ The lower case capitalization of this and certain other company names stated here is accurate.

contact email address associated with the disputed domain name uses the domain name <benley.de>, a domain name that was operated by benley GmbH as of November 28, 2023.

According to the Respondent's initial position in the Response, a collaboration with the Complainant began after "representatives" of benley GmbH (it is not known if such representatives included the Respondent itself) first became aware of the Complainant at the end of 2011 at an international trade fair. The suggestion made in the Response is that the Respondent had already registered the disputed domain name in 2010. However, evidence produced by the Complainant in its supplemental filing shows that the disputed domain name was originally held by a third party, one of the Complainant's Netherlands-based customers (either in his own name or the name of his Dutch company) from at least May 2011. At that time, the disputed domain name was used for a website provided by said Dutch company to promote the Complainant's "BlenderBottle" products.

The Complainant has produced a Whois history for the disputed domain name. While this does not disclose the registrant of the disputed domain name, it may be seen that from May 2, 2010, the registrar of record was a Netherlands-based company using nameservers featuring the Dutch country code Top-Level Domain ("ccTLD"). By September 21, 2013, the disputed domain name had been transferred to a different Netherlands-based registrar of record, also using a nameserver featuring the Dutch ccTLD. By June 14, 2014, the disputed domain name had been transferred to a German registrar of record and used a nameserver featuring the German ccTLD. Furthermore, the earliest evidence from the Internet Archive showing affiliation of the website associated with the disputed domain name to benley GmbH is an entry dated August 22, 2014, being a website promoting the Complainant's products including multiple testimonials from periodicals such as "Good Housekeeping", television programs such as "Good Morning America" and publications such as "Reader's Digest", together with a claim by a publication named "SELF" that celebrity fans of the product include Scarlett Johansson. Said website features a copyright and patent issued/pending notice in a black typeface referring to the Complainant dated 2013 to which has been added in a blue typeface "copyright by VINCENT BENLEY".

The Whois and website history produced by the Complainant suggested that the disputed domain name was probably transferred to the Respondent or to one of the entities affiliated with the Respondent (by the Complainant's said Dutch customer) at some point between September 21, 2013 and June 14, 2014, and that it was more likely than not that the Respondent was not the original registrant of the disputed domain name in 2010 as it contended and/or implied in the Response.²

Besides benley GmbH, another German company also features in the Parties' story and also appears to have collaborated with the Complainant. Said company was named sundesa GmbH from February 8, 2013 to January 6, 2015, BlenderBottle Europe GmbH from January 6, 2015 to February 6, 2018, BlenderBottle Europe Benley GmbH from February 6, 2018 to November 9, 2022, and has been named skyline brands GmbH since November 9, 2022.³ According to the Respondent, from 2012 onwards, this company was

² The Panel's inference that the Respondent was not the original registrant of the disputed domain name in 2010 was subsequently affirmed by the Registry on September 20, 2024 in response to the Panel's request for clarification regarding the Registry's verification response. The Registry confirmed that the current registrant has been the holder of the disputed domain name since January 30, 2017. Nevertheless, the Respondent states in the Response, "If the Respondent had intended to misappropriate alleged intellectual property rights of the Complainants, *he would not have protected the Domain in 2010*, but rather a BlenderBottle trademark." (Panel's emphasis). Also in the Response, the Respondent states, "At the time of the Domain's registration, in 2010 (!), there were no confusingly similar or identical prior rights held by the Complainant. Accordingly, the Domain could not conflict with any such prior rights as it is inferred or suggested in the Complaint." This is a more ambiguous statement, although until receipt of the Parties' supplemental filings, the Panel took this also to mean that the Respondent was claiming to have been the original registrant of the disputed domain name.

³ The Panel obtained these dates from the Handelsregister entry for said company via "www.handelsregister.de," the shared register of companies portal for the German federal states. Given the similarities between the ADR Rules and the Uniform Domain Name Dispute Resolution Policy (the "UDRP"), the Panel will refer to cases decided under both the ADR Rules and the UDRP and notably the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") if relevant to this proceeding. See section 4.8 of the [WIPO Overview 3.0](#) on the subject of the Panel undertaking limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision.

responsible for the design or content of the website associated with the disputed domain name in collaboration with Trove Brands. It is identified as the legal website operator in respect of the website associated with the disputed domain name in the Complainant's screenshot dated November 29, 2023.

Another German company, skyline distribution GmbH, is also mentioned in the Response. The Respondent says that this company also acted as distributor of the Complainant's products. The Panel could not find this company on the relevant register.

In September 2021, Trove Brands' international account manager exchanged emails with various prospective customers in which he referred to the Respondent as "my colleague who manages the UK/EU markets", "an exclusive distributor", and "our distributor in the EU market". The emails referred to the Respondent by name in hyperlinks "@[Respondent's name] - BlenderBottle Europe" and "@BlenderBottle Europe GmbH [Respondent's name]". These hyperlinks were linked to an email address using the disputed domain name.

Neither of the Parties has produced any formal documentation governing the commercial relationship between the Complainant and benley GmbH or skyline brands GmbH from 2011 to date.

In July 2022, Trove Brands and a German limited partnership named Benley Distribution GmbH & Co., KG ("Benley Distribution") entered into an agreement entitled "Trove Brands Distributor Agreement". This agreement may have been an attempt by the Complainant to organize and restate its relationship with the entity or entities that previously acted as its European distributor, albeit that said agreement makes no mention of benley GmbH, or skyline brands GmbH (at that date, named BlenderBottle Europe Benley GmbH).

By virtue of clause 1 of the said agreement, Trove Brands granted Benley Distribution the exclusive right to market and sell BlenderBottle branded products, among others, to customers located in the European Union, the United Kingdom, Norway, Iceland and Ukraine. In clause 6.1, the said agreement provided, inter alia, that to the extent that Benley Distribution had previously sought title or ownership rights to any of Trove Brands' marks, Benley Distribution assigned all intellectual property rights therein to Trove Brands. The agreement is executed on behalf of Benley Distribution by the person who is also listed as the general manager of benley GmbH on the latter's website. This person is not the Respondent.

On July 20, 2023, Trove Brands' attorneys wrote to Benley Distribution formally terminating the said agreement on the basis that Benley Distribution was alleged to have refused to pay for products ordered and received from Trove Brands to the value of approximately USD 1,750,000 excluding interest, informing Benley Distribution of various post-termination provisions of said agreement, and further providing notice that on June 23, 2023, Trove Brands had filed suit against Benley Distribution in the Fourth Judicial District Court, Utah County, for the state of Utah, United States, seeking judgment in a sum reflecting the alleged unpaid amount, an award of attorneys' fees, interest at contractual or statutory rate, an order or injunction requiring return of products and any other equitable relief. The status of this action is unknown to the Panel.

Notwithstanding said termination, the Complainant's screenshots of the website associated with the disputed domain name dated November 29, 2023 appear to show that it was being operated by skyline brands GmbH. As at that date, the said website features the Complainant's products, including for example, referencing the Complainant's BlenderBall whisk. The Panel does not know why said website was not operated by Benley Distribution following the entry into force of the distribution agreement or whether Benley Distribution ever operated said website.

The Respondent refers to a separate court action that appears to involve the Parties, in that it states that the Nuremberg-Fürth District Court has ruled on August 13, 2024 that the sale of the Complainant's products (presumably by one or other of the corporate entities or the partnership described above) is lawful, and that there is no sale of "imitations".

There is no documentation before the Panel indicating that the Respondent, acting as an individual, had any formal legal relationship with the Complainant at any time.

5. Parties' Contentions

A. Complainant

In summary, the Complainant contends as follows:

The Complainant is the owner/exclusive licensee of the BLENDERBOTTLE registered trademark, recognized by European Union law. The disputed domain name incorporates the entirety of said mark and differs only by the ".eu" Top-Level Domain, which is disregarded.

The disputed domain name was initially registered by its holder without rights or legitimate interests. To the extent that Benley Distribution contends that the Respondent acted as an individual in registering the disputed domain name, the Respondent never had a legitimate interest or right to do so. If the Respondent registered the disputed domain name on behalf of Benley Distribution, further to the distribution agreement such authority was terminated. At least since June 23, 2023, the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The disputed domain name was registered without the Complainant's authority even though the Respondent was aware of the BLENDERBOTTLE mark and brand. Pursuant to the distribution agreement, the Complainant authorized Benley Distribution to use the Complainant's trademarks in the disputed domain name exclusively in connection with Benley Distribution's distribution of the Complainant's goods, pursuant to, authorized by and limited to the terms of the distribution agreement, and only for the term of such agreement. The Respondent was not individually a party to said agreement and was never authorized to use the Complainant's marks. To the extent that the Respondent registered the disputed domain name on behalf of Benley Distribution, any rights or legitimate interests held by the Respondent to use the disputed domain name were extinguished when the said agreement terminated. Panels under the ADR Rules or the UDRP have consistently found that registrants lack rights or legitimate interests in similar circumstances involving terminated agency arrangements.

The Respondent did not legitimately use, nor was known by the disputed domain name prior to the business relationship between Benley Distribution and the Complainant. The Respondent knew of the Complainant's product and intellectual property rights prior to the distribution agreement as evidenced by the unauthorized registration of the disputed domain name and its desire to do business with the Complainant. Benley Distribution agreed in said agreement to assign all right, title and interest in and to the Complainant's marks to the extent that it had previously sought such title or ownership rights.

The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. The Respondent's continued use of the disputed domain name without authorization was entirely commercial, not legitimate or fair, and continued to use the Complainant's logos, proprietary descriptions and images in an effort to sell the Complainant's products without intent to pay the Complainant. The present use of the disputed domain name to provide domain parking is not a legitimate noncommercial or fair use of the disputed domain name.

The Respondent is using the disputed domain name in bad faith, there being no good faith reason for the Respondent to retain it or to keep using it to sell products, or to use it for passive domain parking after the distribution agreement was terminated. Any future use by the Respondent would constitute a false association with the Complainant's mark.

The Respondent is intentionally using the disputed domain name to attract Internet users, for commercial gain, to the Respondent's website by creating a likelihood of confusion with the Complainant's trademark with such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website or of a product on the website of the Respondent.

The Respondent continued to offer the Complainant's goods and the disputed domain name is also configured to receive email. Recipients of email bearing the disputed domain name may be confused into believing that they are receiving communications for or on behalf of the Complainant. The Respondent has

offered subscriptions to a “BlenderBottle newsletter”, offering co-branding and merchant services, and referring to itself as BlenderBottle Europe Benley GmbH without authorization. The Respondent has solicited money and sensitive information from customers intending to purchase the Complainant’s goods. The Respondent also links from its website to social media pages on which it holds itself out as “BlenderBottle Europe”.

The Respondent intends, or at least previously intended, to hold itself out as the Complainant when it is not. There is also bad faith in the locking out of the Complainant from using its own trademark as a domain name.

B. Respondent

In summary, the Respondent contends as follows:

At the time the Respondent registered the disputed domain name, there were no confusingly similar or identical prior rights held by the Complainant, and no authorization to be sought for what is a generic term. The Complainant was unknown to the Respondent. The Respondent registered the disputed domain name in connection with the descriptive nature of the words “blender” and “bottle”, combined as “blenderbottle” given that domain names do not allow spaces. The Respondent references examples from Google Books of the term “blender bottle” dating from 1949, 1964, 1971, and 1978. The use of the disputed domain name is permissible under trademark law because it is descriptive and relates to the kind, intended purpose or other characteristics of the goods. The Respondent and others such as skyline brands GmbH wish to continue such descriptive use.

The termination of the distribution agreement does not retroactively invalidate the Respondent’s initial good faith registration and use of the disputed domain name. The Respondent was never bound by the distribution agreement, nor was the original legal entity that used the disputed domain name. The Complainant’s mark does not entitle it to prohibit its use where goods have been lawfully acquired bearing the mark (exhaustion of rights). The Respondent was not responsible for the use of the disputed domain name after termination of the distribution agreement but such use constitutes normal advertising of bottles purchased in good faith. It could be argued that the Complainant registered its trademark in bad faith in the knowledge of the Respondent’s domain name.

benley GmbH used the disputed domain name in cooperation with the Complainant and with its full knowledge and approval during their partnership and the Respondent intends to use the disputed domain name descriptively unrelated to the Complainant’s products, both of these uses supporting legitimate interests. The current use of the disputed domain name in connection with a parking page and the Respondent’s intention to resume a descriptive use does not negate the Respondent’s legitimate interests established during initial registration and subsequent authorized use.

This case may be distinguished from previous cases involving distributors where the domain name was registered with an implied or explicit understanding that it would be used to benefit the complainant’s business. Here, the Respondent registered the disputed domain name independently to use it for its own business purposes, demonstrating good faith registration from the outset. The Respondent intended a descriptive use, not to compete with the Complainant. There was no prior distribution relationship and the Complainant’s permission to register the disputed domain name was not necessary as there were no prior rights. The Respondent is taking a reasonable approach and is willing to limit use of the disputed domain name to avoid confusion with the Complainant’s products. The Respondent has a stronger claim than that described in previous cases involving distributors.

When the disputed domain name was registered, benley GmbH planned to sell “SPIDERBottles”, blender bottles that are still on the European market with a spiral spring or whisk attached to the lid which expands when shaken. If the Complainant existed at all at that point, it had no presence in the European market and representatives of benley GmbH became aware of it in 2011 at an international trade fair, which led to discussions about collaboration. Due to the success of this collaboration, skyline brands GmbH (as currently named) was renamed twice, both names being known and accepted by the Complainant, as were all related marketing activities. As said company distributed the Complainant’s products, the Complainant confirmed

exclusivity for the European market. Following termination of the business relationship, existing bottles are being sold off but no further product is being purchased from the Complainant.

The Complainant was aware of the use of the disputed domain name at all times during the commercial relationship and agreed that the disputed domain name was lawfully acquired before the registration of the Complainant's mark to reflect a descriptive term. The Complainant's employees communicated to email addresses formed under the address space of the disputed domain name and likewise corresponded using the "BlenderBottle" company name.

The Respondent has never sold the Complainant's products nor has any payment obligations to the Complainant. The German District Court decision underscores the legality of the Respondent's position regarding the sale of the Complainant's products.

Upon the Complainant's objection, the use of the disputed domain name by skyline brands GmbH promptly ceased. The intention to use the disputed domain name descriptively mitigates any risk of confusion.

The Complainant has successfully monopolized the descriptive term "Blender Bottle" through a trademark registration after the Respondent registered the disputed domain name. This does not mean that every descriptive use of this term (such as the use as an email address) is unlawful, or that everyone who uses this descriptive term or holds a domain name of the same name is acting in bad faith.

C. Complainant's supplemental filing

In summary, the Complainant contends as follows:

The Complainant asserts that its BlenderBottle line of products was established in 2003 and by 2010 had already established a strong reputation in the United States, adding that the Complainant advertised and sold its products on the website "www.blenderbottle.com," since long before the registration of the disputed domain name.

Contrary to the Respondent's assertion, the Complainant had already established a presence in the European Union prior to the relationship with benley GmbH and any dealings with the Respondent, when the Complainant sold BlenderBottle products to an authorized customer based in the Netherlands (Kingdom of the) who placed orders and resold such products. The disputed domain name was first operated in Dutch by said customer's company, which was listed as the operator at the corresponding website as early as 2011, which website specifically referenced the Complainant's products. After the Complainant established its relationship with benley GmbH, its said customer was directed to purchase products directly from benley GmbH. Said customer corresponded with benley GmbH and the Respondent in particular using the disputed domain name as his email address.

The history of the disputed domain name contradicts the Respondent's assertion that the disputed domain name was registered in good faith without knowledge of the Complainant. The Respondent was not using the disputed domain name when benley GmbH first became a distributor of the Complainant's products in Europe, and the disputed domain name was only transferred to the current registrar at a later date, the earliest evidence for which is 2014. The Respondent did not become affiliated with the disputed domain name until the Respondent was aware of the Complainant and had begun operations as the Complainant's European distributor.

While the Respondent asserts that the descriptive nature of the words "blender" and "bottle" existed at the time of registration of the disputed domain name, the Complainant's "BlenderBottle" products were known by the Respondent and had established a presence in the European Union prior to the Respondent's use of the disputed domain name. The Respondent has always used the disputed domain name to refer to the Complainant's said products. The Respondent's assertion that the disputed domain name was adopted in a descriptive manner strains credulity and is contradicted by the evidence.

D. Respondent's supplemental filing

In summary, the Respondent contends as follows:

It is unclear upon which rights the Complainant relies. The Complainant does not state when the Respondent is alleged to have registered the disputed domain name or why there is bad faith.

The Respondent is not aware of the exact time when it registered or acquired the disputed domain name. It is certain that the Respondent was not known to the Complainant at the time of registration in March 2010. From 2012 onwards, the Respondent acted in agreement with the Complainant when the Complainant had no trademark rights. The Complainant claims that trademark rights existed in the term "blenderbottle" but provides no evidence of such. At the time when the disputed domain name was registered, there were no such trademark rights.

The Respondent is not aware that the Complainant had a strong market position in 2010. The Complainant Trove Brands Ireland Limited was only founded in May 2024 and there is no evidence of earlier existence for the other Complainants, thus it is incorrect to say that a product line of all the Complainants was launched in 2003.

The disputed domain name was already being used at a time when no brand existed, in order to build the brand in the countries of the European Union. The market presence of the Complainant was not a prerequisite for the registration of the disputed domain name but the result of sales efforts of the various companies mentioned in the Complaint.

The Respondent has no correspondence archived, cannot disprove whether the Complainant's customer was previously the owner of the disputed domain name, and does not remember when transfer or registration of the disputed domain name was executed. The Respondent was not the recipient of any of the correspondence produced by the Complainant mentioning said customer.

The Complainant does not dispute that the disputed domain name consists of two descriptive words and is descriptive overall, supporting the Respondent's position that it had legitimate reasons to register and use the disputed domain name.

The Complainant was aware that the company name "BlenderBottle Europe" was in use and agreed to this. Without the support of those at that company, the Complainant would not have obtained a European registered trademark. Had the Respondent intended to harm the Complainant, it would have registered such trademark itself but it did not do this.

6. Discussion and Findings

6.1. Procedural issue – Consolidation of the Complainants

In the present proceeding, the Complainants have requested consolidation of their respective complaints against the Respondent. The ADR Rules do not expressly contemplate that an ADR complaint will be filed by multiple complainants but nor do they exclude or prohibit such a filing.

In assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels under the ADR Rules typically consider 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.⁴

⁴ See, for example, *Eastman Chemical Company and Eastman Chemical HTF GmbH v. Rodun International B.V.*, WIPO Case No. [DEU2022-0032](#), *Chevron Corporation, Chevron Intellectual Property LLC, and Chevron Belgium BV v. Kristiina Loodus*, AS QLS, WIPO Case No. [DEU2022-0039](#), and [WIPO Overview 3.0](#), section 4.11.1.

The Panel finds it appropriate to accept the Complainants' request for consolidation in the present case, on the basis that the Complainants are related entities as described in the factual background section above, and that they have a specific common grievance against the Respondent. The Respondent has not sought to oppose such consolidation. Furthermore, it appears to the Panel both equitable and procedurally efficient to permit it, there being no apparent prejudice to the Respondent in so doing.

The Panel allows the consolidation of the Complainants' respective complaints in the present proceeding. For convenience, unless the context requires it to refer to one or other of the Complainants, the Panel will refer to the Complainants as "the Complainant".

6.2. Procedural issue – Parties' supplemental filings

Paragraph B(8) of the ADR Rules states that, in addition to the Complaint and Response, the Panel may request or admit, in its sole discretion, further statements or documents from either of the Parties. Here, both Parties have submitted supplemental filings seeking to respond to the contentions of the other.

The Panel is content to accept both supplemental filings in this case because these are largely confined to material which each of the Parties could not have reasonably anticipated in their filings-in-chief.

6.3. Substantive issues

In terms of Paragraph B(11)(d)(1) of the ADR Rules, the Complainants must prove in an ADR Proceeding where the Respondent is the holder of a .eu domain name registration in respect of which the Complaint was initiated, that:

- (i) the disputed domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or European Union law; and either
- (ii) the disputed domain name has been registered by the Respondent without rights or legitimate interest in the name; or
- (iii) the disputed domain name has been registered or is being used in bad faith.

A. Identical or Confusingly Similar to a name in respect of which a right or rights are recognized or established by national law of a Member State and/or European Union law

The Panel finds that the Complainant has established that it has relevant rights in a trademark in respect of the BLENDERBOTTLE mark. The disputed domain name is identical to that mark. The fact that the disputed domain name may have been registered before the trademark concerned is not relevant for this particular requirement of the ADR Rules.

The Panel finds that the disputed domain name is identical to a name in respect of which a right or rights are recognized or established by national law of a Member State and/or European Union law as required by the ADR Rules, paragraph B(11)(d)(1)(i), and that the Complainant has carried its burden in this respect.

B. Rights or Legitimate Interests

The ADR Rules, paragraph B(11)(d)(1)(ii) requires the Complainant to demonstrate (as an alternative to paragraph B(11)(d)(1)(iii)) that the disputed domain name has been registered by the Respondent without rights or legitimate interests in the disputed domain name.

The ADR Rules, paragraph B(11)(e) sets out a non-exhaustive list of circumstances that if found by the Panel to be proved shall demonstrate the Respondent's rights to or legitimate interests in the disputed domain name.

Here, the main focus of the Complainant's contentions is that the Respondent was not entitled to use the disputed domain name following the termination of its distribution agreement with Benley Distribution. In effect, the Complainant seeks to enforce the terms of such agreement via the ADR Rules. As has been noted by the panel in a similar previous case under the ADR Rules, "This ADR procedure is, however, not available to decide parties' dispute with respect to the question if the termination of the distribution agreement took effect or not, but merely to decide the elements of paragraph B(11)(d)(1) of the ADR Rules" (see: *Helinox Inc. and Helinox Europe B.V. v. Helinox Development*, WIPO Case No. [DEU2018-0001](#)).

Nevertheless, previous panels under the ADR Rules have determined that it is appropriate to regard respondents entering into a distribution agreement as having no rights or legitimate interests in a domain name corresponding to the complainant's rights following termination of such agreement. For example, in *Vitalen Otomotiv A.Ş and Vitalen Technology GmbH v. Faith Ünsal*, WIPO Case No. [DEU2022-0001](#), the facts were as follows (1) the complainant's trademark predated the registration date of the domain name concerned, (2) said domain name was registered by the respondent in its personal name, (3) a company of which the respondent was the founder and manager subsequently entered into a distribution agreement with the complainant which specified that rights in domain names incorporating the complainant's trademark belonged to the complainant, and (4) said distribution agreement was later cancelled due to the unauthorized registration of the domain name concerned.

Here, however, it is unclear exactly when the Respondent or one of its affiliates originally acquired the disputed domain name from the Complainant's customer. This is a matter that would ordinarily be entirely within the Respondent's knowledge, but the Respondent says that it has forgotten and volunteers no information as to how the disputed domain name came from being held by the Complainant's customer to being held in the Respondent's personal name.⁵ The Panel has gained the impression that the Respondent is lacking candor in this respect, notably because the Response originally indicated that the Respondent had been the registrant of the disputed domain name from 2010 when this was not the case and the Respondent must have known that such an indication was incorrect. Once the historic WhoIs and historic website screenshots were put to it, the Respondent only stated at that point that it could not remember how and when the disputed domain name was transferred to it.⁶

In any event, the Panel finds on the balance of probabilities that the transfer of the disputed domain name from the Complainant's customer to the Respondent or to one of its affiliates took place at the earliest between September 21, 2013 and June 14, 2014 on the basis outlined in the factual background section above. By that point, the Respondent by its own admission states that it had been working with the Complainant for between one and two years. The Complainant's European Union registered trademark was filed on February 15, 2013 and granted on January 14, 2014. The Respondent states that without the help of the various companies involved on the European distribution side (to which the Panel finds that the Respondent was affiliated per the correspondence produced by the Respondent) the Complainant would never have obtained such trademark. Consequently, the Panel finds that the Respondent was more probably than not aware of the Complainant's trademark (insofar as it had either been granted or had been filed and was in the process of review by the relevant trademark office) when the Respondent or one of its affiliates originally acquired the disputed domain name. Given that the disputed domain name was therefore either acquired at a point where the coming into existence of the Complainant's mark was in the Respondent's contemplation or after it was registered, the Respondent is, in that respect, in a similar position to the respondent in *Vitalen Otomotiv A.Ş and Vitalen Technology GmbH v. Faith Ünsal*, *supra*.

It is at this point, however, that the facts and circumstances of the present case part company with those in *Vitalen Otomotiv A.Ş and Vitalen Technology GmbH v. Faith Ünsal*, *supra*. In the present case, the Parties

⁵ As noted above, the Registry confirmed on September 20, 2024 that the Respondent is the holder of the disputed domain name since January 30, 2017. The Panel does not exclude the possibility that an affiliate of the Respondent may have become the holder of the disputed domain name at an earlier date, probably between September 21, 2013 and June 14, 2014, before transferring it into the Respondent's personal name.

⁶ Given that the Respondent cannot remember anything relating to the transfer of the disputed domain name into its personal name, the Panel determined that it would serve no good purpose to put the Registry's clarification to the verification response (indicating that the Respondent is the registrant of the disputed domain name since January 30, 2017) to the Respondent.

cooperated via various corporate vehicles for a lengthy period of time before any formal distribution agreement was entered into. Furthermore, the Respondent was not a party to the formal distribution agreement that was ultimately entered into. The Panel therefore asks itself whether the disputed domain name could have been “registered by the Respondent without rights or legitimate interest in the name” when it was evidently registered in the course of an informal distribution agreement, at a time when there was no relevant prohibition in place of the sort that was ultimately included in the formal distribution agreement. As an affiliate of the Complainant’s European partner, the Respondent could not be said to have registered the disputed domain name without a legitimate interest in the disputed domain name. Furthermore, the Panel assumes that as the Complainant does not appear to have had any European undertaking in its corporate group at the material time (the Complainant’s Irish company having only been registered in 2024) the Respondent might have taken the disputed domain name in its own name, perhaps with the Complainant’s blessing, because the Respondent was an eligible registrant of a .eu domain name when the Complainant was not.

From January 30, 2017, it appears that the Respondent became the holder of the disputed domain name and merely allowed the disputed domain name to be available to those companies representing the German end of the distribution arrangement, presumably by way of a de facto license. While the Complainant provided in the formal distribution agreement that previous rights obtained by the other party (the German limited partnership) must be assigned to the Complainant, it failed to make any such provision in respect to the prior informal arrangement with the limited companies affiliated to the Respondent or, crucially, with the Respondent itself.

In all of these circumstances, the Panel finds that the Complainant has failed to prove that the disputed domain name was registered without rights or legitimate interest in the name.

C. Registered or Used in Bad Faith

As an alternative to proving that the disputed domain name was registered without rights or legitimate interests, the ADR Rules, paragraph B(11)(d)(1)(iii) provides that the Complainant shall prove that the disputed domain name has been registered or is being used in bad faith.

The ADR Rules, paragraph B(11)(f) provides a nonexclusive list of circumstances that may constitute evidence of the registration or use of a domain name in bad faith.

The focus of the Complainant’s submissions is on use in bad faith. The Panel notes in passing that along the lines of the analysis in the immediately preceding section, the Respondent or one of its affiliates seems to have acquired the disputed domain name in the course of (at least one to two years into) an informal commercial distribution arrangement in which there was no corresponding prohibition expressed by the Complainant, with the Respondent becoming the holder of the disputed domain name in its personal name on January 30, 2017. Indeed, the disputed domain name was used for many years to promote the Complainant’s informal and formal European distribution arrangements with the Complainant’s knowledge and agreement. It appears that the Complainant did not know that the disputed domain name was held in the Respondent’s personal name from 2017, but it certainly knew and condoned the fact that the disputed domain name had been acquired by someone at the German distribution end. In these circumstances, the Panel does not find that the disputed domain name was registered in bad faith.

Turning to the question of use in bad faith, paragraph B(11)(d)(1)(iii) of the ADR Rules requires a complainant to show that the domain name concerned “is being used” in bad faith. The Complainant references both the continued use of the disputed domain name for the “BlenderBottle” website post-termination of the distribution agreement, and the subsequent use of the disputed domain name to serve PPC advertising links. The use for the “BlenderBottle” website had ceased by the time the Complaint was filed, and consequently it could be argued, given that the ADR Rules express the requirement for use in the present tense, that this is not a relevant use for this question (other than as part of the overall factual matrix).

The essence of the Complainant's case regarding the PPC links is that the Respondent is not entitled to retain the disputed domain name following the termination of the distribution relationship. The Respondent counters that it is entitled to hold the disputed domain name and to use it in this way because the term "blender bottle" has a descriptive or dictionary meaning and may be referred to, in good faith, as such. The Respondent's initial position was that it originally acquired the disputed domain name on that basis and was merely reverting to the use planned at that time. However, the information put forward in the Complainant's supplemental filing disproves the suggestion that the disputed domain name was acquired by the Respondent independently of the Parties' relationship, and thus, with any alleged dictionary meaning in mind. It was intimately connected with the Complainant, its product and its trademark. It had been used to promote such by the Complainant's customer even before the Respondent or one of its affiliates originally acquired the disputed domain name. The Respondent was aware from the outset that the Complainant had built substantial reputation and goodwill in the BLENDERBOTTLE mark (even if such mark was initially unregistered). This can be seen by way of the quotations and testimonials on the initial archived version of the Respondent's website associated with the disputed domain name dating from August 22, 2014. It would stretch credulity beyond breaking point to suggest, as the Respondent does, that the Complainant had no rights whatsoever in the term, and equally that the Respondent acquired the disputed domain name independently of those rights. Furthermore, as noted in the preceding section, the Complainant's application for a registered mark itself was either being evaluated by the relevant office (with the Respondent's likely awareness of such) or such mark had already been registered and was in force.⁷

The Respondent's contention for a descriptive use following termination of the formal and informal distribution arrangements rests on exceptionally thin evidence, namely a Google book search with four entries. One of the examples put forward, the oldest from 1949, is a dictionary of occupational titles where the listed occupation is clearly intended to be "blender" and not "blender bottle". The other references seem to relate to some form of scientific process or apparatus, but these are insufficient on their own to establish that the term has a genuine descriptive use or dictionary meaning. Based upon the evidence before it, the Panel considers that the relevant public is likely to see the disputed domain name as a reference to the Complainant's mark, not to a dictionary phrase indicating a bottle in which blending takes place. Use either in connection with the present PPC advertising links or the Respondent's intended future use to sell third party product could not therefore be regarded as a good faith use. Such uses take unfair advantage of the Complainant's trademark.

Furthermore, it cannot be overlooked that the Respondent's use of the disputed domain name until very recently has been exclusively concerned with the Complainant's product and intimately bound up with the Complainant's BLENDERBOTTLE trademark. The acquisition of the disputed domain name took place at a time when, considering the 2014 website, the Respondent was aware of the secondary meaning that was likely to have been already established in the term as a single word, as demonstrated by the quotations and testimonials. When the disputed domain name was transferred into the Respondent's personal name, the Respondent was already aware of the Complainant's registered BLENDERBOTTLE trademark. In all of the above circumstances, the Respondent cannot contend that it is making and is entitled to make a descriptive use of the phrase today. To the extent that the Respondent wishes to challenge the registration of the Complainant's trademark on the grounds of descriptiveness, a proceeding under the ADR Rules is not the proper forum.

In these circumstances, the Panel finds that the Complainant has proved that the disputed domain name is being used in bad faith.

⁷ As subsequently confirmed by the Registry, the Respondent acquired the disputed domain name in its personal name on January 30, 2017. By that date, the Complainant's trademark had been registered for a period of three years.

7. Decision

For the foregoing reasons, in accordance with Paragraph B(11) of the ADR Rules, the Panel orders that the disputed domain name <blenderbottle.eu> be transferred to the Third Complainant, Trove Brands Ireland Limited.⁸

/Andrew D. S. Lothian/

Andrew D. S. Lothian

Sole Panelist

Date: September 23, 2024

⁸ (i) The decision shall be implemented by the Registry within thirty (30) days after the notification of the decision to the Parties, unless the Respondent initiates court proceedings in a Mutual Jurisdiction, as defined in Paragraph A(1) of the ADR Rules.

(ii) As the Third Complainant, Trove Brands Ireland Limited, is located in Ireland, a Member State of the European Union, it satisfies the general eligibility criteria for registration of the disputed domain name set out in Article 3 of Regulation (EU) 2019/517. Consequently, the Complainant is entitled to request the transfer of the disputed domain name.