

ADMINISTRATIVE PANEL DECISION

Caffè Borbone S.r.l. v. Jessie Larson

Case No. DME2023-0017

1. The Parties

The Complainant is Caffè Borbone S.r.l., Italy, represented by Società Italiana Brevetti, Italy.

The Respondent is Jessie Larson, United States of America.

2. The Domain Name and Registrar

The disputed domain name <caffeborbone.me> is registered with Dynadot Inc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 6, 2023. On December 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (REDACTED FOR PRIVACY (DT)) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 7, 2023, 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 December 11, 2023.

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 December 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 17, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 18, 2024.

The Center appointed Knud Wallberg as the sole panelist in this matter on January 24, 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, Caffè Borbone S.r.l., was founded in 1996 and is now one of the leading Italian coffee makers producing a variety of capsules, coffee beans and ground coffees.

The Complainant owns several registrations of the trademark CAFFÉ BORBONE including:

- International trademark CAFFÉ BORBONE No. 902614, registered on January 11, 2006, duly renewed, covering goods and services in international classes 9, 30 and 43, and designating the European Union and the Russian Federation.
- European Union trademark CAFFÉ BORBONE No. 15670541, registered on November 23, 2016, duly renewed, covering goods and services in international classes 7, 11, 21, 30, 35, 37, 40 and 43.

The disputed domain name was registered on August 30, 2023 and it is offered for sale or for lease at the website “www.dan.com”.

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 disputed domain name is identical to its earlier and well-known trademark CAFFÉ BORBONE. The Complainant further contends that there are none of the circumstances, which set out how a respondent can prove rights or legitimate interests in the disputed domain name, are present in this case. The Complainant finally contends that the Respondent has registered and is using the disputed domain name in bad faith. The Respondent knew or should have known about the Complainant and its CAFFÉ BORBONE trademark when the disputed domain name was registered, and the fact that the disputed domain name is offered for sale or lease is a clear proof of bad faith use.

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 identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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 disputed domain name contains the Complainant’s widely used and distinctive trademark and it is inconceivable to the Panel that the Respondent registered the disputed domain name without prior knowledge of the Complainants and the Complainant’s marks.

Furthermore, the disputed domain name is offered for sale or lease at a price likely in excess of the holder’s out-of-pocket costs directly related to the disputed domain name, which is in itself an indication of bad faith use cf. Paragraph 4(b)(i) of the Policy.

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 <caffeborbone.me> be transferred to the Complainant.

/Knud Wallberg/

Knud Wallberg

Sole Panelist

Date: February 12, 2024