

## ADMINISTRATIVE PANEL DECISION

JB IP, LLC v. Name Redacted

Case No. D2023-3676

### 1. The Parties

Complainant is JB IP, LLC, United States of America (“U.S.”), represented by Valauskas Corder LLC, U.S.

Respondent is Name Redacted<sup>1</sup>.

### 2. The Domain Name and Registrar

The disputed domain name <jungleboys.delivery> is registered with GoDaddy.com, LLC (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 1, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 5, 2023, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on September 11, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to Complaint on September 12, 2023.

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”).

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<sup>1</sup> The Respondent appears to have used the name of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on September 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 5, 2023. Respondent did not submit any formal response, but on September 25, 2023, a third party contacted the Center by email stating that, "I did not register this domain. I have been a victim of identity fraud in the past and this may be a continuation from this." Accordingly, the Center notified Respondent's default on October 6, 2023.

The Center appointed Phillip V. Marano as the sole panelist in this matter on October 11, 2023. 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**

Complainant is an intellectual property holding company for an independent cannabis collective in operation since at least as early as 2009 (collectively referred to as "Complainant"). Complainant offers information about its goods and services through its official <jungleboys.com> domain name and website. Complainant owns valid and subsisting state and federal registrations for the JUNGLE BOYS trademark in the U.S., including most notably the trademark for JUNGLE BOYS (Reg. No. 7,134,110), filed on October 5, 2020, registered on August 8, 2023, with a first use in commerce on December 21, 2016.

The disputed domain name was registered on January 7, 2023. At the time this Complaint was filed, the disputed domain name resolved to Respondent's website which (i) made repeat use of Complainant's stylized JUNGLE BOYS trademark and images of Complainant's goods from Complainant's official website, (ii) purported to offer delivery services for Complainant's goods (including language such as "Winnipeg Cannabis Delivery Menu"), and (iii) asserted "© Jungle Boys Canada All Rights Reserved."

#### **5. Parties' Contentions**

##### **A. Complainant**

Complainant asserts ownership of the JUNGLE BOYS trademark and has adduced evidence of trademark registration in the U.S. including JUNGLE BOYS (Reg. No. 7,134,110), with earliest priority dating back to December 21, 2016. The disputed domain name is identical or confusingly similar to Complainant's JUNGLE BOYS trademark, according to Complainant, because it utilizes Complainant's JUNGLE BOYS trademark in its entirety.

Complainant further asserts that Respondent lacks any rights or legitimate interests in the disputed domain name based on: Respondent's website, which uses content identical to Complainant's official website and attempts to impersonate Complainant; the lack of any authorization by Complainant for Respondent to use its JUNGLE BOYS trademark.

Complainant argues that Respondent has registered and used the disputed domain name in bad faith for numerous reasons, including: Respondent's website claims to provide the same or highly related goods and services as offered by Complainant without Complainant's permission; and Respondent's website, which uses content identical to Complainant's official website, and attempts to impersonate Complainant.

##### **B. Respondent**

Respondent did not reply to Complainant's contentions. Instead, on September 25, 2023, a third party stated by email: "I did not register this domain. I have been a victim of identity fraud in the past and this may be a continuation from this." This uncontroverted claim is the only evidence touching on the apparent identity theft in the record for this case.

In the absence of any other evidence or indication that may contravene the above-referenced third party email, the Panel finds that this is more likely than not a case identity theft, thus the Panel has decided to redact Respondent's name from the Decision.

## 6. Discussion and Findings

To succeed in its Complaint, Complainant must establish in accordance with paragraph 4(a) of the Policy:

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

Although Respondent did not reply to Complainant's contentions, the burden remains with Complainant to establish by a balance of probabilities, or a preponderance of the evidence, all three elements of paragraph 4(a) of the Policy. A respondent's default would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true. UDRP panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case, *e.g.*, where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), sections 4.2 and 4.3; *see also The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#) ("The Respondent's default does not automatically result in a decision in favor of the complainant. The Complainant must still prove each of the three elements required by Policy paragraph 4(a)").

### A. Identical or Confusingly Similar

Ownership of a nationally or regionally registered trademark serves as *prima facie* evidence that Complainant has trademark rights for the purposes of standing to file this Complaint. [WIPO Overview 3.0](#), section 1.2.1. Complainant submitted evidence that the JUNGLE BOYS trademark has been registered in the U.S. with priority dating back to December 21, 2016. Thus, the Panel finds that Complainant's rights in the JUNGLE BOYS trademark have been established pursuant to the first element of the Policy. And accordingly, the Panel need not address Complainant's various state trademark registrations or Complainant's pending US trademark applications.

The only remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant's JUNGLE BOYS trademark. In this Complaint, the disputed domain name is identical to Complainant's JUNGLE BOYS trademark because, disregarding the ".delivery" generic Top-Level Domain ("gTLD"), the entirety of the trademark is contained within the disputed domain name. [WIPO Overview 3.0](#), section 1.7. ("This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name ... [I]n cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar..."). With regard to gTLDs, such as ".delivery" in the disputed domain name, they are generally viewed as a standard registration requirement and are disregarded under the first element. [WIPO Overview 3.0](#), section 1.11.1.

In view of the foregoing, the Panel concludes that Complainant has established the first element of the Policy.

## B. Rights or Legitimate Interests

Complainant must make out a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name, shifting the burden of production on this element to Respondent to come forward with evidence demonstrating such rights or legitimate interests. Where, as in this Complaint, Respondent fails to come forward with any relevant evidence, Complainant is deemed to have satisfied the second element of the Policy. [WIPO Overview 3.0](#), section 2.1.

It is self-evident that Respondent, who the record reflects has misappropriated the identity of an innocent third party and used it for the registration of the disputed domain name, is not commonly known by neither the disputed domain name or Complainant's JUNGLE BOYS trademark.

In addition, UDRP panels have categorically held that use of a domain name for illegal activity—including the impersonation of the complainant and other types of fraud - can never confer rights or legitimate interests on a respondent. Circumstantial evidence can support a credible claim made by Complainant asserting Respondent is engaged in such illegal activity, including that Respondent has masked its identity to avoid being contactable, or that Respondent's website has been suspended by its hosting provider.

[WIPO Overview 3.0](#), section 2.13. See e.g., *Graybar Services Inc. v. Graybar Elec, Grayberinc Lawrence*, WIPO Case No. [D2009-1017](#) ("Respondent has used the domain name to pretend that it is the Complainant and in particular to create false emails pretending that they are genuine emails coming from the Complainant and one of its senior executives"); see also *The Commissioners for HM Revenue and Customs v. Name Redacted*, WIPO Case No. [D2017-0501](#) ("In addition, the disputed domain names ... have had their web hosting suspended as a result of fraudulent activities. This is evidence of bad faith registration and use of the disputed domain names"). In its Complaint, screengrab evidence submitted by Complainant is compelling in that it is easy matter to compare Complainant's official website with Respondent's website. More specifically, Respondent's website: (i) makes repeated unauthorized use of Complainant's stylized JUNGLE BOYS trademark; (ii) makes repeated unauthorized use of images of Complainant's goods from Complainant's official website; (iii) purports to offer delivery services for Complainant's goods (including language such as "Winnipeg Cannabis Delivery Menu"); and (iv) asserts copyright ownership by a putative Canadian affiliate of Complainant, "© Jungle Boys Canada All Rights Reserved." In addition, as discussed above, uncontroverted evidence in this case establishes that Respondent has likely stolen the identity of an innocent third party for use in the Whois records for the disputed domain name, almost certainly in an attempt to mask Respondent's true identity and avoid being contactable. To this end, the second and third elements of the Policy may be assessed together where clear indicia of bad faith suggests that there cannot be any Respondent rights or legitimate interests. [WIPO Overview 3.0](#), section 2.15.

Furthermore, the nature of the disputed domain name carries a high risk of implied affiliation and cannot constitute fair use here, as it effectively infringes and suggests sponsorship or endorsement by Complainant. [WIPO Overview 3.0](#), section 2.5.1.

In view of the foregoing, the Panel concludes that Complainant has established the second element of the Policy.

## C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy proscribes the following non-exhaustive circumstances as evidence of bad faith registration and use of the disputed domain name:

- i. Circumstances indicating that Respondent has registered or Respondent has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to Complainant who is the owner of the trademark to a competitor of that Complainant, for valuable consideration in excess of Respondent's documented out of pocket costs directly related to the disputed domain name; or

- ii. Respondent has registered the disputed domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- iii. Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- iv. By using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

UDRP panels have categorically held that registration and use of a domain name for illegitimate activity - including impersonation - is manifestly considered evidence of bad faith within paragraph 4(b)(iv) of the Policy. [WIPO Overview 3.0](#), section 3.1.4. Use of the disputed domain name by Respondent to pretend that it is Complainant or that it is associated with Complainant "brings the case within the provisions of paragraph 4(b)(iii) of the Policy, for it shows Respondent registered the domain name primarily for the purpose of disrupting the business of a competitor, namely Complainant." *Graybar Services Inc. v. Graybar Elec, Grayberinc Lawrence*, WIPO Case No. [D2009-1017](#); see also *GEA Group Aktiengesellschaft v. J. D.*, WIPO Case No. [D2014-0357](#) (concluding that Respondent's use of the disputed domain name to disrupt the Complainant's business by using it to impersonate the Complainant for commercial gain was evidence of respondent's bad faith registration and use of the disputed domain). In the present case, the Panel also notes that the registration of the disputed domain name is subsequent to Complainant's trademark first use in commerce in 2009.

As discussed in greater detail above, Complainant has proffered compelling evidence that Respondent's website misappropriates Complainant's stylized JUNGLE BOYS trademark and official website content. Respondent also evidently registered the disputed domain name using the identity of another third party who has no actual connection to the disputed domain name. The use of false registration data in connection with the disputed domain name (and in this case, broader identity theft used to perpetrate impersonation) further supports a finding of bad faith registration and use. See, e.g., *Action Instruments, Inc v. Technology Associates*, WIPO Case No. [D2003-0024](#); [WIPO Overview 3.0](#), section 3.4.

In view of the foregoing, the Panel concludes that 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 <jungleboys.delivery> be transferred to Complainant.

*/Phillip V. Marano/*

**Phillip V. Marano**

Sole Panelist

Date: November 7, 2023