

ADMINISTRATIVE PANEL DECISION

Blu Dot Design & Manufacturing, Inc. v. FangShuidi Case No. D2023-4128

1. The Parties

The Complainant is Blu Dot Design & Manufacturing, Inc., United States of America (“United States”), represented by Fredrikson & Byron, PA, United States.

The Respondent is FangShuidi, China.

2. The Domain Name and Registrar

The disputed domain name <homebludot.com> is registered with OwnRegistrar, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 4, 2023. On October 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 6, 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 (Ubfhs Oncfsf) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 6, 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 October 9, 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 October 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 6, 2023.

The Center appointed Mihaela Maravela as the sole panelist in this matter on November 16, 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

According to information in the Complaint, for over 26 years the Complainant has designed, created, and sold design-driven furniture and home furnishing products throughout the United States and the world under the trademark BLU DOT.

The Complainant is the owner of various registered trademarks that consist of or include BLU DOT, including the United States trademark no. 4370810 for BLU DOT, registered on July 23, 2013, covering goods in classes 20 and 35; and the Chinese trademark no. 35138607 for BLU DOT, registered on May 14, 2022, for goods in class 25. The Complainant has registered the domain name <bludot.com> since June 25, 1997, which it uses as its official website.

The disputed domain name was registered on July 25, 2023, and resolves to a website purporting to sale BLU DOT goods at discounted prices, for example furniture reduced from USD 462 to USD 89, or from USD 425 to USD 98. The website does not include any details of the operator of the website, and displays the trademark of the Complainant in product description.

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 consists entirely of the Complainant's trademark preceded by the descriptive word "home," implying that the disputed domain name is for the sale of home goods (furniture and home furnishings) of the Complainant. The addition of "home" does not prevent a finding of confusing similarity, as the Complainant's trademark is clearly recognizable within the disputed domain name.

As regards the second element, the Complainant contends that the Respondent purports to sell genuine Complainant furniture and home furnishings, using the Complainant's BLU DOT trademark, the Complainant's product trademarks, and mostly appear to use the Complainant's own photography to sell the home items, at discounted sale prices. The Complainant has never authorized the Respondent to register or use the disputed domain name or to provide any goods or services for the Complainant. There is absolutely no connection or relationship of any kind or nature between the Complainant and the Respondent. The Respondent's website also contains no disclaimer as to an affiliation or sponsorship by the Complainant.

With respect to the third element, the Complainant argues that given the status of the Complainant in the furniture and home furnishings industry and the Respondent's use of the identical mark in the disputed domain name with the addition of the descriptive word "home" for purposes of selling BLU DOT furniture and home furnishings, bad faith may be inferred. The Respondent is actively using the disputed domain name to pass itself off as the Complainant by selling discounted BLU DOT furniture and home furnishings.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

No response has been received from the Respondent in this case. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules. The applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”, and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights, (ii) the 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.

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 3.0](#), section 1.7.

Based on the available record, the Panel finds 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 entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. While the addition of other terms here, “home” may bear on assessment of the second and third elements, the Panel finds the addition of such terms do not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, 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.

While 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 often impossible 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. 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 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.

In the present case, the Complainant has established a *prima facie* case that it holds rights over the trademark BLU DOT and claims that the Respondent has no legitimate reason to acquire and use the disputed domain name. There is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services. Rather, according to the unrebutted evidence of the Complainant, the website at the disputed domain name is used to offer for sale BLU DOT goods at a significantly discounted price. Comparing the prices on the website at the disputed domain name (the full price and the discounted price for the same product), as described in Section 4 above, it is reasonable to conclude that those offered on the website at the disputed domain name are counterfeit products. As a result, the Panel finds on balance of probabilities that the website to which the disputed domain name resolves offers counterfeits of the Complainant's products. (Even if the products were genuine, the lack of any disclaimer on the website at the disputed domain name as to the registrant's relationship with the trademark owner or the lack thereof, would falsely suggest to Internet users that the website to which the disputed domain name resolves is owned by the Complainant or at least affiliated to the Complainant).

Also, there is no evidence that the Respondent is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy.

Furthermore, the nature of the disputed domain name carries a risk of implied affiliation and cannot constitute a fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#). The Respondent failed to rebut the *prima facie* case made by the Complainant because the Respondent did not respond to the Complainant's contentions.

Based on the available record, 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 Complainant's registration and use of the relevant trademarks predate the date at which the Respondent registered the disputed domain name. The disputed domain name resolves to a website reproducing the Complainant's trademark and purportedly offering for sale the Complainant's products but at a much lower price. Given the distinctiveness of the Complainant's trademark, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademarks, and to target those trademarks.

The use of the term "home" reinforces the impression that the disputed domain name is connected or endorsed by the Complainant's given that the Complainant's goods are home furniture products. The disputed domain name resolves to a website, which ostensibly offers counterfeits of the Complainant's products. As such, the disputed domain name suggests affiliation with the Complainant in order to attract consumers and offer counterfeit products for commercial gain.

In the Panel's view, the circumstances of the case represent evidence of registration and use in bad faith of the disputed domain name. The Respondent failed to bring evidence as to the contrary.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 <homebludot.com> be transferred to the Complainant.

/Mihaela Maravela/

Mihaela Maravela

Sole Panelist

Date: November 30, 2023