

ADMINISTRATIVE PANEL DECISION

Pointe Noir Pty Ltd, Bloch International Management Pty. Ltd. v. Client Care,
Web Commerce Communications Limited
Case No. D2024-0408

1. The Parties

The Complainants are Pointe Noir Pty Ltd (“Pointe Noir”), and Bloch International Management Pty. Ltd. (“Bloch”), Australia, represented by Venable, LLP, United States of America (“US”).

The Respondent is Client Care, Web Commerce Communications Limited, Malaysia.

2. The Domain Names and Registrar

The disputed domain names <bloch-argentina.com>, <blochchile.com>, <blochcolombia.com>, <blochcostarica.com>, <blochcz.com>, <blohecuador.com>, <blochhrvatska.com>, <blochisrael.com>, <blochjapan.com>, <blochmagyarország.com>, <blochmalaysia.com>, <blochmexico.com>, <blochnorge.com>, <blochosterreich.com>, <blochperu.com>, <blochphilippines.com>, <blochschweiz.com>, <blochsingapore.com>, <blochsouthafrica.com>, <blochsuomi.com>, <blochsverige.com>, and <blochturkiye.com> are registered with Alibaba.com Singapore E-Commerce Private Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 29, 2024. On January 30, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On January 31, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainants on January 31, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amendment to the Complaint on February 1, 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 February 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 3, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 5, 2024.

The Center appointed Clive Duncan Thorne as the sole panelist in this matter on March 11, 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

Pointe Noir and its associated company Bloch are both Australian Proprietary companies and are related companies having common interests worldwide as owners and legitimate users in the trade marks BLOCH.

The brand BLOCH was first used by the Complainants or its predecessors in title in Australia in 1932. It is now one of the world's leading brands of technical dance footwear and apparel. The current website for the BLOCH brand "www.us.blochworld.com" has been owned and operated by Pointe Noir since April 1998.

It can be seen from Annex 5 to the Complaint that the website prominently displays the BLOCH trade marks in connection with dance footwear and apparel.

Pointe shoes branded BLOCH are sold on the website. They are hand-made and used by leading dance companies throughout the world including the Royal Ballet, the American Ballet Theatre, the Bolshoi Ballet, and the Australian Ballet. The shoes have also been worn by some of the world's current and past elite ballerinas.

The Complainants' website is depicted at Annex 5 to the Complaint and prominently displays the BLOCH trade mark as used for footwear and apparel.

Pointe Noir owns the following US trade marks;

BLOCH, Class 25	No.1898161	registered June 6,1995
BLOCH, Class 35	No. 3101147	registered June 6,2006
BLOCH, Classes 18 and 25	No. 6464115	registered August 24, 2021

Copies of the US registration certificates are exhibited at Annex 6 to the Complaint.

Bloch owns trade marks for the mark BLOCH in class 25 in Singapore, Peru, Malaysia, Japan, China, Mexico, Argentina, Chile, and Israel. Copies of the certificates of registration are exhibited in Annexes 7, 8, 9, and 10 to the Complaint.

In China, the trade mark registrations for BLOCH owned by Bloch are;

BLOCH, Class 25	No. 15359191	registered May 7, 2016
BLOCH, Class 25	No. 1545405	registered March 28, 2001
BLOCH, Class 18	No. 19126325	registered March 28, 2017

The trade mark registrations relied upon by the Complainants pre-date the dates of registration of the disputed domain names which were all registered on July 20, 2023.

According to the Complainants, the Respondent uses the disputed domain names to promote infringing BLOCH branded products such as ballet point shoes by claiming that they were founded in 1932, like the authentic BLOCH brand and using an identical font to that used on the Complainants' website. Screenshots

from the Respondent's websites connected with the disputed domain names and showing this are depicted in the Complaint and also included in Annex 13 to the Complaint.

The Complainants assert that the Respondent's websites are highly likely to offer counterfeit products. This is evidenced by the low prices offered by the Respondent. For example, genuine showstopper tap shoes which retail for JPY 13,938.51 are offered on the Respondent's website for JPY 8,397.

The Respondent also advertises using the disputed domain names as offering Cheap Bloch Pointe Shoes through Bloch Outlet as illustrated in the Complaint and which are not authorized by the Complainants.

In the absence of a Response, the Panel finds the evidence as adduced by the Complainants to be true.

5. Parties' Contentions

A. Complainants

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

Notably, the Complainants contend that;

- i. The disputed domain names are confusingly similar to the trade mark BLOCH in which the Complainants own registered rights; and
- ii. There is no evidence that the Respondent uses the domain names in connection with a bona fide offering of goods but rather for phishing purposes. This in the absence of a Response is prima facie evidence of the Respondent having no rights or legitimate interests in the domain names;
- iii. The Respondent registered the domain names having constructive notice of the Complainants' trade mark rights and is using the domain names to purposefully disrupt the Complainants' business.

B. Respondent

The Respondent did not reply to the Complainants' 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 Complainants' 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 Complainants have 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 BLOCH is reproduced within all of the disputed domain names together with the name of or reference to a country used descriptively. Examples include <blochchile.com>, <blochjapan.com>, and <blochmagyarorszag.com> (a reference to Hungary). Accordingly, the disputed domain names are confusingly similar 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 Complainants have established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent has not rebutted the Complainants’ prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

In reaching this conclusion the Panel finds, in the absence of a Response, that there is no evidence of any rights that the Respondent has to use the trade mark BLOCH. The Complainants have confirmed that the Complainants have not given any permission to the Respondent to use the trade mark BLOCH. There is no evidence that the Respondent is commonly known by the domain names.

While prior panels have recognized the limited rights of resellers or service providers to use a trademark for nominative purposes, such fair use is subject to the cumulative conditions of [WIPO Overview 3.0](#), section 2.8. Here, the disputed domain names fail such test, seeing as none of them identify the lack of relationship to the Complainant, exacerbating the implied affiliation caused by the composition of the disputed domain names and thus ultimately reinforcing the general impersonating use of the disputed domain names.

Panels have held that the use of a domain name for illegal activity, here claimed as applicable to this case: sale of counterfeit goods, phishing, unauthorized account access/hacking, impersonation/passing off, or other types of fraud, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

In this case, the Complainants have produced evidence set out in Annex 13 to the Complaint that the disputed domain names are and can be used to access a website upon which infringing BLOCH branded products such as ballet shoes are purportedly offered for sale. This also enables the Respondent to use the disputed domain names for the purpose of phishing and fraudulently obtaining personal identifying information such as credit card and address details from unsuspecting customers.

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.

In the present case, the Panel finds that the Respondent, as a result of the distinctive nature and longstanding use internationally by the Complainants of the trade mark BLOCH, is likely to have had

constructive notice of the trade mark. In the absence of contrary evidence this indicates that the Respondent acted in opportunistic bad faith in registering the domain names.

It is also apparent from Annex 13 that the Respondent is using the disputed domain names to purposefully disrupt the business of the Complainants by using them to access its website purportedly offering for sale infringing products.

The Complainants refer to two additional domain names; <blochaustralia.com> and <blochnewzealand.com> the subject of an earlier UDRP complaint in which that Panel (*Pointe Noir Pty Ltd and J. Bloch Pty. Ltd. v. Client Care, Web Commerce Communications Limited*, WIPO Case No. [D2023-4009](#)) found on the basis of similar evidence that those domain names had been registered by the same Respondent as in this Complaint in bad faith.

The Panel finds that the disputed domain names were registered and are being used by the Respondent as part of a pattern of bad faith conduct, and that the Respondent has intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's marks within section 4b(iv) of the Policy.

Panels have held that the use of a domain name for illegal activity as applicable to this case: sale of counterfeit goods or phishing, impersonation/passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain names constitutes bad faith under the Policy.

The Panel finds that the Complainants have 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 names <bloch-argentina.com>, <blochchile.com>, <blochcolombia.com>, <blochcostarica.com>, <blochcz.com>, <blohecuador.com>, <blochhrvatska.com>, <blochisrael.com>, <blochjapan.com>, <blochmagyarorszag.com>, <blochmalaysia.com>, <blochmexico.com>, <blochnorge.com>, <blochosterreich.com>, <blochperu.com>, <blochphilippines.com>, <blochs Schweiz.com>, <blochsingapore.com>, <blochsouthafrica.com>, <blochsuomi.com>, <blochsverige.com>, <blochturkiye.com> be transferred to the Complainants.

/Clive Duncan Thorne/

Clive Duncan Thorne

Sole Panelist

Date: March 25, 2022