Decision for dispute CAC-UDRP-101911

Case number	CAC-UDRP-101911
Time of filing	2018-03-13 14:25:06
Domain names	MERRELL-ONLINE.COM

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	Wolverine Outdoors, Inc.

Complainant representative

Organization	Seyfarth Shaw LLP

Respondent

Name	Cai Huohuo

OTHER LEGAL PROCEEDINGS

Panel is not aware of any other pending proceedings.

IDENTIFICATION OF RIGHTS

Complainant is proprietor of several trademarks for MERRELL, among them the European Union Trademark MERRELL 001632744 registered on July 12, 2001 in class 25 for footwear, clothing, and headwear.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

Complainant markets footwear, clothing, and accessories, as well as retail store services featuring footwear, clothing, and accessories under the MERRELL Marks around the world through its websites, including but not limited to <MERRELL.COM>. The website at <MERRELL.COM> has been in use since 1995.

Complainant is proprietor of several marks for MERRELL, among them the European Union Trademark MERRELL 001632744 registered on July 12, 2001 in class 25 for “footwear, clothing, and headwear.”

Respondent registered the disputed domain name on March 17, 2016.

Under the disputed domain name and prominently displaying Complainant's MERRELL Marks, a website was available offering sales of Complainant's goods.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

In accordance with paragraph 11 of the RUDRP, the Panel can determine the language of the proceeding otherwise having regarded the circumstances of the case. Since the website under the disputed domain name is in English, the Panel, having considered the circumstances of this case, determines that English is the language of the proceeding.

PRINCIPAL REASONS FOR THE DECISION

In order to succeed in its claim, the Complainant must demonstrate that all of the elements enumerated 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; and

(ii) The Respondent has no rights or legitimate interests with respect to the disputed domain name; and

(iii) The disputed domain name has been registered and is being used in bad faith.

The Complainant has established the fact that it has valid trademark rights for "MERRELL". The disputed domain name is confusingly similar to this trademark since the descriptive addition of the element "online.com" does not have a decisive influence on the similarity of the domain name to the trademark of the Complainant.

The Panel therefore considers the disputed domain name to be confusingly similar to the trademark "MERRELL" in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

The Respondent has no rights or legitimate interests in the disputed domain name, since the Respondent is not a licensee of the Complainant nor has the Complainant granted any permission or consent to the Respondent to use its trademarks or designations confusingly similar to its trademarks. Furthermore, the Respondent has no rights or legitimate interests in the disputed domain name, since there is no indication that the Respondent is commonly known by the name "MERRELL" or that the Respondent is using the disputed domain name in connection with a bona fide offering of goods or services. Sales of goods under the non-authorised use of a trademark providing the impression the trademark owner himself is selling these

goods is not considered as a bone fide offering of goods.

The Panel therefore finds that the Respondent does not have rights or legitimate interests in the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

In view of the identical use of Complainant´s trademark and goods on the website under the disputed domain name, the Respondent must have been aware of the Complainant and its trademarks when registering the disputed domain name. The Complainant has not authorised the Respondent to make use of a designation which is identical to its marks. This Panel does not see any conceivable legitimate use that could be made by the Respondent of this particular disputed domain name without the Complainant's authorisation. The circumstances of this case indicate that the Respondent registered and uses the disputed domain name primarily with the intention of attempting to attract, for commercial gain, Internet users to its potential website or other online locations, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of such website or location, or of a product or service on such website or location.

The Panel therefore considers the disputed domain name to have been registered and used in bad faith in accordance with paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **MERRELL-ONLINE.COM**: Transferred

PANELLISTS

Name	**Dietrich Beier**

DATE OF PANEL DECISION 2018-04-20

Publish the Decision