

Decision for dispute CAC-UDRP-104066

Case number CAC-UDRP-104066

Time of filing 2021-10-08 09:28:45

Domain names **birdbuddys.com**

Case administrator

Organization **Denisa Bilík (CAC) (Case admin)**

Complainant

Organization **Bird Buddy Inc.**

Respondent

Organization **He ZhenBei**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant owns trade mark registrations and applications for BIRD BUDDY including:

- EUTM trade mark registration number 018345691, registered 12 May 2021 in classes 9, 20, 21; and
- UK trade mark registration number UK00003568684, registered 16 July 2021 in classes 9, 20, 21.

FACTUAL BACKGROUND

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

The Complainant was incorporated in Delaware on 15 September 2020.

The Complainant owns trade mark registrations in the EU and the United Kingdom for the word mark BIRD BUDDY, for bird houses and bird feeders and hand-held electronic units used to identify bird species and bird songs; camera containing a linear image sensor; Wireless communication devices for transmitting images taken by a camera; remote video monitoring system consisting primarily of a camera and video monitor for recording and transmitting images to a remote location; downloadable mobile applications for identification of birds. It also owns a registered design on the BIRD BUDDY smart bird feeder in the EU and registered copyright on BIRD BUDDY product design, marketing materials and logo in Slovenia and China. It has been using the BIRD BUDDY mark in connection its products since November 2020.

The Complainant's official website uses the domain name <mybirdbuddy.com> and its Facebook page incorporates its BIRD BUDDY trade mark at: <https://www.facebook.com/mybirdbuddy>.

The Respondent is the registrant of the disputed domain name, which was created on 21 July 2021.

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 trade mark 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.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements:

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

A. IDENTICAL OR CONFUSINGLY SIMILAR

The disputed domain name is made up of the Complainant's trade mark BIRD BUDDY, plus the letter "s" and the top-level domain ".com". It is well recognised that the top-level domain, such as ".com", is a standard registration requirement. It can be disregarded when determining whether the disputed domain name is confusingly similar the Complainant's mark. In a side-by-side comparison, the only difference between the disputed domain name and the Complainant's mark is the addition of the letter "s". The disputed domain name is both optically and phonetically similar to the Complainant's mark.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trade mark, BIRD BUDDY and that that the requirements of paragraph 4(a)(i) of the Policy have been met.

B. NO RIGHTS OR LEGITIMATE INTEREST IN THE DISPUTED DOMAIN NAME

The Complainant asserts that the Respondent has no rights or legitimate interest in the disputed domain name and states that:

- i. the disputed domain name is confusingly similar to it BIRD BUDDY mark;
- ii. the Complainant has not authorised or licenced the Respondent to use the BIRD BUDDY trade mark or its copyright materials;
- iii. the Respondent is not commonly known by the disputed domain name; and
- iv. the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name, but is using it with intent for commercial gain to mislead the consumers or tarnish the Complainant's trade mark.

The Complainant has established a prima facie case that the Respondent has no rights or legitimate interest in the disputed domain name. The burden of proof now shifts to the Respondent. The Respondent has not filed a Response nor disputed the Complainant's assertions that the Respondent has no rights or a legitimate interest in the disputed domain name.

Taking into account the Complainant's assertions and the evidence submitted, the Panel finds that the Respondent has no

rights or legitimate interest in the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been met.

REGISTERED AND BEING USED IN BAD FAITH

The Complainant owns trade mark registrations for the name BIRD BUDDY, copyright on the Bird Buddy logo and design, and copyright on the Bird Buddy smart bird feeder, all of which predate the registration of the disputed domain name.

The disputed domain name is confusingly similar to the Complainant's mark. The evidence submitted shows that the disputed domain name resolves a website that displays the Complainant's registered trade mark, logo and design and the Complainant's registered company number. The website using the disputed domain name also offers BIRD BUDDY products, such as the smart bird feeder, in competition to the Complainant's own bird feeder products.

The Panel concludes that the Respondent must have known of the Complainant's trade mark when it registered the disputed domain name and has used the disputed domain name in bad faith to intentionally attempt to attract for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainant's BIRD BUDDY mark and products offered for sale on the Respondent's website.

Having considered the above factors and the evidence submitted by the Complainant, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith and that the requirements of paragraph 4(a)(iii) of the Policy have been met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BIRDBUDDYS.COM**: Transferred

PANELLISTS

Name	Veronica Bailey
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DATE OF PANEL DECISION 2021-11-09

Publish the Decision
