

Decision for dispute CAC-UDRP-104900

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	Organization	TECNICA GROUP S.P.A.

Complainant representative

Organization Convey srl

Respondent

Organization	Web Commerce Communications Limited
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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 names.

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IDENTIFICATION OF RIGHTS
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The Complainant is the owner of the trademark MOON BOOT since 1978, with many international and national trademark registrations worldwide, including the following:

- INT TM n. 438194 "MOON BOOT" of May 25, 1978 Cl. 25;
- INT TM n. 1106792 'MOON BOOT" of November 18, 2011 Cl. 9, 18, 25;
- EU TM n. 009988544 "MOON BOOT" of October 28, 2011 Cl. 11, 12, 16, 20, 24, 28, 32, 33, 35, 43;
- EU TM n. 010056372 "MOON BOOT" of June 10, 2012 Cl. 9, 18, 25; and
- US TM n. 79109141 "MOON BOOT "of November 18, 2011 Cl. 9, 18, 25.

The Complainant has registered several domain names consisting of or comprising the trademark MOON BOOT under several different TLDs, including <moonboot.com>, which was registered on March 2, 2011, <moonboot.it>, registered on October 11, 2000, <moonboot.cn>, registered on January 18, 2012 and <moonboot.eu>, registered on June 5, 2006.

FACTUAL BACKGROUND

The Complainant is an Italian sport equipment manufacturer active in the sector of footwear and winter sports equipment with the brands Blizzard, Lowa, Nordica, Rollerblade, Tecnica and Moon Boot.

The disputed domain names were registered between March and September 2022.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

MOON BOOT is a snow boot brand first created as après-ski wear in the early 1970s by the Complainant and since then the boots have sold 25 million pairs. They became popular in the years following the Apollo 11 moon landing and resurfaced as a retro futuristic fashion trend in the early 2000s.

The boot is constructed with a thin rubber outsole and cellular rubber midsole covered by nylon fabrics and using polyurethane foams. The Complainant's founder, i.e. Giancarlo Zanatta, after watching the lunar landing and being inspired by the shape and technology of the astronauts' boots, drew sketches and then began to design and develop the original MOON BOOT.

Over the years, the Complainant has collaborated with a roster of big-name brands, with the most recent being GCDS and the list includes Jeremy Scott, Moncler, MSGM, Jimmy Choo, Swarovski and Chanel.

On May 21, 2009, during the 62ND International Cannes Film Festival in Cannes, France, guests wore MOON BOOT brand footwear while attending the "In The Beginning" Premiere held at the Palais Des Festivals. Some celebrities wear regularly MOON BOOT branded footwear such as Claudia Schiffer, Kim Kardashian, Dua Lipa, and the Victoria's Secret Models.

Therefore, the Complainant has spent considerable effort in promoting this mark, thereby acquiring the trademark's goodwill.

The Complainant's website and social media accounts generate a significant number of visits by Internet users every day and are used by the Complainant to promote and also sell online its products.

The disputed domain names were registered by the Respondent, without authorization of Complainant, between July and August 2022, with the exception of <moonbootsromania.com> and <moonbootsale.com>, registered respectively on March 19 and September 19, 2022. They have been all pointed to websites entirely dedicated to the sale of goods bearing the MOON BOOT marks and having similar layouts.

As soon as the Complainant became aware of the Respondent's registration and use of the disputed domain names, confusingly similar to its registered and well-known trademark MOON BOOT, it instructed its representative to address to the Registrant a cease-and-desist letter in order to notify it of the infringement of the Complainant's trademark rights, requesting the immediate cease of any use and the transfer of the ownership of the disputed domain names to the Complainant.

Therefore, a cease-and-desist letter was sent to the Registrant of the disputed domain names on September 22, 2022, but it did not reply.

In light of the absence of a reply and the failure to comply with the requests, the Complainant instructed its representative to file the present Complaint in order to obtain the transfer of the disputed domain names.

1. The disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights

(Policy, Paragraph 4(a)(i); Rules, Paragraphs 3(b)(viii), (b)(ix)(1))

The disputed domain names registered by the Respondent are confusingly similar to trademarks in which Complainant has rights.

The disputed domain names incorporate the whole of the Complainant's trademark MOON BOOT and the fact that they include a nondistinctive element such as generic commercial terms (*i.e.* "sale" in English, "prodej" sale in Czech) and/or geographical terms and the generic Top-Level Domain .com does not affect the confusing similarity.

It is a well-established principle that domain names that wholly incorporate trademarks, in particular one as famous as MOON BOOT, are found to be confusingly similar for the purposes of the Policy, despite the fact that the domain names in question may also contain descriptive or generic terms. See, among the decisions addressing situations where generic terms are used in combination with trademarks, Wal-Mart Stores, Inc. v. Henry Chan, WIPO Case No. D2004-0056 ("chase", "girlsof", "jobsat", "sams", "application", "blackfriday", "blitz", "books", "career(s)", "check", "flw", "foundation", "games", "mart", "photostudio", "pictures", "portrait", "portraitstudio(s)", "registry", "retaillink" and "wire" added to WALMART mark).

It should be also noted that the geographical terms in the disputed domain names, while they cannot be considered enough to distinguish the disputed domain names from the Complainant's mark, are all the more apt to induce confusion among Internet users. MOON BOOT is, in fact, an internationally well-known mark in the sector of winter sport, and the Complainant's products are sold worldwide. Moreover, the Complainant is based in Italy and the domain names <moonbootsitalia.com> and <moonboottialiait.com> are particularly problematic in light of the possible confusion for the Internet users. See along these lines Kabushiki Kaisha Toshiba dba Toshiba Corporation v. WUFACAI, WIPO Case No. D2006-0768.

The combination of the trademark MOON BOOT with generic terms could suggest improperly to consumers that the disputed domain names and corresponding web sites might be directly controlled or authorized by the Complainant. The Complainant itself operates online sale of its products.

Furthermore, the top level ".com" is merely instrumental to the use in Internet - as found in The Forward Association, Inc., v. Enterprises Unlimited (Forum case FA0008000095491, October 3, 2000) and numerous others - and not able to affect the confusing similarity of the disputed domain names to the Complainant's trademark.

In light of the above, the disputed domain names are confusingly similar to the prior registered trademarks in which the Complainant has rights pursuant to paragraph 4(a)(i) of the Policy.

2. The Respondent has no rights or legitimate interests in respect of the disputed domain names;

(Policy, Paragraph 4(a)(ii); Rules, Paragraph 3(b)(ix)(2))

According to paragraph 4(a) of the Policy, the burden of proving the absence of the Respondent' rights or legitimate interests in respect of the disputed domain names lies with the Complainant. It is nevertheless a well-settled principle that satisfying this burden is unduly onerous, since proving a negative fact is logically less feasible than establishing a positive. Accordingly, it is sufficient for the Complainant to produce prima facie evidence in order to shift the burden of production to the Respondent. See, e.g., Document Technologies, Inc. v. International Electronic Communications Inc., WIPO Case No. D2000-0270.

As a preliminary note, along the lines set forth in Pharmacia & Upjohn Company v. Moreonline, WIPO Case No. D2000-0134 and National Football League Properties, Inc. and Chargers Football Company v. One Sex Entertainment Co., a/k/a chargergirls.net, WIPO Case No. D2000-0118, the mere registration of a domain name does not establish rights or legitimate interests in a disputed domain name.

The Respondent is not a licensee, authorized agent of the Complainant or in any other way authorized to use Complainant's trademarks. Specifically, the Respondent is not an authorized reseller of the Complainant and has not been authorized to the registration and use of the dispute domain names.

Upon information and belief, the Respondent is not commonly known by the disputed domain names.

The Respondent has not provided the Complainant with any evidence of the use of, or demonstrable preparations to use, the disputed domain names in connection with a *bona fide* offering of goods or services before any notice of the dispute.

The disputed domain names have been redirected by the Respondent to websites with similar layouts where the Complainant's trademarks MOON BOOT are published and prima facie counterfeit MOON BOOT branded products are offered for sale. In light of the following circumstances, it is evident that the goods offered for sale are counterfeit:

- the goods are sold disproportionately below market value, half the Complainant's prices;
- the Respondent has misappropriated copyrighted images from the Complainant's website;
- the Respondent has concealed his identity both on the Whois and on the websites corresponding to the disputed domain names, where there are not emails and/or physical addresses to contact the Respondent but only online forms.

In view of the abusive sale of counterfeit goods, the Oki Data Test - dedicated to resellers, distributors or service providers using a domain name containing the complainant's trademark to undertake sales related to the complainant's goods - is inapplicable to this case. Indeed, the Respondent's conduct is not a legitimate activity, and however, should you examine the corresponding websites, there is no evident disclaimer as to the Respondent's lack of relationship with the Complainant and the Respondent has registered forty-six domain names confusingly similar to the Complainant' trademark.

It is evident that the Respondent's use cannot be considered a bona fide offering of goods or services nor a legitimate non-commercial

or fair use of the disputed domain names. Such wilful conduct clearly demonstrates, to the contrary, that Respondent did not intend to use the disputed domain names in connection with any legitimate purpose. Moreover, the Respondent has not replied to the cease-and-desist letter providing a valid reason for the registrations of the disputed domain names confusingly similar to the Complainant's trademark and this circumstance excludes that the Respondent could have rights or legitimate interests in respect of the disputed domain names. Along these lines, the CAC decision No. 104793 Diadora S.p.A. v. Whoisprotection.cc as follows: "in the Panel's view, the choice of a domain name which incorporates a complainant's trade mark wholly (as in this case) or virtually wholly, and is unaccompanied or unsupported by any credible explanation as to the reason for this coincidence, could further evidence a lack of rights or legitimate interests".

The current use of the disputed domain names cannot be considered a legitimate non-commercial or fair use without intent for commercial gain, because the Respondent is undoubtedly attempting to gain profit from the sales of prima facie counterfeit products and it is clear that the Respondent's intention is to benefit from the Complainant's trademarks' reputation to disrupt the Complainant's business and to illegitimately trade on the Complainant's fame for commercial gain. In the Case No. D2015-1466 WIPO *Prada S.A. v. Chen Mingjie*, where the Respondent was using its web site to offer for sale *prima facie* counterfeit PRADA products at prices significantly lower than those of the original products and no disclaimer had been published, the Panel found: "Given the high probability that the goods on offer through the disputed domain name are counterfeit, and the lack of disclosure on the site as to the Respondent's lack of relationship to the Complainant, there is also no evidence of a *bona fide* offering of goods or services".

In the light of the aforementioned reasons, the Complainant concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain names pursuant to paragraph 4(a)(ii) of the Policy.

3. The disputed domain names were registered and are being used in bad faith.

(Policy, paragraphs 4(a)(iii), 4(b); Rules, paragraph 3(b)(ix)(3))

As to the assessment of the Respondent's bad faith at the time of registration, in light of the registration and intensive use of the trademark MOON BOOT since 1978 and the advertising and sales of the Complainant's products worldwide, the Respondent could not have possibly been ignorant of the existence of the Complainant's trademark, confusingly similar to the disputed domain names.

The aforesaid trademark of the Complainant enjoys worldwide reputation in the sector of manufacturing winter footwear. The disputed domain names were registered between March and September 2022, years after the Complainant obtained its trademark registrations.

Furthermore, the actual knowledge of MOON BOOT trademark by Respondent at the time of the registration of the disputed domain names is demonstrated by the facts that the Respondent offers for sale replicas of Complainant's goods and that the Respondent also reproduces the trademarks MOON BOOT on the web sites corresponding to the disputed domain names.

By virtue of its extensive worldwide use the Complainant's trademark MOON BOOT has become a well-known trademark in the sector of manufacturing winter footwear. As noted in Ferrari S.p.A. v. Allen Ginsberg, WIPO Case No. D2002-0033, "Respondent has registered the domain name <maserati.org> corresponding to the well-known or even famous trademark MASERATI which he must have been aware of".

Considering the trademark's distinctiveness and well-known character, it is inconceivable that the Respondent was unaware of the existence of the Complainant's registered trademark at the time of the registration of the disputed domain names, with which it is confusingly similar.

Therefore, it is clear that the Respondent was well aware of the trademark MOON BOOT and has registered the disputed domain names with the intention to refer to the Complainant and to its trademarks.

With reference to the above, the Complainant highlights that it has been stated in various decisions that the registration of a domain name with the knowledge of the Complainant's trademark is evidence of bad faith, i.a. in Belstaff S.R.L. v. jiangzheng ying Case No. D2012-0793, "the Panel notices that the word "belstaff" is distinctive and the Complainant had expended substantial efforts to create and maintain the reputation of the mark BELSTAFF. Use of the Domain Names by the Respondent took place only long after the trademark BELSTAFF had become well known in the relevant public sector. Therefore, the Respondent should have been aware of the mark BELSTAFF when it applied to register the Domain Names. In this Panel's view, the Respondent's reproduction of the Complainant's trademark BELSTAFF (both word and device trademarks) on the Websites, as well as its offering of purported Belstaff products is sufficient to show that it knew of the BELSTAFF mark when registering the Domain Names. Incorporation of the BELSTAFF mark in the Domain Names without any reasonable justification is sufficient evidence of bad faith by the Respondent".

Indeed, the fact that replicas of MOON BOOT products are being offered for sale on the web sites attached to the disputed domain names indicates that the Respondent was fully aware of the Complainant's mark's reputation and association with the Complainant and that his purpose in registering the disputed domain names, which incorporates the Complainant's trademark MOON BOOT, was solely intended to capitalize on the reputation of Complainant's mark by diverting Internet users seeking products under the MOON BOOT mark to its own commercial web site.

As highlighted in Swarovski Aktiengesellschaft v. Jun Qiao, WIPO Case No. D2013-1617, "the fact that purported Swarovski goods were offered at the relevant website indicates that the Respondent was fully aware of the Swarovski mark's distinct reputation and association with the Complainant. There is no reason to choose such a distinctive mark, and also to include other terms in a domain name that are suggestive of the very business of the Complainant, other than a bad faith attempt to ride on the coattails of the trademark owner".

The use of the disputed domain names in connection with commercial web sites where the Complainant's trademark is misappropriated and prima facie counterfeit MOON BOOT branded products are offered for sale, clearly indicating that the Respondents' purpose in registering the disputed domain names was to capitalize on the reputation of the Complainant's trademark by diverting Internet users seeking MOON BOOT products to its websites for financial gain, by intentionally creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of its web sites and/or the goods offered or promoted through said web sites, according to paragraph 4(b)(iv) of the Policy.

As anticipated in the paragraph above, the circumstances that the goods are sold disproportionately below market value, the misappropriation of copyrighted images from the Complainant's website and concealing the Respondent's identity both on the Whois and on the websites corresponding to the disputed domain names means that the goods are prima facie counterfeit.

Such use of the disputed domain names to promote and sell prima facie counterfeit products is also apt to disrupt Complainant's business. See along these lines Guccio Gucci S.p.A. v. zhang shao hua, WIPO Case No. D2010-0332: "The Respondent's website contains the Complainant's logo which is displayed prominently together and images used in its advertising campaigns with replica Gucci handbags being offered alongside the products of the Complainant's competitors. The Respondent has registered the disputed domain name and allowed the operator of the site, to which the disputed domain name resolves, to use it primarily for offering goods to Internet users in a way which disrupts the business of the Complainant. On the basis of the evidence adduced, the Panel finds that the presumption under paragraph 4(b)(iii) of the Policy has been invoked".

Moreover, on the web sites corresponding to the disputed domain names there is no disclaimer informing the users as to the Respondents' lack of relationship with the Complainant thus, the websites create the impression that they are authorized by the Complainant.

As anticipated, in light of the low prices, the misappropriation of copyrighted images from the Complainant's website and the concealment of the Respondent's identity, the goods offered for sale on the web sites corresponding to the disputed domain names are prima facie counterfeit and such conduct constitutes a further evidence of bad faith registration and use of the disputed domain names, as stated in several decisions, inter alia Karen Millen Fashions Limited v. Lily Rose WIPO Case No. D2012-0428 "the Panel finds Respondent's conduct in registering the disputed domain name and offering for sale counterfeit branded merchandise via Respondent's Website, all without the authorization, approval, or license of the Complainant, amounts to bad faith registration and use under paragraph 4(b)(iv) of the Policy. The Panel therefore finds the requisite element of bad faith has been satisfied, under paragraph 4(b)(iv) of the Policy."

Moreover, in a prior decision referred to a case where the domain names at issue where containing the mark MOON BOOT in its entirety followed by another term and the .com generic top level domain suffix (Case No. CAC-UDRP-104579), the Panel found that: "Disputed domain names consist of Complainant's well-known mark in its entirety, followed by a country name or abbreviation or another term, and the general top level domain name suffix. They are directed to websites selling counterfeit products under the Complainant's mark. Respondent has no right or legitimate interest in the domain names and they are being used to attract Internet users to Respondent's websites for commercial gain by creating a likelihood of confusion."

In registering forty-six disputed domain names, confusingly similar to the trademark MOON BOOT, the Respondent has been engaged in a pattern of conduct preventing the Complainant from reflecting the mark in corresponding domain names, as indicated also in the WIPO decision Case No. D2013-2034 Salvatore Ferragamo S.p.A v. Ying Chou: "A "pattern of conduct" as required in paragraph 4(b) (ii) of the Policy typically involves multiple domain names directed against multiple complainants, but may also involve multiple domain names directed against a single complainant (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0"), paragraph 3.3). Here the latter applies. The fact of registering four domain names that incorporate the Complainant's trademark represents, in the Panel's assessment, a pattern of conduct directed against the Complainant, stopping it from reflecting its trademark in the disputed domain names. The Panel concludes that paragraph 4(b)(ii) of the Policy is made out".

In light of the above, the Complainant submits that the disputed domain names were registered and are being used in bad faith in full satisfaction of paragraphs 4(a)(iii) and 4(b) of the Policy.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (within the meaning of paragraph 4(a)(ii) of the Policy).

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names have been registered and are 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

The disputed domain names registered in 2022 all consist of the Complainant's prior registered trade mark MOONBOOT (registered as set out above since 1978), a generic term or terms and a gTLD.

The addition of a generic term or terms and a gTLD do not prevent confusing similarity between a Complainant's mark and a contested domain name under the Policy.

Accordingly, the Panel holds that the disputed domain names are all confusingly similar to the Complainant's registered MOONBOOT mark under the Policy.

The Respondent is not authorised by the Complainant to use the Complainant's MOONBOOT trade mark and there is no evidence including in the Whols database details that the Respondent is commonly known by the disputed domain names other than the allegedly confusing material complained of and attached to the disputed domain names.

The disputed domain names which in themselves carry a risk of presumed affiliation with the Complainant have all been used for websites that purport to offer the Complainant's products under a masthead consisting of the Complainant's MOONBOOT mark in its logo form mimicking the Complainant's official web sites and/or using material taken from the official sites of the Complainant, thereby appearing to be sites emanating from or authorised by the Complainant when they are not. The Complainant invites the Panel to infer the goods offered by the Respondent are, in fact, counterfeit although there is no actual evidence of this. However, the Panel is clear that the use made of each of the disputed domain names to suggest they are connected to official sites of the Complainant is confusing and deceptive and is not a bona fide offering of goods or services. The use is commercial and so cannot be legitimate non commercial fair use.

The Respondent has not responded to this Complaint or provided any explanation to counter the prima facie case put forward by the Complainant as set out herein.

The Panel finds that the Respondent does not have any rights or legitimate interests in each of the disputed domain names.

The use of the Complainant's logo and material from the Complainant's official web sites shows that the Respondent has actual knowledge of the Complainant's rights, business and services.

The disputed domain names have been used for sites mimicking official sites of the Complainant. Panel holds that the Respondent has intentionally registered each of the disputed domain names to divert Internet users seeking the Complainant's products to the Respondent's websites for financial gain, by intentionally creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of the Respondent's web sites according to paragraph 4(b)(iv) of the Policy.

Further the large number of disputed domain names registered by the Respondent containing the Complainant's distinctive and well known trade mark which in themselves are likely to carry a risk of affiliation with the Complainant where there is none and use to mimic the Complainant shows a pattern of activity in competition with the Complainant's interests falling within paragraph 4 (b)(ii) of the Policy and is an addition ground for finding bad faith.

The Respondents activities are also likely to disrupt the Complainant's business contrary to paragraph 4 (b) (iii) of the Policy which is also grounds for a finding of bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. moonbootaustraliau.com: Transferred

2. moonbootbelgiebe.com: Transferred 3. moonbootdanmark.com: Transferred 4. moonbootespana.com: Transferred 5. moonbootfrancefr.com: Transferred 6. moonboothrvatskahr.com: Transferred 7. moonboothungary.com: Transferred 8. moonbootirelandie.com: Transferred 9. moonbootitaliait.com: Transferred 10. moonbootnederlandnl.com: Transferred 11. moonbootoutletnz.com: Transferred 12. moonbootpolskapl.com: Transferred 13. moonbootportugal.com: Transferred 14. moonbootromania.com: Transferred 15. moonbootsale.com: Transferred 16. moonbootsargentina.com: Transferred 17. moonbootsbelgie.com: Transferred 18. moonbootscanadaca.com: Transferred 19. moonbootschile.com: Transferred 20. moonbootscolombia.com: Transferred 21. moonbootsdanmark.com: Transferred 22. moonbootsdeutschland.com: Transferred 23. moonbootsfrance.com: Transferred 24. moonbootsgreece.com: Transferred 25. moonbootshrvatska.com: Transferred 26. moonbootsireland.com: Transferred 27. moonbootsitalia.com: Transferred 28. moonbootsjapan.com: Transferred 29. moonbootslovenijasi.com: Transferred 30. moonbootslovensko.com: Transferred 31. moonbootsmexico.com: Transferred 32. moonbootsnederland.com: Transferred 33. moonbootsnorge.com: Transferred 34. moonbootsosterreich.com: Transferred 35. moonbootspolska.com: Transferred 36. moonbootsrbija.com: Transferred 37. moonbootsromania.com: Transferred 38. moonbootssale.com: Transferred 39. moonbootsschweiz.com: Transferred 40. moonbootsslovenija.com: Transferred 41. moonbootssuomi.com: Transferred 42. moonbootsturkiye.com: Transferred 43. moonbootsuae.com: Transferred 44. moonbootturkiye.com: Transferred 45. moonbootuksale.com: Transferred 46. moonbootvyprodej.com: Transferred

PANELLISTS

Name	Dawn Osborne
DATE OF PANEL DECISION	2022-11-03
Publish the Decision	