Decision for dispute CAC-UDRP-106608

Case number	CAC-UDRP-106608
Time of filing	2024-06-21 09:38:39
Domain names	bambulabua.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	BAMBULAB LIMITED

Complainant representative

Organization	Thomsen Trampedach GmbH

Respondent

Name	PAVLO SUZANSKYI

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 Complaint has a few registered trademarks "BAMBULAB" in different countries worldwide, including, but not limited to:

- EUIPO no. 018584524, BAMBULAB, registered on February 15, 2022, in class 7,17, 35;
- UK trademark no. 00003712903, BAMBULAB, registered on January 14, 2022, in class 7, 17, 35.

FACTUAL BACKGROUND

The Complainant is a consumer tech company from Hong Kong, established in 2020, focusing on desktop 3D printers.

The Complainant operates its website under the domain name <bambulab.com>, registered on March 6, 2019.

The disputed domain name was registered on November 28, 2023 and resolved to a website offering printers for sale.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it. 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.

PRINCIPAL REASONS FOR THE DECISION

Procedural Issue: Language of Proceedings

Paragraph 11(a) of the Rules provides that “unless otherwise agreed by the Parties, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding”.

The language of the Registration Agreement for the disputed domain name is Ukrainian. The Panel is proficient in both Ukrainian and English.

The factors that the Panel should take into consideration include whether the Respondent is able to understand and effectively communicate in the language in which the Complaint has been made and would suffer no real prejudice, and whether the expenses of requiring translation and the delay in the proceedings can be avoided without at the same time causing injustice to the Parties.

The Complainant has filed the Complaint in English and requested English to be the language of this proceeding based on the Respondent’s registration of a domain name including an English-language trademark and response to the abuse notices provided in English.

Additionally, the Respondent used an American name and address to hide his real identity, indicating familiarity with the English language.

While applying the provision on the language of the proceeding, the Panel considers that it should ensure that the parties are treated equally, that each party is given a fair opportunity to present its case, and that the proceeding takes place with due expedition.

The Respondent raised no objection to the proceedings being conducted in English.

While there is a language requirement in paragraph 11(a) of the Rules, the Panel must balance that against other considerations of ensuring that the proceeding takes place with due expedition and that the parties are treated fairly and given a fair opportunity to present their case. The Panel is of the view that the language requirement should not cause any undue burden on the parties or undue delay.

According to section 4.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (WIPO Overview 3.0), this complaint falls under scenarios warranting proceeding in a language other than that of the registration agreement. For instance, (i) evidence showing that the respondent can understand the language of the complaint, (ii) the language/script of the domain name, particularly where it is the same as that of the complainant’s mark.

Based on the foregoing, the Panel concludes that it is not unfair to the Parties to proceed in English and finds it appropriate to exercise its discretion and allow the proceedings to be conducted in English.

Substantive Issues

The burden for the Complainant under paragraph 4(a) of the Policy is to prove:

- that the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark in which the Complainant has rights;

- that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

- that the disputed domain name has been registered or is being used in bad faith.

The Complainant must prove in this administrative proceeding that each of the aforementioned three elements is present in order to obtain the transfer of the disputed domain name.

In accordance with paragraph 14(a) of the Rules, if the Respondent does not submit a Response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

(1) Identical or Confusingly Similar

It is clear for the Panel, that the Complainant has shown rights in respect of its BAMBULAB trademark for the purposes of the Policy. WIPO Overview 3.0, section 1.2.1.

Moreover, the disputed domain name is confusingly similar to the Complainant's trademark BAMBULAB as it incorporates the trademark in its entirety with the mere addition of the term "UA" at the end which does not significantly alter the visual perception of the core part of the domain name.

Addition of Top Level Domain ("TLD") ".com" is viewed as a standard registration requirement and may be disregarded for the purposes of the confusing similarity test. See WIPO Overview 3.0, section 1.11.1.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark and that the requirement of paragraph 4(a)(i) of the Policy is met in this case.

(2) 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.

As it stands from the case file, the Respondent is not licensee, authorized agent or reseller of the Complainant or in any other way authorized to use the Complainant's trademarks. Further, the Complainant confirms that the Respondent was not authorized by the Complainant to register and use the disputed domain name. Considering the disclosed information for the disputed domain name by the Registrar, it is clear that the Respondent is not commonly known by the disputed domain name.

Having carefully considered the case file, the Panel did not find evidence of the Respondent's use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services.

As such, the Panel finds that the Complainant has established that the Respondent does not have rights or a legitimate interest in the disputed domain name, and that the element under paragraph 4(a)(ii) of the Policy has been established.

(3) Registered or 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.

As to the assessment of the Respondent's bad faith at the time of registration, from the correspondence with the Respondent it is evident that the latter knew the Complainant's trademark and the 3D printer business very well. By registering disputed domain name, the Respondent intended to take advantages of the use of the famous Complainant's trademark BAMBULAB in the Ukrainian market, which the Complainant has not entered yet, for commercial gain or to mislead consumers or internet users, and adding "UA" after the Complainant's trademark in the disputed domain name only confirms this intention (WIPO Overview 3.0, section 3.1.4, clearly defines this as bad faith). Furthermore, from the evidence presented in the case file it is clear to the Panel that the Complainant's trademark is well-known in the respective field, namely 3D printers, and the Respondent could not have been unaware

of its existence when he registered the disputed domain name.

Furthermore, the actual knowledge of the BAMBULAB trademark by the Respondent is clearly demonstrated by the fact that the Respondent was using the disputed domain name to resolve to a website prominently featuring the Complainant's trademark.

The above-described use of the disputed domain name shows that the Respondent intentionally registered and is using the disputed domain name to attract users to its website for commercial gain, by creating a likelihood of confusion with the Complainant's well-known trademark as to the source, sponsorship, affiliation, or endorsement of the website and of its business promoted therein according to 4(b)(iv) of the Policy.

Consequently, the Panel considers that the disputed domain name was registered and is being used in bad faith. In light of the above, the third element under paragraph 4(a)(iii) of the Policy has been established.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **bambulabua.com**: Transferred

PANELLISTS

Name	**Ganna Prokhorova**

DATE OF PANEL DECISION 2024-07-18

Publish the Decision