Decision for dispute CAC-UDRP-106721

Case number	CAC-UDRP-106721
Time of filing	2024-07-31 09:44:17
Domain names	moonbootargentina.com, moonbootaustralia.net, moonbootbelgie.net, moonbootbelgique.com, moonbootbulgaria.com, moonbootcanadasale.com, moonbootdanmark.net, moonbootisrael.net, moonbootjapan.net, moonbootkuwait.com, moonbootnederland.net, moonbootnorge.net, moonbootparis.net, moonbootsouthafrica.net, moonbootsuomi.net, moonbootukstore.com, moonbootbrasil.com, moonbooteesti.com, moonbootlatvia.com, moonbootlietuva.com, moonbootportugal.net, moonbootrebajas.com, moonbootromania.net, moonbootschile.net, moonbootscolombia.net, moonbootsgreece.net, moonbootslovenija.net, moonbootsperu.com, moonbootsrbija.net, xn--moonbootespaa-tkb.com, xn--moonbootmagyarorszg- 7ub.com, xn--moonboottrkiye-osb.com, moonbootsuisse.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	TECNICA GROUP S.P.A.

Complainant representative

Organization	Convey srl

Respondents

Name	Aaron Bradley
Name	zhang qiang
Name	Jacob Kelly
Name	Bailey Rees
Name	Emma Hicks
Name	Ahmed Lewis
Name	Charlotte Lyons
Name	Brady Bailey
Name	Eloise Tomlinson
Name	Brooke Bond

Name	**Morgan Storey**
Name	**Chelsea Russell**
Name	**Yasmin Perkins**
Name	**Jordan Miah**
Name	**Adam Douglas**
Name	**Nathan Price**
Name	**Morgan Mistry**
Name	**Joel Ferguson**
Name	**NEVENA Stajic**

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.

IDENTIFICATION OF RIGHTS

The Complainant is the registered owner of many trademarks for MOON BOOT, e.g. European Union trademark registration no. 000516880 MOON BOOT (word) registered on November 18, 1999 for goods in class 25.

FACTUAL BACKGROUND

It results from the Complainant's undisputed allegations that it 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. 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 of pairs circa.

The Complainant further contends its trademark MOON BOOT to be distinctive and well-known.

Furthermore, the Complainant use, amongst others, the domain name < moonboot.com > (registered on March 2, 2011) to connect to its official website for advertising and commercializing its products.

The disputed domain names were all registered on March 17, 2023 except the disputed domain name < moonbootparis.net >, which has been registered on July 27, 2023. Furthermore, the undisputed evidence provided by the Complainant proves that the disputed domain names resolve to websites purportedly offering for sale products under the Complainant's MOON BOOT trademarks, displaying without authorization the Complainant's trademark and logo and images from the Complainant's website.

Finally, the Complainant sent a cease-and-desist letter to the Respondent on July 9, 2024. The Respondent did not reply to it

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain names 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 names are 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 names (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 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.

According to the information provided by the Registrars upon the Request for Registrar Verification sent by Online ADR Center of the Czech Arbitration Court, the disputed domain names are registered by different Registrants (Respondents): (i.e.

Aaron Bradley (Spain) is the Registrant of <moonbootargentina.com>;

zhang qiang (China) is the Registrant of <moonbootaustralia.net>, <moonbootbelgie.net>, <moonbootbelgique.com>, <moonbootbulgaria.com>, <moonbootcanadasale.com>, <moonbootdanmark.net>, <moonbootisrael.net>, <moonbootjapan.net>, <moonbootkuwait.com>, <moonbootnederland.net>, <moonbootnorge.net>, <moonbootparis.net>, <moonbootsouthafrica.net>, <moonbootsuomi.net>, <moonbootukstore.com>;

Jacob Kelly (Spain) is the Registrant of <moonbootbrasil.com>;

Bailey Rees (Spain) is the Registrant of <moonbooteesti.com>;

Emma Hicks (Spain) is the registrant of <moonbootlatvia.com>;

Ahmed Lewis (Spain) is the Registrant of <moonbootlietuva.com>;

Charlotte Lyons (Spain) is the Registrant of <moonbootportugal.net>;

Brady Bailey is the Registrant of <moonbootrebajas.com>;

Eloise Tomlinson (Spain) is the Registrant of <moonbootromania.net>;

Brooke Bonde (Spain) is the Registrant of < moonbootschile.net >;

Morgan Storey is the Registrant of <moonbootscolombia.net>;

Chelsea Russell (Spain) is the Registrant of <moonbootsgreece.net>;

Yasmin Perkins (Spain) is the Registrant of <moonbootslovenija.net>;

Jordan Miah (Spain) is the Registrant of <moonbootsperu.com>;

Adam Douglas (Spain) is the Registrant of <moonbootsrbija.net>;

Nathan Price (Spain) is the Registrant of <xn--moonbootespaa-tkb.com>;

Morgan Mistry (Spain) is the Registrant of <xn--moonbootmagyarorszg-7ub.com>;

Joel Ferguson (Spain) is the Registrant of <xn--moonboottrkiye-osb.com>;

NEVENA Stajic (Serbia) is the Registrant of <moonbootsuisse.com>.)

In its Amended Complaint the Complainant requests the Panel to consolidate the cases.

Under Paragraph 10(e) of the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules) “A Panel shall decide a request

by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules".

In the Panel's view the Complainant submitted sufficient evidence to justify the consolidation in terms of common control of the disputed domain names or corresponding websites and fairness and equitableness of the consolidation to all parties.

As specified in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0") at point 4.11.2 "Panels have considered a range of factors, typically present in some combination, as useful to determining whether such consolidation is appropriate, such as similarities in or relevant aspects of (i) the registrants' identity(ies) including pseudonyms, (ii) the registrants' contact information including email address(es), postal address(es), or phone number(s), including any pattern of irregularities, (iii) relevant IP addresses, name servers, or webhost(s), (iv) the content or layout of websites corresponding to the disputed domain names, (v) the nature of the marks at issue (e.g., where a registrant targets a specific sector), (vi) any naming patterns in the disputed domain names (e.g., <mark-country> or <mark-goods>), (vii) the relevant language/scripts of the disputed domain names particularly where they are the same as the mark(s) at issue, (viii) any changes by the respondent relating to any of the above items following communications regarding the disputed domain name(s), (ix) any evidence of respondent affiliation with respect to the ability to control the disputed domain name(s), (x) any (prior) pattern of similar respondent behaviour, or (xi) other arguments made by the complainant and/or disclosures by the respondent(s).

The Panel considers the consolidation as appropriate, taking into consideration, in particular, the content of the websites corresponding to the disputed domain names. In particular, the content of the websites related to the "Login section" and "Contact us section" is identical for all the disputed domain names, but the disputed domain names < <moonbootbrasil.com>, <moonbootportugal.net>, <moonbootromania.net>, and <moonbootsrbija.net>). In addition, all the disputed domain names resolve to webshops allegedly advertising Complainant's MOON BOOT products). In addition, all dispute domain names share the same Registrar (but < moonbootsuisse.com >). They have been created on the same day, but <moonbootparis.net>. Furthermore, there are similarities in the registrants' contact information in particular in relation to the email addresses (but for Registrant zhang qiang). In addition, there are similarities in the naming patterns in the disputed domain names, e.g. all disputed domain names (but the disputed domain name < moonbootrebajas.com>) contain at least the Complainant's trademark and a geographical term in its entirety or a misspelled geographic term (i.e. the disputed domain names <xn--moonbootespaa-tkb.com>, <xn--moonbootmagyarorszg-7ub.com>, <xn--moonboottrkiye-osb.com>).

Thus, the content of the websites corresponding to the disputed domain names, the naming patterns in the disputed domain names and the registrants' contact information (i.e. email address) give evidence of a common control of the domain names at issue. On the balance of probabilities and taking into account the above circumstances of the present case, the Panel finds that the disputed domain names are under common control. The Panel is also satisfied that consolidation of these disputes is fair and equitable to all parties, and that they should be consolidated in the interest of procedural efficiency (s. Pandora A/S v. Larry Sack, Alice Ferri, marino blasi, Sirkin Mösening, Meghan Pier, Monica Lugo, Tom Fargen, CAC Case No. 103259).

Furthermore, the Respondent has not contested or provided any rebuttal regarding the consolidation request made by the Complainant. Therefore, the Panel finds that consolidation would be fair and equitable.

PRINCIPAL REASONS FOR THE DECISION

1. Pursuant to paragraph 4(a)(i) of the Policy, the complainant must establish rights in a trademark or service mark, and that the disputed domain name is identical or confusingly similar to a trademark in which the complainant has rights.

It results from the evidence provided, that the Complainant is the registered owner of various MOON BOOT trademarks.

Prior UDRP panels have found that a disputed domain name is confusingly similar to a complainant's trademark where the disputed domain name incorporates the complainant's trademark in its entirety (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0") at section 1.7. This Panel shares this view and notes that the Complainant's registered trademark MOON BOOT is fully included in the disputed domain names.

Furthermore, it is the view of this Panel that the addition of the additional terms in the disputed domain names at issue cannot prevent a finding of confusing similarity between the disputed domain names and the Complainant's trademark since the Complainant's trademark is clearly recognizable in the disputed domain names (see WIPO Overview 3.0 at section 1.8).

Finally, the generic Top-Level Domain ("gTLD") (i.e. ".com" and "net") of the disputed domain names is typically disregarded under the first element confusing similarity test (see WIPO Overview 3.0 at section 1.11.1).

In the light of the above, the Panel finds that the disputed domain names are confusingly similar to a trademark in which the Complainants have rights.

2. Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the panel to be proved, shall demonstrate the respondent's rights or legitimate interests to the disputed domain name.

In the Panel's view, based on the undisputed allegations stated above, the Complainant has made a prima facie case that none of

these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain names.

According to the Complaint, which has remained unchallenged, the Complainant has no relationship in any way with the Respondents and did, in particular, not authorize the Respondents' use of the Complainant's trademark MOON BOOT, e.g. by registering the disputed domain names comprising said trademark entirely.

Furthermore, the Panel notes that there is no evidence showing that the Respondents might be commonly known by the disputed domain names in the sense of paragraph 4(c)(ii) of the Policy.

Moreover, the nature of the disputed domain names carries a risk of implied affiliation, since all the disputed domain names (but the disputed domain name < moonbootrebajas.com >) contain the Complainant's trademark MOON BOOT plus a geographical term in its entirety or a misspelled geographic term (i.e. the disputed domain names <xn--moonbootespaa-tkb.com>, <xn--moonbootmagyarorszg-7ub.com>, <xn--moonboottrkiye-osb.com>>). Geographical terms are seen as tending to suggest sponsorship or endorsement by the trademark owner, see WIPO Overview 3.0 at section 2.5.1.

Moreover, regarding the disputed domain name <moonbootrebajas.com>, the Panel notes that the disputed domain name is clearly constituted by the Complainant's registered trademark and the term "rebajas" meaning sales in Spanish, which is within the trademark owner's field of commerce tending to suggest sponsorship or endorsement by the Complainant. The Panel finds it most likely that the Respondent selected the disputed domain name with the intent to attract Internet users for commercial gain. This is also confirmed by the content of the website to which the disputed domain name resolves, allegedly offering for sale products under the Complainant's trademarks, displaying without authorization the Complainant's trademark and logo and images from the Complainant's website.

Further, the Panel also notes that the websites at all the disputed domain names do not display any accurate and prominent disclaimer regarding the lack of the relationship between the Complainant and the Respondent.

It is acknowledged that once the panel finds a prima facie case is made by a complainant, the burden of production under the second element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name (see WIPO Overview 3.0 at section 2.1). Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds, in the circumstances of this case, that the Respondents have no rights or legitimate interests in the disputed domain names.

The Panel finds that the Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

3. According to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith. One of these circumstances is that the Respondent by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

It is the view of this Panel that these circumstances are met in the case at hand.

It results from the Complainant's documented allegations that the disputed domain names resolved to websites allegedly offering for sale Complainant's goods and reproducing without any authorization the Complainant's trademark and logo and images from the Complainant's website. For the Panel, it is therefore evident that the Respondent knew the Complainant's mark when it registered the disputed domain names. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent knew that the disputed domain names included the Complainant's trademark when it registered the disputed domain names. This is underlined by the fact that the disputed domain names are clearly constituted by the Complainant's registered trademark MOON BOOT plus a geographical term in its entirety or a misspelled geographic term (but < moonbootrebajas.com > which is clearly constituted by the Complainant's registered trademark and the term "rebajas" meaning sales in Spanish, which is within the trademark owner's field of commerce.

Finally, the further circumstances surrounding the disputed domain names' registration and use confirm the findings that the Respondents have registered and are using the disputed domain names in bad faith (see WIPO Overview 3.0 at section 3.2.1):

(i) the nature of the disputed domain names (i.e., incorporating the Complainant's mark plus geographical terms or plus the addition of term which is within the trademark owner's field of commerce);

(ii) the content of the websites to which the disputed domain names direct (allegedly advertising and selling Complainant's goods);

(iii) a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondents choice of the disputed domain names;

(iv) the Respondents concealing their identity;

(v) the Respondents' failure to reply to the cease and desist letter sent by the Complainant.

In light of the above the Panel finds that the disputed domain names have been registered and are being used in bad faith pursuant

to 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. **moonbootargentina.com**: Transferred
2. **moonbootaustralia.net**: Transferred
3. **moonbootbelgie.net**: Transferred
4. **moonbootbelgique.com**: Transferred
5. **moonbootbulgaria.com**: Transferred
6. **moonbootcanadasale.com**: Transferred
7. **moonbootdanmark.net**: Transferred
8. **moonbootisrael.net**: Transferred
9. **moonbootjapan.net**: Transferred
10. **moonbootkuwait.com**: Transferred
11. **moonbootnederland.net**: Transferred
12. **moonbootnorge.net**: Transferred
13. **moonbootparis.net**: Transferred
14. **moonbootsouthafrica.net**: Transferred
15. **moonbootsuomi.net**: Transferred
16. **moonbootukstore.com**: Transferred
17. **moonbootbrasil.com**: Transferred
18. **moonbooteesti.com**: Transferred
19. **moonbootlatvia.com**: Transferred
20. **moonbootlietuva.com**: Transferred
21. **moonbootportugal.net**: Transferred
22. **moonbootrebajas.com**: Transferred
23. **moonbootromania.net**: Transferred
24. **moonbootschile.net**: Transferred
25. **moonbootscolombia.net**: Transferred
26. **moonbootsgreece.net**: Transferred
27. **moonbootslovenija.net**: Transferred
28. **moonbootsperu.com**: Transferred
29. **moonbootsrbija.net**: Transferred
30. **xn--moonbootespaa-tkb.com**: Transferred
31. **xn--moonbootmagyarorszg- 7ub.com**: Transferred
32. **xn--moonboottrkiye-osb.com**: Transferred
33. **moonbootsuisse.com**: Transferred

PANELLISTS

Name	**Dr. Federica Togo**

DATE OF PANEL DECISION 2024-09-05

Publish the Decision