Decision for dispute CAC-UDRP-107190

Case number	CAC-UDRP-107190
Time of filing	2024-12-18 16:46:42
Domain names	bitterliebe.shop

Case administrator

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

Complainant

Organization	BitterPower GmbH

Complainant representative

Organization	pm.legal

Respondent

Organization	Gypsy Spangle

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 is the registered owner of the following trademarks:

- EU word trademark BITTERLIEBE no. 018148573, registered on 11 March 2020 for goods in classes 5, 30, and 33; and

- International word trademark BITTERLIEBE, no. 1564105, registered on 10 November 2020 for goods in classes 5, 30, and 33.

("**Complainant's Trademarks**").

The disputed domain name <bitterliebe.shop> was registered on 27 September 2024.

FACTUAL BACKGROUND

As the Respondent did not file any response to the complaint, the Panel took into account the following facts asserted by the Complainant (and supported by the documentary evidence submitted by the Complainant) and unchallenged by the Respondent:

(a) The Complainant is a German food start-up that was founded in 2018 by its current CEOs, Mr. Jan Stratmann and Mr. Andre Sierek. Since then, the Complainant has grown rapidly and is one of the fastest growing food start-ups in Europe with over half a

million customers.

(b) The Complainant is the owner of Complainant's Trademarks.

(c) The disputed domain name was used to operate a website offering for sale the Complainant’s products as well as products of third parties. In particular, the Respondent offers inter alia products of the German food start-up companies 3Bears Foods GmbH (https://3bears.de/) and mykraut Handels GmbH (https://www.my-kraut.de/). Furthermore, the title of the Complainant's website BitterLiebe - Das Original | Bekannt aus "Höhle der Löwen", which refers to the Complainant's participation in the German entertainment show "Die Höhle der Löwen", was used verbatim on the Respondent's website.

PARTIES CONTENTIONS

The Parties' contentions are the following:

THE COMPLAINANT:

In addition to the above factual assertions, the Complainant also contends the following:

(i) The disputed domain name is identical to Complainant’s Trademarks;

(ii) Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant’s Trademarks, or apply for registration of the disputed domain name. Furthermore, even if the Complainant's products sold at the website under the disputed domain name are genuine, the Respondents failed to satisfy the requirements set out in the case of Oki Data Americas, Inc. v. ASD, Inc. (WIPO Case No. D2001-0903) to establish legitimate interest of a non-authorized distributor in the disputed domain name, because the Respondent does not accurately and prominently disclose its relationship with the Complainant in any way and the Respondent doesn't use the website to sell only the Complainant's products. Therefore, the Complainant has no rights or legitimate interests in respect of the disputed domain name.

(iii) The website under the disputed domain name displays the Complainant’s Trademarks and the products of the Complainant are offered there for sale. There is no disclaimer or any information explaining that the Respondent is not affiliated with the Complainant. Given the distinctiveness of the Complainant's trademarks and the content of the website, it is clear that the Respondent has registered the domain name with full knowledge of the Complainant's Trademarks. The Respondent’s intention therefore must have been to benefit financially from the Complainant’s Trademarks, however, the Respondent failed to properly disclose its relationship with the Complainant and offered competing third party products. This amounts to bad faith of the Respondent in registration and use of the disputed domain name.

THE RESPONDENT:

The Respondent did not provide any response to the complaint.

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 Uniform Domain Name Dispute Resolution Policy ("**UDRP**" or "**Policy**").

For details, please see "Principal Reasons for the Decision".

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).

For details, please see "Principal Reasons for the Decision".

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).

For details, please see "Principal Reasons for the Decision".

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 that the Complainant proves each of the following three elements to obtain an order that the disputed domain name should be transferred or cancelled:

(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 in respect of the disputed domain name; and

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

The Panel will proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied in this proceeding.

RIGHTS

The disputed domain name is identical to the Complainant's Trademarks. For sake of completeness, the Panel asserts that the top-level suffix in the domain name (i.e. the ".shop") must be disregarded under the identity / confusing similarity test as it is a necessary technical requirement of registration.

Therefore, the Panel concludes that the Complainant satisfied the requirement under paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such a prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (please see, for example, WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd. <croatiaairlines.com>).

Under the disputed domain name there was an e-shop where Complainant's and third party products were being offered for sale. Under the established practice in the area of domain name disputes a reseller selling genuine products of a brand could generally have legitimate interest to use the name of such brand also in a domain name. However, there are certain important obligations that such reseller has to meet. Such obligations were outlined in the WIPO Case No. D2001-0903 Oki Data Americas, Inc. v. ASD, Inc., <okidataparts.com> and are the following:

(i) the reseller must actually be offering the goods or services at issue;

(ii) the reseller must use the site to sell only the trademarked goods or services;

(iii) the site must accurately and prominently disclose the reseller’s relationship with the trademark holder; and

(iv) the reseller must not try to “corner the market” in domain names that reflect the trademark.

It is clear that the Respondent in this case failed to satisfy at least the obligations under points (ii) and (iii) above as the website operated under the disputed domain name does not include any information as to the Respondent’s relationship with the Complainant and also products of other brands are sold at the website under the disputed domain name.

Therefore, the Panel concludes that the Respondent does not have rights or legitimate interest in the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Panel also finds that the Respondent must have registered the disputed domain name in the full knowledge of the Complainant’s Trademarks, as the Respondent’s website sold Complainant’s products. Therefore, the Respondent also must have been aware of the fact that it is not an authorized reseller of the Complainant's products. However, the Respondent failed to disclose such fact to consumers. Therefore, the Respondent apparently intended, by creating a likelihood of confusion with the Complainant’s Trademarks and for commercial gain, to divert traffic intended for the Complainant’s website to its own. Moreover, the Respondent offered products of third parties at the website and therefore used the disputed domain name identical to the Complainant's Trademarks for sale of competing products. Such conduct, in the opinion of the Panel, amounts to bad faith of the Respondent upon registration and use of the disputed domain name.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **bitterliebe.shop**: Transferred

PANELLISTS

Name	**Michal Matějka**

DATE OF PANEL DECISION 2025-02-06

Publish the Decision