

ADMINISTRATIVE PANEL DECISION

PSBC Limited v. Gbdcj Yncjw

Case No. D2022-3893

1. The Parties

The Complainant is PSBC Limited, Hong Kong, China, represented by De Gaulle Fleurance & Associés, France.

The Respondent is Gbdcj Yncjw, Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <poupettebarth.com> (the “Disputed Domain Name”) is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 18, 2022. On October 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On October 19, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Name which differed from the named respondent (Domain Protection Services Inc.) (the “Named Respondent”) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 19, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on October 21, 2022.

The Center verified that the Complaint and the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on October 31, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 20, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 21, 2022.

The Center appointed Rosita Li as the sole panelist in this matter on November 28, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

In the present case, the Panel determines that the Complaint should proceed solely against the underlying registrant, Gbdcj Yncjw (the "Respondent"), since it is the actual holder of the registration for the Disputed Domain Name as disclosed by the Registrar and against which the Complaint was initiated. The Disputed Domain Name was originally registered through the Named Respondent, a privacy service.

4. Factual Background

The Complainant is PSBC Limited with its registered office in Hong Kong, China.

The Complainant submits that:

- In the 1990s, the Boho Chic-style clothing and fashion articles for women under the "Poupette St Barth" brand name were created and launched. Its products are colorful and easily recognizable, using exclusive prints made entirely by hand using an ancestral Balinese know-how.
- The first and second "Poupette St Barth" stores in St Barth (Saint Barthélemy, France) were opened in 1995 and 2000, respectively.
- In 2015, the Complainant acquired and made substantial investments to enable the "Poupette St Barth" brand to grow significantly through selective and exclusive distribution worldwide, including flagship stores, retailers and manufacturing ateliers. The Complainant's investments enabled the following developments for the "Poupette St Barth" brand:
 - In 2015, a new store opened in St Barth, and the first atelier in Bali, Indonesia;
 - In 2016, new flagship stores opened in Cannes, France, and in East Hampton, the United States of America;
 - In 2017, retailers started distributing products in Greece and the Benelux, and a second atelier opened in Bali, Indonesia;
 - In 2018, new store opened in St Tropez, France;
 - In 2019, new stores opened in Southampton, the United States of America, in Milan, Italy, and an office and showroom opened in Paris, France;
 - Subsequently, wholesale distribution started with the addition of 101 new wholesale accounts;
 - In 2020, a new store opened in Miami, the United States of America, and the wholesale distribution expanded with an agreement with Harrods and 90 additional new wholesale accounts.
- Products of the "Poupette St Barth" brand are now sold worldwide in 220 points of sale, including several flagship stores bearing the trading name "Poupette St Barth", multi-brands retail stores, and on the Internet such as through its own e-commerce website "www.poupettestbarth.com".
- When the Complainant acquired the "Poupette St Barth" brand, the Complainant also acquired the worldwide trade mark rights for the POUPETTE and POUPETTE ST BARTH marks (collectively, the "Complainant's Marks"), including but not limited to:

- France trade mark no. 3007424 for POUPETTE, registered on February 15, 2000, duly renewed and covering classes 3, 18, 20, 24, and 25;
- International Registration no. 818795 for POUPETTE, registered January 8, 2004, duly renewed and designating, amongst others, the European Union, covering classes 3 and 25; and
- France trade mark no. 4549309 for POUPETTE ST BARTH, registered on May 7, 2019 and covering classes 3, 9, 14, 18, 24, and 25.

The Complainant submits that it owns several domain names including the domain name <poupetestbarth.com> registered since January 7, 2011, which directs Internet users to the Complainant's website where products of the "Poupette St Barth" brand are promoted and sold (the "Complainant's Website").

The Disputed Domain Name was registered on July 8, 2022. According to the evidence provided by the Complainant, the Disputed Domain Name resolves to a fraudulent website being a copy of the Complainant's Website and bearing the Complainant's Marks, which purports to sell products under the "Poupette St Barth" brand with huge discounts.

5. Parties' Contentions

A. Complainant

The Complainant submitted that the three elements set out under paragraph 4(a) of the Policy in relation to the Disputed Domain Name have been satisfied. A summary of the Complainant's submission is as follows.

- (i) The Complainant submits that the Disputed Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights. The Complainant contends that:

The Disputed Domain Name is identical or at least highly similar to the Complainant's Marks:

- The Disputed Domain Name merely adds the term "barth" to the Complainant's POUPETTE marks, which does not avoid confusing similarity as the main and distinctive element of the Disputed Domain Name is still "poupette";
- The Disputed Domain Name is also almost identical to the Complainant's POUPETTE ST BARTH mark, as the Disputed Domain Name merely omits the letters "ST", which is barely noticeable and obviously insufficient to avoid consumers' confusion. Further, any consumer accessing the website of the Disputed Domain Name will believe they are reaching the Complainant's Website;
- Consumer confusion actually already occurred given that the Complainant received a complaint by a consumer who ordered a dress on the website of the Disputed Domain Name but never received it;
- The Disputed Domain Name is clearly a case of typosquatting; and
- The Respondent was targeting the Complainant's Marks through the domain name chosen as the Disputed Domain Name resolves to a website which is a copy of the Complainant's Website, bearing the Complainant's Marks. This is an indication that the Disputed Domain Name is confusingly similar to the Complainant's Marks.

(ii) The Complainant submits that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Complainant contends that:

- The Complainant searched in trade mark databases for possible trade mark registrations or applications owned by the Respondent in any searchable jurisdiction, particularly searching for any trade mark containing or consisting of "POUPETTEBARTH" or "POUPETTE BARTH", and found nothing. To the best of the Complainant's knowledge, the Respondent holds no intellectual property rights over any mark that contains the term "POUPETTEBARTH";
- The Complainant never authorized the Respondent to register and use the Disputed Domain Name and the Respondent is not one of the Complainant's authorized retailers; and
- The Respondent therefore has no rights or legitimate interests in the Disputed Domain Name.

(iii) The Complainant submits that the Disputed Domain Name was registered and is being used in bad faith. The Complainant contends that:

- The Respondent's decision to register and use a domain name that is confusingly similar to the Complainant's Marks has been done on purpose and in bad faith;
- By registering the Disputed Domain Name, the Respondent aimed at intentionally attempting to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's Marks as to the source of the website of the Disputed Domain Name;
- It is impossible that the Respondent's decision to register the Disputed Domain Name, which is confusingly similar to the Complainant's Marks, was purely fortuitous or coincidental;
- Bad faith use of the Disputed Domain Name is clear as its associated website reproduces, without authorization, the Complainant's Website and the Complainant's Marks, which would lead Internet users to believe that they are on the Complainant's Website;
- The Disputed Domain Name website is clearly and deliberately designed to lead to confusion since it includes many features of the Complainant's Website or of its retailers, including:
 - The reproduction of the Complainant's Marks in the website's name and all over the website including, the upper browser banner, the homepage of the website, the products page of the website;
 - The reproduction of the Complainant's copyright disclaimer at the end of the homepage;
 - The reproduction of the Complainant's favicon representing a stylized Tiare flower; and
 - The reproduction of the picture and description of "Poupette St Barth" brand products as they appear on the Complainant's Website;
- Further, the address provided on the contact page of the Disputed Domain Name website is obviously erroneous and fraudulent as it is the address of a Walmart supermarket that has no link with the Complainant nor with the Respondent;
- Finally, the Complainant was made aware that the products ordered on the Disputed Domain Name website are sold with huge discounts to attract consumer's interest but are never delivered. The Complainant received a complaint from a customer who ordered a dress on the Disputed Domain Name website but never received the order confirmation nor the dress despite having already paid. The Complainant submitted that after having communicated with the customer, they understood that the customer thought she was ordering the dress on the Complainant's Website and that she was misled by the Disputed Domain Name website;

- The Disputed Domain Name website is manifestly a scam website and is prejudicing the Complainant's online sales and reputation; and
- The Respondent clearly tries to create in the mind of Internet users an association with the Complainant and to unfairly benefit from the Complainant's prestige and reputation to scam consumers with fake sales of the Complainant's "Poupette St Barth" brand products.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that a complainant must satisfy each of the following three elements in a complaint:

- (i) the disputed domain name is identical or confusingly similar to a trade mark 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.

A. Identical or Confusingly Similar

According to section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), generic Top-Level Domains such as ".com" in a disputed domain name do not typically form part of the relevant assessment in the test of confusing similarity. The Panel will accordingly consider the second level part of the Disputed Domain Name (*i.e.*, "poupettebarth").

The Complainant demonstrated that it is the proprietor of the Complainant's Marks.

According to section 1.7 of the [WIPO Overview 3.0](#), "where a domain name incorporates the entirety of a trademark [...] the domain name will normally be considered confusingly similar to that mark". The Disputed Domain Name incorporates the Complainant's POUPETTE marks in their entirety, the addition of the term barth" in the Disputed Domain Name does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's POUPETTE marks.

Furthermore, despite the omission of the letters "st" in between the terms "poupette" and "barth" in the Disputed Domain Name, the Disputed Domain Name is also confusingly similar to the Complainant's POUPETTE ST BARTH mark. The Panel is prepared to find the omission of the letters "st" in the Disputed Domain Name does not prevent a finding of confusing similarity between the Disputed Domain Name and the Complainant's POUPETTE ST BARTH mark.

Accordingly, the Panel is of the view that the Disputed Domain Name is confusingly similar to the Complainant's Marks and the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

According to section 2.1 of the [WIPO Overview 3.0](#), "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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element".

The Panel accepts the Complainant's submissions that the Respondent does not appear to own any trade mark registrations or applications containing or consisting of **POUPETTEBARTH** or **POUPETTE BARTH**. The Panel notes that the Complainant has never authorized the Respondent to register and use the Disputed Domain Name, and that the Respondent is not one of the Complainant's authorized retailers. The Disputed Domain Name is associated with a website that displays products purporting to be of the "Poupette St Barth" brand, which are clearly labeled with prices and discounts as well as corresponding product titles containing the words "Poupette St Barth". The website of the Disputed Domain Name also clearly displays the Complainant's Marks throughout.

Considering the website of the Disputed Domain Name resolves to what appears to be a fraudulent copy of the Complainant's Website which displays the Complainant's Marks and purports to sell the Complainant's "Poupette St Barth" clothing products, the Panel is prepared to find that the Respondent did not use the Disputed Domain Name in connection with a *bona fide* offering of goods or services. The Panel finds it apparent that the Respondent had the intention to divert consumers seeking to find the Complainant to the Disputed Domain Name by impersonating the Complainant. It is clear that the use of the Disputed Domain Name, which is also inherently misleading, by the Respondent was an attempt to capitalize on the reputation and goodwill of the Complainant's Marks and mislead Internet users. As such, the Panel does not find that the use of the website associated with the Disputed Domain Name is for a legitimate noncommercial or fair use.

Further, according to section 2.13.1 of the [WIPO Overview 3.0](#), UDRP panels have consistently held that, "the use of a domain name for illegal activity (e.g., the sale of counterfeit goods[,], impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent". This Panel is prepared to find that the evidence submitted by the Complainant regarding the sale of clothing products in the Complainant's "Poupette St Barth" brand name at below market value supports the submission that the Respondent is using the Disputed Domain Name for fraudulent activity ([WIPO Overview 3.0](#) section 2.13.2.).

Considering the foregoing, the Panel is satisfied that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests.

C. Registered and Used in Bad Faith

According to section 3.1.4 of the [WIPO Overview 3.0](#), UDRP panels have "consistently found that the mere registration of a domain name that is identical or confusingly similar [...] to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith".

The Panel finds that at the time of registration of the Disputed Domain Name in 2022, the Complainant's Marks were already registered in various parts of the world. The Panel agrees that the Complainant's Marks are well known and reputable amongst the general public. Considering the reputation of the Complainant's Marks, it would not be plausible for the Respondent to claim that it was unaware of the Complainant and the Complainant's Marks. The Panel is prepared to infer that the Respondent knew or should have known that its registration of the Disputed Domain Name would be confusingly similar to the Complainant's Mark ([WIPO Overview 3.0](#), section 3.2.2.). Accordingly, the Panel finds that the Respondent registering the Disputed Domain Name, which is confusingly similar to the Complainant's Marks, which are well-known and registered earlier, is a clear indicator of bad faith.

Moreover, factors such as domain names that carry a high risk of implied affiliation, and a clear absence of rights or legitimate interests, are indicators of bad faith. The Panel accordingly considers its findings in the above sections 6.A. and 6.B., coupled with the fact that the Respondent failed to explain its choice of the Disputed Domain Name to be indicators of the Respondent's bad faith.

Further, considering the appearance and use of the Disputed Domain Name website to sell goods purporting to be under the "Poupette St Barth" brand, the Panel is prepared to find that the Respondent has attempted to pass off as an official website of the Complainant and/or pass off as being affiliated with the Complainant, to benefit from the reputation and goodwill of the Complainant's "Poupette St Barth" brand. The Panel

considers that the Respondent registered and used the Disputed Domain Name primarily for the purpose of attempting to attract, for commercial gain, Internet users to their website by creating confusion with the Complainant's Marks as to the source, sponsorship, affiliation, or endorsement of their website or of the product(s) on their website to the Complainant ([WIPO Overview 3.0](#), section 3.1). According to section 3.1.4 of the [WIPO Overview 3.0](#), UDRP panels have found that actual confusion is sufficient evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark. In the present case, the Panel is satisfied that the evidence submitted by the Complainant of the complaint received from a consumer who purchased a product on the website associated with the Disputed Domain Name, believing they were purchasing from the Complainant's Website, is sufficient to show that there was in fact actual confusion between the Disputed Domain Name and the Complainant's Marks.

Further, the Panel observes that the Respondent attempted to conceal its identity using a proxy service. The Panel is of the view that the Respondent's use of a proxy service and provision of false contact information provided in the website at the Disputed Domain Name are indicators of bad faith ([WIPO Overview 3.0](#), section 3.6).

In view of the foregoing, the Panel is of the view that paragraph 4(a)(iii) of the Policy has been satisfied.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Disputed Domain Name <poupettebarth.com> be transferred to the Complainant.

/Rosita Li/

Rosita Li

Sole Panelist

Date: December 12, 2022