

ADMINISTRATIVE PANEL DECISION

ETAM SAS v. Tingying Zhao

Case No. D2023-3283

1. The Parties

The Complainant is ETAM SAS, France, represented by Domgate, France.

The Respondent is Tingying Zhao, China.

2. The Domain Name and Registrar

The disputed domain name <etammode.com> (the “Domain Name”) is registered with Gransy, s.r.o. d/b/a subreg.cz (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 31, 2023. On July 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On August 1, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Not Disclosed) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 1, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On August 3, 2023, the Complainant transmitted by email a request for an extension of time to submit an amended Complaint. On August 7, 2023, the Center granted the extension until August 16, 2023. The Complainant filed an amended Complaint on August 16, 2023.

The Center verified that the Complaint together with 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 August 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 6, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 8, 2023.

The Center appointed Nicholas Smith as the sole panelist in this matter on September 15, 2023. 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.

4. Factual Background

The Complainant is a French company, specializing in lingerie products under the trademark ETAM (the “ETAM Mark”). The Complainant operates 1,500 stores in 57 countries and sells its products from a total of 3700 stores and through its website at “www.etam.com”.

The Complainant has held a trademark registration for the ETAM Mark in various jurisdictions since 1959, including international registrations for the ETAM Mark registered in 1959 (no. 216180, for goods in classes 1, 2, 23, 24 and 25) and another registered in 2000 (no. 744378, for good in classes 3, 9, 18 and 25) designating over 30 countries including China and the United States of America.

The Domain Name was registered on June 6, 2023. The Domain Name resolves to a French-language website (the “Respondent’s Website”) that offers lingerie products in direct competition with the goods offered by the Complainant under the ETAM Mark.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

Notably, the Complainant contends that:

- a) It is the owner of the ETAM Mark, having registered the ETAM Mark in various jurisdictions including China, the location of the Respondent. The Domain Name is confusingly similar to the ETAM Mark as it reproduces the ETAM Mark in its entirety and adds the additional term “mode”.
- b) There are no rights or legitimate interests held by the Respondent in respect of the Domain Name. The Complainant has not granted any license or authorization for the Respondent to use the ETAM Mark. The Respondent is not commonly known by the ETAM Mark, nor does it use the Domain Name for a *bona fide* purpose or legitimate noncommercial purpose. Rather, the Respondent is using the Domain Name for commercial gain by offering lingerie products in direct competition with the Complainant under the Complainant’s ETAM Mark. Such use is not a legitimate use of the Domain Name.
- c) The Domain Name was registered and is being used in bad faith. The Respondent is using the Domain Name to divert Internet users searching for the Complainant to the Respondent’s Website for commercial gain. Such conduct amounts to registration and use of the Domain Name in bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the ETAM mark is reproduced within the Domain Name. Accordingly, the Domain Name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms, here "mode", may bear on assessment of the second and third elements, the Panel finds the addition of such a term does not prevent a finding of confusing similarity between the Domain Name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. 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.

While 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 often impossible 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. 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.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Name.

The Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.
- the Respondent (as an individual, business, or other organization) has not been commonly known by the Domain Name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.
- the Respondent is not making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.

- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the Domain Name.

The Respondent's use of the Domain Name to resolve to a webpage offering lingerie products in direct competition with the lingerie products offered by the Complainant under the ETAM Mark does not amount to use for a *bona fide* offering of goods and services. Rather, it appears that the purpose behind the Respondent's conduct is to appropriate the fame and reputation of the ETAM Mark to increase the number of visitors to the Respondent's Website for its commercial gain, such conduct not being *bona fide*.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and 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.

The Panel considers that the record of this case reflects that the Respondent 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 the Respondent's website or location or of a product or service on the Respondent's website or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

The Panel finds that the Respondent must have been aware of the Complainant and its reputation in the ETAM Mark at the time the Respondent registered the Domain Name. The Complainant has traded in China, the location of the Respondent, for a number of years and has a considerable international reputation in the field of lingerie. The Respondent has provided no explanation, and neither it is immediately obvious, why an entity would register a domain name incorporating the coined ETAM Mark, and redirect it to a French-language website offering competing lingerie products unless there was an awareness of and an intention to create a likelihood of confusion with the Complainant and its ETAM Mark.

The Respondent's Website purports to offer lingerie products in direct competition with the Complainant. Noting the absence of any explanation for the registration, the Panel considers that the most likely explanation is that the Respondent is using the Domain Name to intentionally attempt to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the ETAM Mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's Website.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 Domain Name, <etammode.com> be transferred to the Complainant.

/Nicholas Smith/

Nicholas Smith

Sole Panelist

Date: September 28, 2023