

## ADMINISTRATIVE PANEL DECISION

Babolat VS v. Client Care, Web Commerce Communications Limited  
Case No. D2023-3362

### 1. The Parties

The Complainant is Babolat VS, France, represented by SafeBrands, France.

The Respondent is Client Care, Web Commerce Communications Limited, Malaysia.

### 2. The Domain Names and Registrar

The disputed domain names <babolat-argentina.com>, <babolataustralia.com>, <babolatbelgie.com>, <babolatbelgique.com>, <babolat-brasil.com>, <babolat-canada.com>, <babolat-chile.com>, <babolat-colombia.com>, <babolatcostarica.com>, <babolatcz.com>, <babolatdanmark.com>, <babolatdeutschland.com>, <babolat-egypt.com>, <babolatenfrance.com>, <babolatenmexico.com>, <babolatentunisie.com>, <babolatenuruguay.com>, <babolatespana.com>, <babolatguatemala.com>, <babolathrvatska.com>, <babolat-india.com>, <babolatireland.com>, <babolatisrael.com>, <babolat-italia.com>, <babolatkuwait.com>, <babolatnederland.com>, <babolatnz.com>, <babolatosterreich.com>, <babolatparaguay.com>, <babolat-peru.com>, <babolatphilippines.com>, <babolatpoljska.com>, <babolatportugal.com>, <babolatschweiz.com>, <babolatsouthafrica.com>, <babolatsrbija.com>, <babolatsuisse.com>, <babolatsusa.com>, <babolatsverige.com>, <babolat-turkiye.com>, <babolatuae.com>, and <babolat-uk.com> (the “Disputed Domain Names”) are registered with Alibaba.com Singapore E-Commerce Private Limited (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 4, 2023. On August 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On August 7, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Names which differed from the named Respondent (Kuala Lumpur, MY) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 23, 2023, 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 August 25, 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 29, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 18, 2023. The Respondent did not submit any response. However, an email communication was received from a third party on September 29, 2023. Accordingly, the Center notified the Commencement of Panel Appointment Process on September 19, 2023.

The Center appointed Nicholas Weston as the sole panelist in this matter on September 28, 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 company incorporated under the laws of France that operates a business founded in 1875 manufacturing and selling racquet sports products, which are currently commercialized in more than 160 countries around the world and is or was a sponsor of professional tennis players such as Rafael Nadal, Dominic Thiem, and Jo-Wilfried Tsonga. In 2022, the Complainant became the official racquet service of the Wimbledon Championship tennis tournament. The Complainant holds registrations for the trademark BABOLAT in numerous jurisdictions including, for example: International Trademark Registration No. 794703 for the word mark BABOLAT, registered on July 11, 2002; and Malaysian trademark No. 02008823 for the word mark BABOLAT, registered on July 25, 2002.

The Complainant owns numerous domain names that incorporate its trademark including <babolat.com> registered on January 30, 1997.

The Respondent registered all of the Disputed Domain Names on June 12, 2023.

The Disputed Domain Names that were able to be accessed by the Complainant resolved to websites which displayed the Complainant’s trademark and purported to offer for sale heavily discounted products that resemble those available at the Complainant’s main website. At the time of the Decision, the Disputed Domain Names resolve to such websites or to webpages indicating that the sought websites are geographically unavailable.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant cites its numerous registrations for the trademark BABOLAT as *prima facie* evidence of ownership.

The Complainant submits that its rights in the trademark BABOLAT predate the Respondent’s registration of the Disputed Domain Names. It submits that the Disputed Domain Names are confusingly similar to its trademark, because each of the Disputed Domain Names incorporate in their entirety the BABOLAT trademark and that the similarity is not removed by the additional geographic terms, where it is used the additional term “en” meaning “in” in the English language, or the addition of the generic Top-Level Domain (“gTLD”) “.com”.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names because “the Respondent did not obtain any authorization from the Complainant to use the registered trademark BABOLAT” and none of the circumstances that amount to exceptions set out in paragraph 4(c) of the Policy apply.

Finally, the Complainant alleges that the registration and use of the Disputed Domain Names were, and currently are, in bad faith, contrary to the Policy and the Rules having regard to the prior use and distinctive nature of the Complainant’s trademark, and the use to which the Disputed Domain Names have been put to direct Internet traffic to “websites that reproduce Complainant’s trademarks, logo, copyrighted photos, graphic charter in order to sell heavily discounted goods supposedly coming from the Complainant.”

## **B. Respondent**

The Respondent did not reply to the Complainant’s contentions. A third party communication was received requesting that it be removed from any future communications relating to the proceeding.

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, the Complainant has the burden of proving the following:

- (i) that the Disputed Domain Names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names and
- (iii) that the Disputed Domain Names have been registered and are being used in bad faith.

### **A. Identical or Confusingly Similar**

The Complainant has produced sufficient evidence to demonstrate that it has registered trademark rights in the trademark BABOLAT in numerous jurisdictions including Malaysia, where the Respondent is incorporated. The propriety of a domain name registration may be questioned by comparing it to a trademark registered in any country (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 1.2.1).

Turning to whether the Disputed Domain Names are identical or confusingly similar to the BABOLAT trademark, the Panel observes that each of the Disputed Domain Names comprise: (a) an exact reproduction of the Complainant’s trademark BABOLAT; (b) with in some cases either a hyphen or, alternatively, an additional French word “en” meaning “in” in the English language; (c) followed by a term; (d) followed by the gTLD “.com”.

It is well established that the gTLD used as technical part of a domain name may be disregarded. (see section 1.11 of the [WIPO Overview 3.0](#)). The relevant comparison to be made is with the Second-Level portion of each Disputed Domain Name, specifically: “babolat-argentina”, “babolataustralia”, “babolatbelgie”, “babolatbelgique”, “babolat-brasil”, “babolat-canada”, “babolat-chile”, “babolat-colombia”, “babolatcostarica”, “babolatcz”, “babolatdanmark”, “babolatdeutschland”, “babolat-egypt”, “babolatenfrance”, “babolatenmexico”, “babolatentunisie”, “babolatenuruguay”, “babolatespana”, “babolatguatemala”, “babolathrvatska”, “babolat-india”, “babolatireland”, “babolatisrael”, “babolat-italia”, “babolatkuwait”, “babolatnederland”, “babolatnz”, “babolatosterreich”, “babolatparaguay”, “babolat-peru”, “babolatphilippines”, “babolatpolska”, “babolatportugal”, “babolatschweiz”, “babolatsouthafrica”, “babolatsrbija”, “babolatsuisse”, “babolatsusa”, “babolatsverige”, “babolat-turkiye”, “babolatuae”, and “babolat-uk”.

It is also well established that in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing under the first element (see [WIPO Overview 3.0](#), section 1.7). Accordingly, since the BABOLAT trademark is entirely incorporated in the Disputed Domain Names, the Panel finds that the Disputed Domain Names are confusingly similar to the Complainant's BABOLAT trademark.

The Panel finds that the Complainant has established paragraph 4(a)(i) of the Policy.

## **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy lists the ways that the Respondent may demonstrate rights or legitimate interests in the Disputed Domain Names. The Policy also places the burden on the Complainant to establish the absence of the Respondent's rights or legitimate interests in the Disputed Domain Names. Because of the inherent difficulties in proving a negative, the consensus view is that the Complainant need only put forward a *prima facie* case that the Respondent lacks rights or legitimate interests. The burden of production then shifts to the Respondent to rebut that *prima facie* case (see [WIPO Overview 3.0](#), section 2.1).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names because the respondent is not an authorized user of the Complainant's trademarks and has, it submits, "no relation either economical or financial or of any other kind with the Complainant".

Panels have recognized that resellers, distributors, or service providers using a domain name containing the complainant's trademark to undertake sales or repairs related to the complainant's goods or services may be making a *bona fide* offering of goods and services and thus have a legitimate interest in such domain name (see [WIPO Overview 3.0](#), section 2.8). However, the evidence is that the Respondent is not commonly known by any of the Disputed Domain Names. Nor is the Respondent an authorized reseller with legitimate interests in a domain name incorporating a Complainant's mark. Nor does the site accurately and prominently disclose the registrant's relationship with the trademark holder, a requirement of the test recognised by numerous panels set out in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) (the "Oki Data test"). The Disputed Domain Names also fail the Oki Data test on the basis that the goods offered for sale appear to be counterfeit, and there appears here to be an attempt to "corner the market" in domain names that reflect the BABOLAT trademark given the 42 Disputed Domain Names at issue here (see [WIPO Overview 3.0](#), section 2.8.1).

The Panel is satisfied that the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests. The Respondent did not submit a Response and has not come forward with any claims or evidence of rights or legitimate interests in any of the Disputed Domain Names. In the absence of countervailing evidence, this Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names because it is engaging in an illegitimate commercial use of the Disputed Domain Names by suggesting some association with the Complainant for the purpose of misleading consumers based on users seeking out the Complainant's mark BABOLAT and opportunistically using the Complainant's trademark to divert Internet traffic to its webpages that (where access is available) appear to offer for sale counterfeit products purporting to be those of the Complainant.

The Panel finds for the Complainant on the second element of the Policy.

## **C. Registered and Used in Bad Faith**

The third element of the Policy requires that the complainant must also demonstrate that the Disputed Domain Names have been registered and used in bad faith. Paragraph 4(b) of the Policy sets out certain circumstances to be construed as evidence of both of these conjunctive requirements.

The Panel finds that the evidence in the case shows the Respondent registered and has used the Disputed Domain Names in bad faith.

On the issue of registration, taking into account the composition of each of the Disputed Domain Names, the fact that they were all registered on the same day, and the content of the websites they resolve to, the Panel is satisfied that the Respondent deliberately targeted the Complainant's trademark BABOLAT when it registered each of the Disputed Domain Name and finds that the requisite element of bad faith has been satisfied in each case.

This Panel finds that there is no reason for the Respondent to have registered the Disputed Domain Names other than to trade off the reputation and goodwill of the Complainant's trademark (see *BABOLAT VS v. Huili Gan, Lu Yufeng, Xiaofen Tan, Fanyuan Tang, Peishun Wang*, WIPO Case No. [D2023-0963](#) ("the disputed domain names are so obviously connected with the Complainant that their very selection by the Respondents, which have no connection with the Complainant, suggests the disputed domain names were registered with a deliberate intent to create an impression of an association with the Complainant").

The diversion of Internet users for commercial gain is also a common example of use in bad faith as referred to in paragraph 4(b)(iv) of the Policy and identified in many previous UDRP decisions (see [WIPO Overview 3.0](#), section 3.1.4).

In addition, the gap of several years between registration of the Complainant's trademark and the Respondent's registration of the Disputed Domain Names, along with the composition of the Disputed Domain Names (containing the Complainant's trademark in its entirety) in the circumstances of this case is a further indicator of bad faith. In this case, the Complainant's rights in its trademark predate any rights that could possibly flow from the Respondent's registrations by approximately 21 years.

On the issue of use, the Complainant's evidence is that most of the Disputed Domain Names resolved to websites that displayed the Complainant's trademark and, currently, a number do not resolve to an active website or are geographically blocked. This Panel accepts the Complainant's evidence that many of the Disputed Domain Names resolved to websites displaying the Complainant's trademark as evidence that the Respondent was well aware of the Complainant's trademark BABOLAT when registering the Disputed Domain Names and has used it in bad faith.

This Panel finds that where the Disputed Domain Names have been used to resolve to a passive website does not prevent a finding of bad faith. Previous UDRP panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. "While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put" (see [WIPO Overview 3.0](#), section 3.3). This Panel notes that the evidence is that a majority of these factors are present in this proceeding.

This Panel also accepts the evidence of geo-blocking in some instances (where the Disputed Domain Names present an "access denied" message) and finds that this does not prevent a finding of bad faith, in view of the Respondent's failure to participate in this proceeding, and (as discussed in section 6.B above) the Respondent's attempt to "corner the market" in domain names that reflect the BABOLAT trademark (see [WIPO Overview 3.0](#), section 3.3).

The Panel also observes that the Respondent has been the unsuccessful respondent in numerous other UDRP proceedings that are easily located by a search of the Center's public website. See, e.g., *LEGO Juris A/S v. Client Care, Web Commerce Communications Limited*, WIPO Case No. [D2023-0915](#), and *Benetton Group S.R.L. v. Client Care, Web Commerce Communications Limited*, WIPO Case No. [D2023-1769](#). The Panel therefore finds that the Respondent is a serial offender who deliberately targeted the Complainant and is engaged in a pattern of bad faith conduct. The sheer number of those adverse decisions involving a known bad actor indicates to this Panel a pattern of conduct that supports a further finding of bad faith against the Respondent (See [WIPO Overview 3.0](#), section 3.1.2).

In the absence of any countervailing evidence, this Panel accepts the Complainant's evidence and finds that the Respondent has used the Complainant's trademark BABOLAT for the Disputed Domain Names, without the Complainant's consent or authorization, for the very purpose of capitalizing on the reputation of the trademark to infringe upon the Complainant's rights.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) of the Policy.

## **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 Names, <babolat-argentina.com>, <babolataustralia.com>, <babolatbelgie.com>, <babolatbelgique.com>, <babolat-brasil.com>, <babolat-canada.com>, <babolat-chile.com>, <babolat-colombia.com>, <babolatcostarica.com>, <babolatcz.com>, <babolatdanmark.com>, <babolatdeutschland.com>, <babolat-egypt.com>, <babolatenfrance.com>, <babolatenmexico.com>, <babolaten tunisie.com>, <babolatenuruguay.com>, <babolatespana.com>, <babolatguatemala.com>, <babolathrvatska.com>, <babolat-india.com>, <babolatireland.com>, <babolatisrael.com>, <babolat-italia.com>, <babolatkuwait.com>, <babolatnederland.com>, <babolatnz.com>, <babolatosterreich.com>, <babolatparaguay.com>, <babolat-peru.com>, <babolatphilippines.com>, <babolatpolska.com>, <babolatportugal.com>, <babolatschweiz.com>, <babolatsouthafrica.com>, <babolatsrbija.com>, <babolatsuisse.com>, <babolatsusa.com>, <babolatsverige.com>, <babolat-turkiye.com>, <babolatuae.com>, and <babolat-uk.com> be transferred to the Complainant.

*/Nicholas Weston/*

**Nicholas Weston**

Sole Panelist

Date: October 9, 2023