

ADMINISTRATIVE PANEL DECISION

**Babolat VS v. Client Care, Web Commerce Communications Limited,
Benjamin Gordon, Benjamin Gordon, Amarilis Morales, Amarilis Morales
Case No. D2023-4762**

1. The Parties

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

The Respondent is Client Care, Web Commerce Communications Limited, Malaysia, Benjamin Gordon, Benjamin Gordon, United States of America, Amarilis Morales, Amarilis Morales, Canada.

2. The Domain Names and Registrar

The disputed domain names <babolatmalaysia.com>, <babolat-nz.com>, <babolatpadelbelgie.com>, <babolatph.com>, <babolatrekethr.com>, <babolatsingapore.com>, <babolatsklep.com>, <babolat-southafrica.com>, <babolatsuomi.com>, <babolattennisaustralia.com>, <babolattennisuk.com>, <babolattennisusa.com>, and <tiendababolatargentina.com> 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 November 15, 2023. On November 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On November 17, 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 and contact information in the Complaint (Kuala Lumpur, MY & Quebec, CA & Georgia, US).

The Center sent an email communication to the Complainant on November 24, 2023 with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting the Complainant to either file separate complaint(s) for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity. The Complainant filed an amended Complaint on November 29, 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 December 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 10, 2024.

The Center appointed Nayiri Boghossian as the sole panelist in this matter on January 26, 2024. 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 manufacturer of racquet sports products founded in 1875. The Complainant owns trademark registrations for BABOLAT such as:

- European Union trademark registration No. 004873411, registered on January 31, 2007.
- International trademark registration No. 794703, registered on July 11, 2002.
- United States of America trademark registration No. 78146130, registered on January 6, 2004.

The Complainant owns the domain name <babolat.com>.

The disputed domain names <babolatmalaysia.com>, <babolat-nz.com>, <babolatph.com>, <babolatsingapore.com>, <babolat-southafrica.com>, <babolattennisaustralia.com>, <babolattennisuk.com> and <babolattennisusa.com> were registered on October 11, 2023.

The disputed domain names <babolatrekethr.com>, <babolatsuomi.com>, <babolatpadelbelgie.com>, <tiendababolatargentina.com> and <babolatsklep.com> were registered on October 13, 2023.

The disputed domain names <babolatmalaysia.com>, <babolat-nz.com>, <babolatph.com>, <babolatsingapore.com>, <babolat-southafrica.com>, <babolattennisaustralia.com>, <babolattennisuk.com>, <babolattennisusa.com>, <babolatrekethr.com>, <babolatsuomi.com>, <babolatpadelbelgie.com>, and <tiendababolatargentina.com> resolve to websites which offer what appear to be the Complainant’s products or counterfeits thereof.

It has not been possible to access the disputed domain names <babolatsklep.com> and <babolatph.com>.

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 disputed domain names.

Notably, the Complainant contends that the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant owns the trademark BABOLAT and has registered it in many countries. The Complainant’s trademark is well-known. The disputed domain names incorporate the Complainant’s trademark, which is the distinctive element of the disputed domain names. The generic Top-Level Domain (“gTLD”) “.com” is a standard registration requirement. The addition of generic or geographical words is not enough to eliminate confusing similarity.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain names. The Respondent is not commonly known by the name BABOLAT. The Respondent is not authorized by the Complainant to use its trademark and there is no relationship between them. The Respondent is using the disputed domain names in order to sell what appear to be, judging from their prices, counterfeit products of the Complainant. In any case, there is nothing to disclose the accurate relationship between the Complainant and the Respondent. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain names nor a bona fide offering of goods or services. The Respondent is attempting to obtain unfair commercial gain.

The Complainant contends that the disputed domain names were registered and are being used in bad faith. The Respondent knew of the Complainant's trademark as the disputed domain names resolve to websites which sell supposedly the Complainant's products at discounted prices. This is an indication of bad faith use as well. Also, there is no disclosure of the relationship with the Complainant and the latter's intellectual property is being used on these websites. The disputed domain names were registered for commercial gain by creating confusion with the Complainant's trademark and suggesting that the Complainant is the source of the websites. Through these websites, the Respondent can collect personal information and credit card details from the consumers.

B. Respondent

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

6. Discussion and Findings

Consolidation: Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The disputed domain name registrants did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition \("WIPO Overview 3.0"\)](#), section 4.11.2.

As regards common control, the Panel notes that the domain names were registered on the same dates; either October 11, 2023 or October 13, 2023, with the exception of <babolatsklep.com> and <babolatph.com>, they all resolve to websites selling what seem to be the products of the Complainant or counterfeits thereof. All websites with the exception of the two aforementioned ones have very similar designs; their layout is identical and they include photos of products and players. They are all registered with the Registrar.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as "the Respondent") in a single proceeding.

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 disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

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 entirety of the mark is reproduced within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, mostly country names or abbreviations, may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. 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 disputed domain names such as those enumerated in the Policy or otherwise.

In relation to the disputed domain names <babolatmalaysia.com>, <babolat-nz.com>, <babolatph.com>, <babolatsingapore.com>, <babolat-southafrica.com>, <babolattennisaustralia.com>, <babolattennisuk.com>, <babolattennisusa.com>, <babolatrekethr.com>, <babolatsuomi.com>, <babolatpadelbelgie.com>, and <tiendababolatargentina.com>, Panels have held that the use of a domain name for illegal activity here, claimed sale of counterfeit goods, (given the prices of the goods, it is the Panel's view that they must be counterfeit), can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. Furthermore, even if the websites at the disputed domain names would not be selling counterfeit goods, the composition of the disputed domain names, and the content of the website (prominently displaying the Complainant's logo), suggests sponsorship, affiliation or endorsement by the Complainant.

It is not clear what the disputed domain names <babolatsklep.com> and <babolatph.com> are used for. Given that they are registered by the Respondent at the same time as the other disputed domain names, the Panel is of the view that they are used for the same purpose, i.e., selling counterfeit products and therefore

would not give rise to any rights or legitimate interests. If they are not used for any purpose, such passive holding does not confer any rights or legitimate interests.

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.

In the present case, the Panel notes that the Respondent was aware of the Complainant's products as, the disputed domain names <babolatmalaysia.com>, <babolat-nz.com>, <babolatph.com>, <babolatsingapore.com>, <babolat-southafrica.com>, <babolattennisaustralia.com>, <babolattennisuk.com>, <babolattennisusa.com>, <babolatrekethr.com>, <babolatsuomi.com>, <babolatpadelbelgie.com>, and <tiendababolatargentina.com> reproduce the Complainant's trademark in its entirety (in certain cases along terms connected to the Complainant's business such as "tennis" or "padel"), and also resolve to websites which offer what seem to be counterfeit products of the Complainant.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In relation to the disputed domain names <babolatmalaysia.com>, <babolat-nz.com>, <babolatph.com>, <babolatsingapore.com>, <babolat-southafrica.com>, <babolattennisaustralia.com>, <babolattennisuk.com>, <babolattennisusa.com>, <babolatrekethr.com>, <babolatsuomi.com>, <babolatpadelbelgie.com> and <tiendababolatargentina.com> Panels have held that the use of a domain name for illegal activity here, claimed sale of counterfeit goods constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain names constitutes bad faith under the Policy.

It is not clear what the disputed domain names <babolatsklep.com> and <babolatph.com> are used for but given they are registered by the Respondent at the same time as the other disputed domain names, the Panel is of the view that they are used for the same purpose and hence are used in bad faith. If <babolatsklep.com> and <babolatph.com> are not used for any purpose, then 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. Having reviewed the available record, the Panel finds the non-use of the aforementioned disputed domain names does not prevent a finding of bad faith in the circumstances of this proceeding. Although 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, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's trademark, and the composition of the disputed domain names, and finds that in the circumstances of this case the passive holding of the disputed domain names does not prevent a finding of bad faith under the Policy.

The Panel finds that the Complainant has established the third element 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, <babolatmalaysia.com>, <babolat-nz.com>, <babolatph.com>, <babolatsingapore.com>, <babolatsklep.com>, <babolat-southafrica.com>, <babolattennisaustralia.com>, <babolattennisuk.com>, <babolattennisusa.com>, <babolatrekethr.com>, <babolatsuomi.com>, <babolatpadelbelgie.com>, and <tiendababolatargentina.com>, be transferred to the Complainant.

/Nayiri Boghossian/

Nayiri Boghossian

Sole Panelist

Date: February 9, 2024