

ADMINISTRATIVE PANEL DECISION

Magellan v. Liwu Yu
Case No. D2022-0253

1. The Parties

Complainant is Magellan, France, represented by Inlex IP Expertise, France.

Respondent is Liwu Yu, China.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 26, 2022. On January 26, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 7, 2022, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 Respondent of the Complaint, and the proceedings commenced on February 9, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 1, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on March 2, 2022.

The Center appointed Marina Perraki as the sole panelist in this matter on March 10, 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.

4. Factual Background

Complainant is active in the fashion industry for men and women clothes sold under the trademark BONOBO. Complainant provides its goods also through its website at "www.bonoboplanet.com".

Complainant is the owner of trademark registrations for BONOBO worldwide, including:

- French trademark registration no. 312793, BONOBO (figurative), filed on October 25, 2001 for goods in international class 25; and
- European Union Trade Mark registration no. 005163225, BONOBO (word), filed on June 27, 2006 and registered on October 14, 2009 for goods in international classes 14, 18 and 25.

The Domain Name was registered on January 10, 2022 and leads to a website that looks like an e-shop offering clothing (the Website). Per Complaint, this is not a genuine website, as there is only one "clothing" tab on the Website, the address provided to the Registrar does not correspond to the address on the Website and the address on the Website does not correspond to any BONOBO SOLDES shop. The Website is presented as an e-shop where the consumer can create an account and purchase products, namely, the consumer is invited to provide personal details for purchasing products.

5. Parties' Contentions

A. Complainant

Complainant asserts that it has established all three elements required under paragraph 4(a) of the Policy for the transfer of the Domain Name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements, which Complainant must satisfy with respect to the Domain Name:

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

A. Identical or Confusingly Similar

Complainant has demonstrated rights through registration and use on the BONOBO mark.

The Domain Name incorporates Complainant's trademark BONOBO in its entirety. This is sufficient to establish confusing similarity (*Magnum Piering, Inc. v. The Mudjacks and Garwood S. Wilson, Sr.*, WIPO Case No. [D2000-1525](#); *Instagram, LLC v. Sedat Das, Arda Arda, Domain Admin, whoisprotection biz, Domain Admin Domain Admin, whoisprotection biz*, WIPO Case No. [D2016-2382](#)).

The word “soldes”, which means “sales” in English, does not prevent a finding of confusing similarity, as the BONOBO trademark of Complainant remains clearly recognizable (*Nintendo of America Inc. v. Fernando Sascha Gutierrez*, WIPO Case No. [D2009-0434](#); WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.8).

The generic Top-Level Domain (“gTLD”) “.com” is disregarded, as gTLDs typically do not form part of the comparison on the grounds that they are required for technical reasons (*Rexel Developpements SAS v. Zhan Yequn*, WIPO Case No. [D2017-0275](#); *Hay & Robertson International Licensing AG v. C. J. Lovik*, WIPO Case No. [D2002-0122](#)).

The Panel finds that the Domain Name is confusingly similar to the BONOBO mark of Complainant.

Complainant has established the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

(i) before any notice to Respondent of the dispute, Respondent’s use of, or 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; or

(ii) Respondent (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or

(iii) Respondent is 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.

The Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Name.

Respondent has not submitted any response and has not claimed any such rights or legitimate interests with respect to the Domain Name. As per Complainant, Respondent was not authorized to register the Domain Name.

Respondent has not demonstrated any preparations to use, or has not used the Domain Name or a trademark corresponding to the Domain Name in connection with a *bona fide* offering of goods or services.

On the contrary, as Complainant demonstrated, the Domain Name resolves to the Website containing content that suggested falsely that the website was that of Complainant or of an affiliated entity or of an authorized partner of Complainant.

Per Complainant, Respondent is not an affiliated entity or an authorised distributor or partner of Complainant and no agreement, express or otherwise, existed allowing the use of Complainant’s trademarks on the website of Respondent.

A distributor, reseller or service provider, can make a *bona fide* offering of goods or services and thus have a right or legitimate interest in a domain name only if the following cumulative requirements are met (*Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); [WIPO Overview 3.0](#), section 2.8.1): (i) respondent must actually be offering the goods or services at issue; (ii) respondent must use the site to sell only the trademarked goods or services; (iii) the site must accurately and prominently disclose the registrant’s relationship with the trademark holder; and (iv) respondent must not try to “corner the market” in domain names that reflect the trademark.

These requirements are not cumulatively fulfilled in the present case. The Domain Name falsely suggested that it was official website of Complainant or of an entity affiliated to or endorsed by Complainant. The Website reproduced, without authorization by Complainant, Complainant's trademarks, without any disclaimer of association (or lack thereof) with Complainant.

In addition, the nature of the Domain Name, comprising Complainant's trademark in its entirety in combination with the word "soldes", namely "sales" in English, carries a risk of implied affiliation ([WIPO Overview 3.0](#), section 2.5.1).

The Panel finds that these circumstances do not confer upon Respondent any rights or legitimate interests in respect of the Domain Name.

Complainant has established Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation," are evidence of the registration and use of the Domain Name in "bad faith":

(i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or

(ii) that Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or

(iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or

(iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith.

Because the BONOBO mark had been used and registered by Complainant before the Domain Name registration, the Panel finds it more likely than not that Respondent had Complainant's mark in mind when registering the Domain Name (*Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whois Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc.*, WIPO Case No. [D2014-1754](#)).

Respondent should have known about Complainant's rights, as such knowledge is readily obtainable through a simple browser search (see *Compart AG v. Compart.com / Vertical Axis Inc.*, WIPO Case No. [D2009-0462](#)).

Furthermore, the content of the Website further supports registration in bad faith reinforcing the likelihood of confusion, as Internet users are likely to consider the Domain Name as in some way endorsed by or connected with Complainant ([WIPO Overview 3.0](#), section 3.1.4).

The above further indicates that Respondent knew of Complainant and chose the Domain Name with knowledge of Complainant and its industry (*Safepay Malta Limited v. ICS Inc.*, WIPO Case No. D2015-0403).

Last, Respondent could have conducted a trademark search and should have found Complainant's prior registrations in respect of BONOBO (*Citrix Online LLC v. Ramalinga Reddy Sanikommu Venkata*, WIPO Case No. [D2012-1338](#)).

As regards bad faith use of the Domain Name, Complainant has demonstrated that the Domain Name was used to create the Website, which prominently displayed Complainant's registered trademarks, thereby giving the false impression that it was operated by Complainant or a company affiliated to Complainant or an authorised partner of Complainant. The Domain Name operated therefore by intentionally creating a likelihood of confusion with Complainant's trademark and business as to the source, sponsorship, affiliation or endorsement of the website it resolved to. This supports the finding of bad faith use (*Aktiebolaget Electrolux v. Priscilla Quaiotti Passos*, WIPO Case No. [D2011-0388](#) and [WIPO Overview 3.0](#), section 3.1.4).

Under these circumstances and on this record, the Panel finds that Respondent registered and used the Domain Name in bad faith.

Complainant has established Policy, paragraph 4(a)(iii).

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, <bonobosoldes.com>, be transferred to Complainant.

/Marina Perraki/

Marina Perraki

Sole Panelist

Date: March 23, 2022