

## **ADMINISTRATIVE PANEL DECISION**

**Abena Holding A/S v. Bambo Eko Pleny / Tomas Gajec, VTTG s.r.o.  
Case No. D2022-0577**

### **1. The Parties**

The Complainant is Abena Holding A/S, Denmark, represented by Patrade Legal ApS, Denmark.

The Respondent is Bambo Eko Pleny, Czech Republic / Tomas Gajec, VTTG s.r.o., Czech Republic.

### **2. The Domain Names and Registrars**

The disputed domain names <abena.org> and <bambonature.org> are registered with Ascio Technologies Inc. (the “Registrar”).

The disputed domain names <abena.store>, <bambonature.info>, and <bambonature.store> are registered with WEDOS Internet, a.s. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 18, 2022. On February 18, 2022, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On February 21 and 22, 2022, the Registrars transmitted by email to the Center their verification responses disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on February 23, 2022, providing the registrant and contact information disclosed by the Registrars, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint in English on February 23, 2022.

On February 23, 2022, the Center transmitted an email communication to the Parties in English and Czech regarding the language of the proceeding. On March 1, 2022, both Parties agreed that the language of the proceeding be English.

The Center verified that the Complaint together with the amendment to 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 the Respondent in English of the Complaint, and the proceedings commenced on March 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 22, 2022. The Respondent's submissions were received by the Center on February 25, 2022.

The Center appointed Adam Taylor as the sole panelist in this matter on April 1, 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**

The Complainant's group supplies healthcare products worldwide under the brands "Abena" and – specifically in relation to diapers and other baby products – "BAMBO Nature".

The Complainant operates various websites including "www.abena.com" and "www.bambonature.com".

The Complainant owns a number of trade marks worldwide for ABENA including European Union ("EU") trade mark No. 002424851, filed on October 25, 2001, registered on June 5, 2003, in classes 3, 5, and 16.

The Complainant also owns various figurative trade marks of which the textual component is BAMBO NATURE, including EU trade mark No. 012743332, filed on March 31, 2014, registered on August 12, 2014, in classes 5, 16, and 24.

The disputed domain names <abena.org> and <bambonature.org> were registered on February 9, 2015, and September 5, 2016, respectively. The disputed domain names <abena.store>, <bambonature.store>, and <bambonature.info> were all registered on January 25, 2022.

The Respondent used the disputed domain name <abena.org> for a Czech-language website which was branded with the Complainant's "ABENA" logo and whose homepage contained a description of the Complainant and its products as if the Complainant were speaking, e.g., "[o]ur incontinence care products" followed by a "[m]ore at" link to the Respondent's website at "www.bamboekopleny.cz" ("the Main Site"). The Main Site offered the Complainant's products for sale under the Complainant's "BAMBO Nature" logo alongside an "EKO PLENY" logo.

The disputed domain name <abena.store> redirected to the website at <abena.org>.

The Respondent used the disputed domain name <bambonature.org> for a Czech-language website which was branded with the Complainant's "BAMBO Nature" logo, and which offered the Complainant's products for sale via links to product pages on the Main Site.

The disputed domain names <bambonature.store> and <bambonature.info> redirected to the website at <bambonature.org>.

#### **5. Parties' Contentions**

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

The following is a summary of the Complainant's contentions.

The Complainant's marks and domain names are globally known as a result of the Complainant's activities over decades.

The disputed domain names are identical to, and being used to offer the same goods covered by, the Complainant's trade marks. There is an obvious and significant risk of confusion arising from the infringement of the Complainant's rights.

The Respondent lacks rights or legitimate interests in respect of the disputed domain names.

While the Respondent has been a legitimate customer of an official Czech distributor of the Complainant's goods for at least five years, that does not legitimise the Respondent's registration of the Complainant's trade marks as domain names.

Neither the Complainant, nor its official Czech distributor, has ever given the Respondent permission to register the disputed domain names.

The disputed domain names and websites are effectively the same as those of the Complainant's own domain names and website.

The Respondent has been selling the Complainant's goods via the Main Site for several years and has no legitimate reason to register domain names comprising the Complainant's trade marks to gain traffic for this website. The Respondent could legitimately market its website via alternative domain names that do not include the Complainant's trade marks.

There is no evidence that the Respondent is making legitimate noncommercial or fair use of the disputed domain names.

The disputed domain names were registered and are being used in bad faith.

The Respondent is fully aware of the Complainant and its business as the Respondent has been selling the Complainant's products for some years. The Respondent knows that its registration and use of the disputed domain names is unacceptable.

The Respondent did not inform, or ask permission from, the Complainant or its official Czech distributor, before registering the disputed domain names.

When it became aware of the disputed domain names, the Complainant and its Czech distributor contacted the Respondent demanding immediate cancellation or transfer of the disputed domain names. The Respondent refused to comply and claimed that it was currently selling the disputed domain names to a third party. Neither the Complainant, nor its official Czech distributor, consented to such a transaction.

The Respondent has used the disputed domain names in order to intentionally attract Internet users to its own website for commercial gain. The disputed domain names will give the impression that the Complainant is responsible for the activities connected with the disputed domain names.

## **B. Respondent**

The following is a summary of the Respondent's contentions.

The Respondent acknowledges that the Complainant owns trade marks for ABENA and BAMBO NATURE and that the disputed domain names are identical or confusingly similar to those trade marks.

The Complainant's official representative was informed about registration of the disputed domain names "by the time" and did not object.

The disputed domain names <abena.org> and <bambonature.org> were registered as press release ("PR") and information websites to help and support the Main Site, which officially sells, and has a significant share of the Czech market for, the Complainant's BAMBO NATURE products.

The Respondent's websites at the disputed domain names have always been operated in good faith and only in the Czech language. The Respondent never intended to register the disputed domain names for commercial purposes or to sell to anybody else.

The Respondent has invested a lot of effort, time, and money to make its websites functional and informative, as well as on search engine optimisation.

The Respondent does not agree to cancellation or transfer of the disputed domain names but is happy to cooperate with the Complainant to make mutually acceptable changes to the design and text of the Respondent's websites.

The Respondent registered the disputed domain names <abena.store>, <bambonature.info>, and <bambonature.store> this year and temporarily redirected them to the disputed domain names <abena.org> and <bambonature.org>, because the Respondent is planning to use the more recent disputed domain names in a similar but slightly different and more modern manner to promote the Complainant's products and raise their awareness in the Czech Republic even further.

## **6. Discussion and Findings**

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain names are identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- the disputed domain names have been registered and are being used in bad faith.

### **A. Preliminary Issue - Language of the Proceeding**

Paragraph 11(a) of the Rules states that, unless otherwise agreed by the parties, the default language of the proceeding is the language of the registration agreement, subject to the authority of the panel to determine otherwise.

Here, while the language of the Registration Agreement for the disputed domain names <abena.store>, <bambonature.info>, and <bambonature.store> is Czech, the Parties have indeed "otherwise agreed" that English should be the language of the proceeding. Accordingly, the Panel determines that English should be the language of this proceeding.

### **B. Preliminary Issue – Informal Response**

The Response is in the form of an email to the Center, which does not comply with the formal requirements set out in paragraph 5 of the Rules. For example, there is no statement of truth. The Panel has nonetheless decided to admit the Response in accordance with its powers under paragraph 10(d) of the Rules but to bear in mind the Response's non-compliance with the Rules, including in particular the absence of a statement of truth, when weighing up the Respondent's assertions in this case.

### **C. Identical or Confusingly Similar**

It is not in dispute that the Complainant owns registered trade marks for the word ABENA as well as figurative BAMBO NATURE marks of which the textual component is "BAMBO NATURE".

Disregarding the Top-Level Domain ("TLD") suffixes, the disputed domain names <abena.org> and <abena.store> are identical to the Complainant's ABENA trade mark.

The disputed domain names <bambonature.org>, <bambonature.store>, and <bambonature.info> are identical to the Complainant's figurative BAMBO NATURE trade mark of which the textual component is "BAMBO NATURE". Section 1.10 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") states that assessment of confusing similarity involves comparing the (alpha-numeric) domain name and the textual components of the relevant mark and that design or figurative/stylised elements which are incapable of representation in domain names are largely disregarded.

The Complainant has therefore established the first element of paragraph 4(a) of the Policy.

#### **D. Rights or Legitimate Interests**

As explained in section 2.1 of [WIPO Overview 3.0](#), the consensus view is that, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If not, the complainant is deemed to have satisfied the second element.

Here, the Complainant has not licensed or otherwise authorised the Respondent to use its trade marks.

Paragraph 4(c) of the Policy gives examples of circumstances which, if proved, suffice to demonstrate that a respondent possesses rights or legitimate interests.

As to paragraph 4(c)(i) of the Policy, the Respondent is a reseller of the Complainant's goods via the Main Site.

While the Respondent describes the disputed domain names <abena.org> and <bambonature.org> as PR and information websites designed to "help and support" the Main Site, it is plain, and the Respondent does not seriously contest, that the purpose of those websites was to drive traffic to, and generate sales of the Complainant's products at, the Main Site. The Respondent redirected the other three disputed domain names to those two "support" websites.

The consensus view of UDRP panels – as expressed in section 2.8 of [WIPO Overview 3.0](#) – is that to establish a *bona fide* offering of goods or services in such circumstances, a reseller must comply with certain conditions (the "Oki Data requirements").

In this case, the Panel considers that the Respondent has failed to comply with the Oki Data requirement to accurately and prominently disclose the Respondent's relationship with the Complainant.

On the contrary, as explained above, the Respondent has used the disputed domain names for, or to redirect to, websites branded with the Complainant's logo which, combined with the identity between the Complainant's trade marks and the disputed domain names, strongly implied that they were official websites of the Complainant and which, in turn, were designed to drive traffic to the Main Site reselling the Complainant's products. Certainly, the Panel has not been provided with any evidence of any, let alone a prominent, disclaimer on any of the Respondent's websites that accurately disclosed that the Respondent was a non-official reseller of the Complainant's products.

Furthermore, UDRP panels have found that domain names identical to a complainant's trade mark carry a high risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#).

The Panel also considers that, by registering five domain names that were effectively identical to the Complainant's trade marks, the Respondent has failed to comply with the Oki Data requirement not to "corner the market" in domain names that reflect a complainant's trade mark.

Accordingly, the Panel considers that the Respondent's use of the disputed domain names cannot be said to be *bona fide* for the purposes of the Policy.

Nor is there any evidence that paragraphs 4(c)(ii) or (iii) of the Policy apply in the circumstances of this case.

For the above reasons, the Panel concludes that the Complainant has established the second element of paragraph 4(a) of the Policy.

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

As explained in section 6.D. above, the Panel considers that the disputed domain names are likely to misrepresent to Internet users that any associated websites are connected with the Complainant.

This is compounded by the fact that, as also discussed above, the Respondent used the disputed domain names for, or to redirect to, Complainant-branded websites which strongly implied that they were the official Complainant websites, thereby failing to comply with the Oki Data requirement to accurately and prominently disclose the Respondent's relationship with the Complainant. Furthermore, the Respondent set out to "corner the market" in domain names that reflect the Complainant's trade marks.

In the Panel's view, paragraph 4(b)(iv) of the Policy applies in these circumstances. The Respondent has intentionally attempted to attract Internet users to its websites for commercial gain by creating a likelihood of confusion with the Complainant's trade marks.

For the above reasons, the Panel considers that the Complainant has established the third element of paragraph 4(a) of the Policy.

The Respondent claims that it informed the Complainant's official representative in the Czech Republic about the registration of the disputed domain names, and that the Complainant's representative did not object. However, the Respondent has provided no detail in support of this assertion, let alone any supporting evidence. The Respondent has not identified who exactly it allegedly told about its registration of the disputed domain names, when the communications were made, by which means, and in relation to which disputed domain names. Nor has the Respondent supplied evidence of any communications.

In these circumstances, and given the Complainant's flat denial that any such notice was given, the Respondent has not satisfied the Panel that the Complainant or its representative consented to, or at least acquiesced in, the Respondent's registration (or use) of any of the disputed domain names.

While the Respondent claims that the websites at the disputed domain names have always been operated in good faith, the Panel has concluded that this is not the case for the purposes of the Policy, for reasons explained above.

The Respondent points out that the websites at the disputed domain names are in the Czech language but, in the Panel's view, it is the content of the websites, rather than the language used, that is of relevance in this case.

The Respondent claims that it never intended to register the disputed domain names for commercial purposes, but the Panel considers that use of the disputed domain names to drive traffic to, and enhance sales on, the Main Website is plainly a commercial activity.

While the Respondent says that it does not agree to cancellation or transfer of the disputed domain names, transfer to a complainant is the usual remedy where registrants have been found to have registered and used domain names in bad faith. Nor does it assist the Respondent if, as it claims, it has invested much time and money developing and promoting its websites at the disputed domain names. The Respondent risked loss of any such investment by registering the disputed domain names that corresponded with the Complainant's trade marks, and by using them in the manner outlined above.

The Respondent offers to cooperate with the Complainant to make mutually acceptable changes to the design and text of the Respondent's websites. However, the potential resolution of this dispute on the basis

of the Respondent's retention of the disputed domain names on those, or any other, terms, is a matter for the parties and not for the Panel, whose only role is to consider whether the Complainant has established the three elements under the Policy. As the Panel has so concluded, the Panel considers that it should order the usual remedy in such cases, namely transfer to the Complainant.

## **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, <abena.org>, <abena.store>, <bambonature.info>, <bambonature.org>, and <bambonature.store> be transferred to the Complainant.

*/Adam Taylor/*

**Adam Taylor**

Sole Panelist

Date: April 21, 2022