

ADMINISTRATIVE PANEL DECISION

Sam Entreprise JB Pastor & Fils, and Mr. Patrice Pastor v. 李先生
(Xiansheng Li)

Case No. D2022-0663

1. The Parties

The Complainants are Sam Entreprise JB Pastor & Fils, Monaco, and Mr. Patrice Pastor, Monaco, represented by Monaco Intellectual Property (Mipro), Monaco.

The Respondent is 李先生 (xiansheng li), China.

2. The Domain Name and Registrar

The disputed domain name <pastor-et-fils.com> is registered with Net-Chinese Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 25, 2022. On February 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 1, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On March 1, 2022, the Center transmitted another email communication to the Parties in English and Chinese regarding the language of the proceeding. On March 2, 2022, the Complainants confirmed their request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 the Respondent of the Complaint, and the proceeding commenced on March 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 28, 2022. On March 8, 2022, the Center received an auto reply from the Respondent. The Respondent did not submit any response. Accordingly, the Center notified the Parties on March 29, 2022 that it would proceed to panel appointment.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on April 14, 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

A. Complainants

The 1st Complainant Sam Entreprise JB Pastor & Fils is a company incorporated in Monaco on June 30, 1956, and part of the Pastor Group of construction companies founded by Mr. Jean-Baptiste Pastor in Monaco in 1920. The 2nd Complainant Mr. Patrice Pastor is a director of the 1st Complainant.

The 1st Complainant has constructed a number of high profile buildings and infrastructure projects in Monaco over the years, including the Louis II Stadium and the underground railway to Monte Carlo.

The 1st Complainant is the owner of registration No. 11.28527 in Monaco for the trade mark J. B. PASTOR & FILS, with a registration date of May 19, 2011; and registration No. 11.28529 in Monaco for the trade mark J. B. PASTOR & FILS MONACO, with a registration date of May 19, 2011.

The 2nd Complainant is the owner of registration No. 11.28520 in Monaco for the trade mark PASTOR, also with a registration date of May 19, 2011.

B. Respondent

The Respondent is apparently an individual resident in China.

C. The Disputed Domain Name

The disputed domain name was registered on November 25, 2021.

D. Website at the Disputed Domain Name

The disputed domain name has previously at various times been resolved to English and Chinese language websites with stock filler text; and to a Chinese language website apparently with erotic or pornographic content and containing an “enter now” icon.

As at the date of this Decision, the disputed domain name is no longer resolved to any website.

5. Parties’ Contentions

A. Complainant

The Complainants contend that the disputed domain name is confusingly similar or identical to the Trade Mark, the Respondent has no rights or legitimate interests in respect of the disputed domain name, and the disputed domain name has been registered and is being used in bad faith.

B. Respondent

The Respondent did not reply to the Complainants’ contentions.

6. Discussion and Findings

6.1. Consolidation of Complainants

Paragraph 10(e) of the Rules provides as follows:

“A Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules.”

Past UDRP decisions suggest that a complaint may be brought by multiple complainants where (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion; and (ii) it would be equitable and procedurally efficient to permit the consolidation (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 4.11.1).

In the present proceeding, the Complainants have requested consolidation, due to their common legal and business interest in the trade marks set out in section 4.A above (the “Trade Mark(s)”; and their specific common grievance against the Respondent.

The Respondent has not made any submissions on this issue.

The 2nd Complainant is a director of, and shares the same principal place of business, as the 1st Complainant. The Panel finds that, in all the circumstances, the Complainants have common grievances against the Respondent, and the Respondent has engaged in common conduct that has affected the Complainants’ rights in a similar fashion.

The Panel also finds that it would be procedurally efficient and equitable for the Complainants to be consolidated.

In all the circumstances, the Panel therefore determines, under paragraph 10(e) of the Rules, that there be consolidation of the Complainants in this proceeding.

6.2. Language of the Proceeding

The language of the registration agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11, in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement. However, paragraph 11(a) of the Rules allows the panel to determine the language of the proceeding having regard to all the circumstances. In particular, it is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burdens being placed on the parties and undue delay to the proceeding.

The Complainants have requested that the language of the proceeding be English, for the following reasons:

- (i) English is the most used language in the business world;
- (ii) Translating the Complaint into Chinese would involve considerable additional cost for the Complainant; and
- (iii) The disputed domain name is in the Roman alphabet which suggests the Respondent understands English.

The Panel would have accepted a response in Chinese, but the Respondent did not file a response.

In exercising its discretion to use a language other than that of the Registration Agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both Parties, taking into account all relevant circumstances of the case, including matters such as the Parties' ability to understand and use the proposed language, time, and costs.

Although there is insufficient evidence before the Panel to support a conclusion that the Respondent is conversant in English, the Panel notes that the Respondent has taken no part in this proceeding; and that all of the Center's communications with the Parties have been sent in English and Chinese.

The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner.

In all the circumstances, the Panel therefore finds it is not foreseeable that the Respondent would be prejudiced, should English be adopted as the language of the proceeding.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.3. Substantive Elements of the Policy

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

A. Identical or Confusingly Similar

The Panel finds that the Complainants have rights in the Trade Marks acquired through use and registration.

The disputed domain name consists of a dominant feature of the Trade Marks J. B. PASTOR & FILS and J. B. PASTOR & FILS MONACO – namely, the words “pastor et fils” (“pastor and sons” in the French language), separated by hyphens; and incorporates the entirety of the Trade Mark PASTOR (see [WIPO Overview 3.0](#), section 1.7).

The Panel therefore finds that the disputed domain name is confusingly similar to the Trade Marks.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to the respondent of the dispute, the respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name even if the respondent has acquired no trade mark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

The Complainants have not authorised, licensed, or permitted the Respondent to register or use the disputed domain name or to use the Trade Marks. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that he has acquired any trade mark rights in respect of the disputed domain name or that the disputed domain name has been used in connection with a *bona fide* offering of goods or services. To the contrary, the disputed domain name was previously used in respect of websites which do not on their face appear to be legitimate commercial websites; and it is presently not being used.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain name; and there has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

The Panel finds that the Respondent has failed to produce any evidence to rebut the Complainants' *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Panel therefore finds that the Respondent lacks rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Given (i) the notoriety of the Complainants and of their Trade Marks in Monaco in the construction and infrastructure fields; (ii) the evidence submitted by the Complainants that a simple Internet search for the term "pastor et fils" directs Internet users to the Complainants' websites; (iii) the distinctiveness of the Trade Marks; (iv) the fact the Trade Marks have no meaning in the Chinese language; (v) the fact the disputed domain name is confusingly similar to the Trade Marks; (vi) the Respondent's prior use of the disputed domain name in respect of websites which do not appear to be genuine commercial websites; (vii) the Respondent's act of taking down the most recent of the websites at some time following the filing of the Complaint; and (viii) the lack of any substantiated credible explanation from the Respondent, the Panel finds, in all the circumstances, that the requisite element of bad faith has been made out. The Panel considers it is most likely the Respondent was aware of the Complainants' Trade Marks at the time he registered the disputed domain name. Furthermore, the Respondent's present non-use or passive holding of the disputed domain name would not prevent a finding of bad faith under the Policy.

The Complainants rely on additional grounds in support of a finding of bad faith, namely that, according to the Complainants' Reverse Whois Search, the Respondent has registered a large number of domain names and that he has "no interest" in such registrations; and that the Respondent has been the respondent in a previous UDRP proceeding in which a domain name he had registered was ordered to be transferred to the complainant therein. The Panel would note in this regard that (i) the mere fact of registration of a large number of domain names is not in itself indicative of bad faith; (ii) the name of the Respondent 李先生 (xiansheng li) means "Mister Li" in Chinese; (iii) 李 (Li) is a very common surname in China; and (iv) on the evidence it is not possible for the Panel to fairly conclude that the Respondent is the same person who has registered the domain names referred to by the Complainants.

For all the foregoing reasons, the Panel concludes that the disputed domain name has been registered and is being used in bad faith, and that the Complainants have satisfied 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 name <pastor-et-fils.com> be transferred to the Complainants.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Dated: April 28, 2022