

ADMINISTRATIVE PANEL DECISION

NBA Properties, Inc. v. 王海涛 (Wang Hai Tao)
Case No. D2022-1231

1. The Parties

The Complainant is NBA Properties, Inc., United States of America (“United States”), represented by Greenberg Traurig, LLP, United States.

The Respondent is 王海涛 (Wang Hai Tao), China.

2. The Domain Name and Registrar

The disputed domain name <nbaplus.com> (the “Domain Name”) is registered with Alibaba Cloud Computing (Beijing) Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on April 7, 2022. On April 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 8, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on April 8, 2022, 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 in English on April 15, 2022.

On April 8, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On April 15, 2022, the Complainant submitted its 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 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 in English and Chinese of the Complaint, and the proceedings commenced on April 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 10, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 11, 2022.

The Center appointed Karen Fong as the sole panelist in this matter on May 18, 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 together with its affiliates form the men's professional basketball league known by the name NBA. During the 2020-2021 NBA regular season, NBA teams played 72 games that were seen by approximately 2 million total live spectators and millions more television viewers. NBA games and programming span 215 countries. NBA merchandising is also for sale in over 125,000 stores in 100 countries. The NBA website at the domain name <nba.com> registered in 1994 receives an average of 50 million visits every month.

The NBA trade mark is registered globally with the earliest registration submitted in evidence, United States Trade Mark Registration No. 2118226 for NBA, dating back to 1997. The Complainant also has NBA trade mark registrations in China which includes Trade Mark No. 4019666 for 国家篮球协会 NBA, registered on August 7, 2010 (collectively, the "Trade Mark").

The Respondent is based in China and the Domain Name was registered on January 17, 2019. The Domain Name does not resolve to an active website.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to the Trade Mark, that the Respondent has no rights or legitimate interests with respect to the Domain Name, and that the Domain Name has been registered and is being used in bad faith. The Complainant requests transfer of the Domain Name to the Complainant.

B. Respondent

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

6. Discussion and Findings

A. General

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the Domain Name, the Complainant must prove each of the following, namely that:

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

B. Language of the Proceeding

The Rules, paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement, the language of the proceeding shall be the language of the registration agreement, subject to the authority of the panel to determine otherwise, having regard to the circumstances of the administrative proceeding. According to the information received from the Registrar, the language of the Registration Agreement for the Domain Name is Chinese.

The Complainant submits that the language of the proceeding should be English for the following reasons:

- the Domain Name is in Latin characters rather than Chinese characters indicating the Respondent's awareness of the English language;
- the Domain Name contain the Complainant's famous NBA mark and English word "plus", which further indicates the Respondent's familiarity with the English language; and
- the Complainant would be put to great expense and inconvenience to have to translate the Complaint in Chinese, which would cause undue delay.

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.

The Panel accepts the Complainant's submissions regarding the language of the proceeding. The Respondent has not challenged the Complainant's request and in fact has failed to file a response. The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner. In this case, the Complainant may be unduly disadvantaged by having to conduct the proceeding in Chinese. The Panel notes that all of the communications from the Center to the Parties were transmitted in both Chinese and English. In view of all the circumstances, the Panel determines that English be the language of the proceeding.

C. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has established that it has rights to the Trade Mark.

The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the trade mark and the domain name to determine whether the domain name is confusingly similar to the trade mark. The test involves a side-by-side comparison of the domain name and the textual components of the relevant trade mark to assess whether the mark is recognizable within the domain name.

In this case, the Domain Name contains the Complainant's Trade Mark in its entirety with the addition of the word "plus". The addition of this word does not prevent a finding of confusing similarity. For the purposes of assessing identity or confusing similarity under paragraph 4(a)(i) of the Policy, it is permissible for the Panel to ignore the generic Top-Level Domain ("gTLD") which in this case is ".com". It is viewed as a standard registration requirement (section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#))).

The Panel finds that the Domain Name is confusingly similar to a trade mark in which the Complainant has rights, and that the requirements of paragraph 4(a)(i) of the Policy therefore are fulfilled.

D. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights or legitimate interests in the domain name by demonstrating any of the following:

(i) before any notice to it of the dispute, the 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) the respondent has been commonly known by the domain name, even if it has acquired no trade mark or service mark rights; or

(iii) the 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 trade mark or service mark at issue.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a domain name, it is well established that, as it is put in section 2.1 of the [WIPO Overview 3.0](#), that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests. Once such *prima facie* case is made out, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent does not come forward with such allegations and evidence of relevant rights or legitimate interests, the panel weighs all the evidence, with the burden of proof always remaining on the complainant.

The Complainant contends that there is no evidence that the Respondent is commonly known by the Domain Name nor has any trade mark rights to the Trade Mark. Further, it has not authorised, licensed, sponsored, or otherwise permitted the Respondent to use the Trade Mark in the Domain Name or for any other purpose. The Domain Name is being passively held and therefore does not amount to *bona fide* offering of goods or services or legitimate noncommercial or fair use under the Policy.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not provided any explanation of its rights or legitimate interests in relation to the Domain Name, and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the Domain Name.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

E. Registered and Used in Bad Faith

To succeed under the Policy, the Complainant must show that the Domain Name has been registered and is being used in bad faith.

The Panel is satisfied that the Respondent was aware of the Trade Mark when it registered the Domain Name given the global reputation of the Trade Mark and the fact that the registration of the Trade Mark predates the registration of the Domain Name by more than 20 years. It is therefore implausible that the Respondent was unaware of the Complainant when it registered the Domain Name.

In the [WIPO Overview 3.0](#), section 3.2.2 states as follows:

“Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant's mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant's mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent's claim not to have been aware of the complainant's mark.”

The fact that there is a clear absence of rights or legitimate interests coupled with the Respondent's choice of the Domain Name (clearly targeting the Complainant's Trade Mark) is also a significant factor to consider

(as stated in section 3.2.1 of the [WIPO Overview 3.0](#)). The Domain Name falls into the category stated above and the Panel finds that registration is in bad faith.

The Domain Name is also used in bad faith. The Domain Name directs to an inactive page. Section 3.3 of the [WIPO Overview 3.0](#) states that:

“[f]rom the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or ‘coming soon’ page) 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.”

In this case, the Trade Mark is well known and the Respondent has failed to file a Response. This is also a situation where in the absence of any arguments to the contrary, given the fame of the Trade Mark and the area of activity where it operates, it is implausible that there can be any good faith use to which the Domain Name may be put. Considering the circumstances, the Panel considers that the Domain Name is also being used in bad faith. Accordingly, the Complaint has satisfied the third element of the UDRP, *i.e.*, the Domain Name was registered and is being used in bad faith under paragraph 4(b)(iv) 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 Domain Name, <nbaplus.com>, be transferred to the Complainant.

/Karen Fong/

Karen Fong

Sole Panelist

Date: June 10, 2022