

## **ADMINISTRATIVE PANEL DECISION**

**BA&SH v. Whois Agent, Domain Protection Services, Inc. / Zhelan Hao**  
Case No. D2022-1419

### **1. The Parties**

Complainant is BA&SH, France, represented by Cabinet Bouchara, France.

Respondent is Whois Agent, Domain Protection Services, Inc., United States of America / Zhelan Hao, China.

### **2. The Domain Name and Registrar**

The disputed domain name <frbash.com> (the “Domain Name”) 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 April 20, 2022. On April 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 21, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from named Respondent and contact information in the Complaint. The Center sent an email communication to Complainant on April 22, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on April 22, 2022.

The Center verified that the Complaint 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 Respondent of the Complaint, and the proceedings commenced on April 26, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 16, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on May 17, 2022.

The Center appointed Clive L. Elliott Q.C. as the sole panelist in this matter on May 23, 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 a French company operating in the field of design, manufacture, and distribution of ready-to-wear goods for women, as well as fashion accessories.

Complainant is the registered owner of the following trade marks (“Complainant’s Mark”):

Trade Mark	Jurisdiction	Registration No.	Registration Date
ba&sh	France	3444110	August 1, 2006
	France	4236723	December 28, 2015
	European Union	5679758	February 10, 2012
	European Union	15561905	November 29, 2016
ba&sh	France	4403492	November 10, 2017
	European Union	17895989	October 6, 2018

Complainant is also the owner of the domain name <ba-sh.com> which is used as Complainant’s main website.

According to the publicly available WhoIs, the Domain Name was registered on November 19, 2021. At the time of the Decision and at time of filing the Complaint, the Domain Name resolved to an active website displaying Complainant’s Marks and selling what appears to be Complainant’s products.

#### 5. Parties’ Contentions

##### A. Complainant

Complainant asserts it is the owner of Complainant’s Mark and that the Domain Name is confusingly similar to Complainant’s Mark. That is, on the basis it contains Complainant’s Mark in its entirety, with the addition of the prefix country code “fr” (for France) and the elimination of the ampersand “&”. Complainant submits that the addition of the prefix “fr” reinforces the likelihood of confusion as Internet users are likely to mistakenly believe that the Domain Name is registered by Complainant for local business in France, as France is the country of origin and represents Complainant’s main market.

Complainant notes that as Complainant’s Mark comprises the initials of their founders, Barbara Boccara and Sharon Krief, jointly united under the term BA&SH, that Respondent could not have been mistaken or had invented this term when registering the Domain Name. Complainant also asserts that the Domain Name was registered more than fifteen years after Complainant’s earliest trade mark.

Complainant contends that the Domain Name is being used in connection with webpages purportedly selling Complainant’s products and reproducing Complainant’s logo.

Complainant further advises that Respondent is using the Domain Name in the same way (*i.e.* an e-commerce website selling Complainant’s products, reproducing its photos and displaying Complainant’s Mark), and has the same contact details, as the respondents in WIPO Case No. [D2022-0236](#) and WIPO Case No. [D2022-0766](#).

Complainant argues that Respondent does not own any rights in the trade marks that it reproduces as they belong exclusively to Complainant, and that Respondent has no authorization to use or reproduce Complainant's Mark. Complainant suggests that the Domain Name which incorporates Complainant's Mark, is being used as an e-commerce website selling counterfeit ready-to-wear products and/or as a phishing scheme, and Respondent is free riding on the worldwide reputation of Complainant and Complainant's Marks in order to attract Internet users to Respondent's website by creating a likelihood of confusion for commercial gain.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar**

Complainant is a French company, that designs and makes ready-to-wear women's apparel and fashion accessories. Complainant has provided evidence of the registration of Complainant's Mark in France, dating back from at least 2006.

The Domain Name reproduces Complainant's Mark, namely BA&SH, to the extent it reproduces the dominant part of Complainant's Mark, albeit with the removal of "&" and the addition of the prefix "fr". Notwithstanding these minor differences, the BA&SH mark is clearly recognizable in the Domain Name. The addition of the letters "fr" does not prevent a finding of confusing similarity. See section 1.8 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). Further, a dominant feature of Complainant's Mark is recognizable in the Domain Name. See section 1.7 of [WIPO Overview 3.0](#).

The Domain Name is therefore confusingly similar to Complainant's Mark.

The first ground under the Policy is made out.

### **B. Rights or Legitimate Interests**

Complainant submits that Respondent is not sponsored by or affiliated with Complainant, nor has Complainant given Respondent permission to use Complainant's Mark in any manner.

In addition, Complainant contends that Respondent is using the Domain name on an e-commerce website selling counterfeit ready-to-wear products and/or is a phishing scheme. It is not clear whether the products on the website at the Domain Name are counterfeit or not, however the website does not clearly indicate the relationship between Respondent and Complainant. Therefore, this use cannot be considered as a *bona fide* offering of good and services.

The allegation is that Respondent is using the Domain Name in a misleading and deceptive manner. On the face of it, this cannot be regarded as a legitimate use of the Domain Name or otherwise representing Respondent's legitimate interests or its rights.

In the absence of any attempt by Respondent to challenge these allegations, the Panel infers that Respondent is unable to refute these allegations. Further, the Panel infers that Respondent's website is being used for improper purposes and that in the present circumstances it does not represent a *bona fide* offering of goods and services or any other legitimate use or interest in the Domain Name.

Respondent has therefore failed to rebut Complainant's *prima facie* case that Respondent lacks rights or legitimate interests in the Domain Name.

Accordingly, the second ground under the Policy is made out.

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

The evidence provided by Complainant indicates that the Domain Name resolves to an active website displaying Complainant's Marks and selling what appears to be Complainant's products.

Complainant asserts that Respondent is free riding on its worldwide reputation and Complainant's Mark, so as to attract Internet users to its website and in doing so it is creating a likelihood of confusion for commercial gain. Absent any attempt to challenge these allegations, the fact that Complainant had registered Complainant's Mark many years earlier and that the Domain Name, the Respondent's Website contains Complainant's BA&SH logo and the Domain Name is confusingly similar to Complainant's Marks, the Panel finds that the Domain Name was registered and used in bad faith.

Complainant has therefore established the third ground under 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 <frbash.com> be transferred to Complainant.

*Clive L. Elliott Q.C.*

**Clive L. Elliott Q.C.**

Sole Panelist

Date: June 9, 2022