

ADMINISTRATIVE PANEL DECISION

Bonpoint v. Chang Qi; Fangling24 Zhang
Case No. D2022-2075

1. The Parties

The Complainant is Bonpoint, France, represented by Cabinet Germain & Maureau, France.

The Respondent is Chang Qi, China; Fangling24 Zhang, China.

2. The Domain Names and Registrars

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

The disputed domain name <bonpoint.shop> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 8, 2022. On June 8, 2022, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On June 8, 2022 and June 9, 2022 the Registrars transmitted by email to the Center their verification response 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 June 11, 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 on June 15, 2022.

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 of the Complaint, and the proceedings commenced on June 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 10, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 11, 2022.

The Center appointed Marilena Comanescu as the sole panelist in this matter on July 26, 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, a French company, operates in the field of children's fashion including clothing, cosmetics and perfumes, and has opened its first shop in Paris in 1975. Currently, the Complainant has famous clients and operates in 120 stores across 30 countries, enjoying a significant reputation worldwide including in Asia. The Chinese market represents around 25% of the Complainant's turnover, with 25 stores available in China in 2022.

The Complainant holds trademark rights for BONPOINT, such as the following:

- the Chinese figurative trademark registration No. 19959908A filed on May 16, 2016 and registered on August 14, 2017, for goods in International Class 25; and
- the European Union stylized trademark registration No. 003837218 filed on May 14, 2004, and registered on February 12, 2007, for goods in International Classes 3, 25 and 28.

The Complainant owns domain names reflecting its BONPOINT mark, including <bonpoint.com> (registered on November 3, 1998), <bonpoint.eu> and <bonpoint.cn>.

The disputed domain name <bonpointoutlet.com> was registered on April 19, 2022, and the disputed domain name <bonpoint.shop> was registered on April 29, 2022.

At the time of filing the Complaint, both the disputed domain names resolved to commercial websites promoting highly discounted children fashion articles, such as clothing, cosmetics and perfumes, some of which are visually identical to those offered by the Complainant, are reproducing the Complainant's BONPOINT mark and distinctive cherry logo, feature the store holders as "Bonpoint Sales Store" and "Bonpoint Popular Shop" respectively and are inviting Internet users to subscribe to a newsletter.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain names are almost identical or highly similar to its distinctive well-known trademark BONPOINT, that the Respondent has no rights or legitimate interests in the disputed domain names and that the Respondent registered and is using the disputed domain names in bad faith. The Complainant requests transfer of the disputed domain names to it.

B. Respondent

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

6. Discussion and Findings

In view of the Respondent's default, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent. Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

- (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

The Panel will further analyze the concurrence of the above circumstances.

A. Preliminary Procedural Issue: Consolidation of Multiple Disputed Domain Names and Respondents

According to the provisions of paragraph 10(e) of the Rules, the Panel has the power to decide the consolidation of multiple domain names disputes. Further, paragraph 3(c) of the UDRP Rules provides that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In the present case, there are two disputed domain names, and apparently two Respondents. According to the information provided by the Registrar, the disputed domain name <bonpointoutlet.com> was registered by the Respondent Chang Qi, and the disputed domain name <bonpoint.shop> was registered by the Respondent Fangling24 Zhang.

Both disputed domain names have been registered in April 2022, with the BONPOINT mark incorporated together with a term related to Complainant's business and the websites corresponding to the disputed domain names are used in the same manner – *i.e.* for selling children fashion goods and with Complainant's mark and logo displayed, having a similar template, footer menu, payment methods and other sections.

As provided in the amended Complaint, the two named Respondents are located in the same country; the content on the websites is in English; both websites are using the same arbitrary technical metadata, as seen in the source code, including for example the same author names, the same images (with the same name of the file), and the same "published time"; and both named Respondents use the same email provider (163.com), with an address composed in the same way (a string of characters followed by six digits), which suggests an automatic address creation in both cases, and thus the management via an organized network.

The Respondent had the opportunity to comment on the consolidation request made by the Complainant but it chose to remain silent.

For the above, the Panel finds that the disputed domain names and corresponding websites are subject to common control and it would be equitable and procedurally efficient to decide the consolidation of multiple disputed domain names and the Respondents in the present procedure. See also section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

B. Identical or Confusingly Similar

The Complainant holds rights in the BONPOINT trademark.

The disputed domain name <bonpoint.shop> reproduces the Complainant's mark exactly.

The disputed domain name <bonpointoutlet.com> incorporates the Complainant's trademark BONPOINT in its entirety with an additional term "outlet". However, such addition does not prevent a finding of confusing similarity as the Complainant's trademark is clearly recognizable within the disputed domain name.

Numerous UDRP panels have considered that the addition of other terms (whether descriptive or geographic term, pejorative, meaningless or otherwise) to trademarks in a domain name is not sufficient to escape a

finding of confusing similarity. See section 1.8 of the [WIPO Overview 3.0](#).

It is well established in decisions under the UDRP that the generic Top-Level Domain (“gTLD”) (e.g., “.com”, “.shop”) are typically disregarded for the purposes of consideration of confusing similarity between a trademark and a domain name.

Given the above, the Panel finds that the disputed domain name <bonpoint.shop> is identical to the Complainant’s trademark and the disputed domain name <bonpointoutlet.com> is confusingly similar to the Complainant’s trademark, pursuant to the Policy, paragraph 4(a)(i).

C. Rights or Legitimate Interests

The Complainant asserts that the Respondent does not hold any trademark rights, license or authorization whatsoever to use the mark BONPOINT, that the Respondent is not commonly known by the disputed domain names, and that the Respondent has not used the disputed domain names in connection with a legitimate noncommercial or fair use or a *bona fide* offering of goods and services.

Under the Policy, “where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element”. See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent has not replied to the Complainant’s contentions and has not come forward with relevant evidence to rebut the Complainant’s *prima facie* case.

There is nothing in the record suggesting that the Respondent has ever been commonly known by the disputed domain names or that the Respondent made a *bona fide* offering of goods or services or a legitimate noncommercial use under the disputed domain names.

According to the evidence provided in Annexes 15 and 16 to Complaint, the Respondent has used the disputed domain names in connection with commercial websites selling apparent BONPOINT branded goods (at a very low price comparing to the Complainant’s own goods, with the Complainant claiming that the products sold via the disputed domain names are counterfeits), as well as competing goods of third parties in the case of the disputed domain name <bonpoint.shop>.

The sale of counterfeit goods can never confer rights or legitimate interests on a respondent. See section 2.13 of the [WIPO Overview 3.0](#). The Panel notes some indicia that the goods sold on the websites at the disputed domain names may be counterfeits, if so the Respondent does not have rights or legitimate interests, but the Panel will also make an analysis of this case under the possibility that those were BONPOINT branded goods.

In certain cases, UDRP panels have recognized that resellers, distributors using a domain name containing a complainant’s trademark to undertake sales related to complainant’s goods may be making a *bona fide* offering of goods and thus have a legitimate interest in such domain name. Accordingly, in this case, the key question under this element is whether the Respondent’s use of the disputed domain names amount to a *bona fide* offering of goods or services under paragraph 4(c)(i) of the Policy.

The current state of UDRP panel consensus in relation to this issue is helpfully summarized in the section 2.8 of the [WIPO Overview 3.0](#), based on panel decisions such as *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). According to the “Oki Data test”, several cumulative requirements will be applied in the specific conditions of a UDRP case, including the fact that the site must accurately and prominently disclose the registrant’s relationship with the trademark holder (the complainant) and that the respondent must use the site to sell only the trademarked goods or services. In this case, according to the available record, on the websites corresponding to the disputed domain names there was no indication

regarding the relationship between the Parties (or lack thereof), and the Respondent is using the site at <bonpoint.shop> to also sell third parties' goods.

This is definitely not an activity falling under the circumstances listed by paragraph 4(c) of the UDRP as demonstrating the Respondent's rights or legitimate interests in the disputed domain names.

In addition, and without prejudice to the above, the nature of the disputed domain names, comprising the Complainant's well-known trademark alone or in combination with an additional term related to the Complainant's business, carries a risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#).

Consequently, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names, pursuant to the Policy, paragraph 4(a)(ii).

D. Registered and Used in Bad Faith

The Complainant holds trademark rights for BONPOINT since at least 1976, a corresponding website since 1998 and its trademark is distinctive and gained reputation in relation to children clothing.

The disputed domain names were created in 2022 and incorporate the Complainant's mark together with dictionary terms closely related to the Complainant's business, "outlet", and the gTLD ".shop". The websites at the disputed domain names also feature the Complainant's trademark, logo and depict images of the Complainant's products.

For the above, the Panel finds that the disputed domain names were registered in bad faith, with knowledge of the Complainant, its business, and particularly targeting its BONPOINT trademark.

At the time of filing the Complaint the Respondent was using without permission the Complainant's distinctive trademark in order to get traffic on its web portals and to obtain commercial gain from the false impression created for the Internet users with regard to a potential connection with the Complainant. This impression is created particularly by the incorporation of the Complainant's trademark in the disputed domain names, together with a term and a gTLD related to the Complainant's business, the content on the website provided thereunder, which includes the Complainant's trademark and visuals, and the lack of any disclaimer on this website.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt "to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location" is evidence of registration and use in bad faith.

Given that the disputed domain names incorporate the Complainant's trademark and the websites operated under the disputed domain names display the Complainant's trademarks, visuals and product images, indeed in this Panel's view, the Respondent intended to attract Internet users accessing the websites corresponding to the disputed domain names who may be confused and believe that the websites are held, controlled by, or somehow affiliated or related to the Complainant, for its commercial gain. This activity may also disrupt the Complainant's business and tarnish its trademark.

The Respondent has not participated in the present proceedings in order to put forward any arguments in its favor and apparently provided false or incomplete contact details in the WhoIs. Such facts, together with all the other elements in this case, constitute, in the eyes of this Panel, supports a finding of bad faith behavior.

Also, it has been consistently found by previous UDRP panels that the mere registration of a domain name that is identical or confusingly similar to a third party's well-known trademark can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

For all the above reasons, the Panel finds that the Respondent registered and is using the disputed domain names in bad faith, pursuant to the 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 disputed domain names <bonpointoutlet.com> and <bonpoint.shop> be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: August 9, 2022