

ADMINISTRATIVE PANEL DECISION

American Bankers Association v. kun Ren
Case No. D2022-3187

1. The Parties

The Complainant is American Bankers Association, United States of America (“United States”), represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is kun Ren, China.

2. The Domain Name and Registrar

The disputed domain name <wwwaba.com> is registered with Flappy Domain, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on August 29, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 30, 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 August 31, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On the same day, the Complainant submitted an amended Complaint in English, including a 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 September 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 27, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 29, 2022.

The Center appointed Matthew Kennedy as the sole panelist in this matter on October 11, 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.

On October 20, 2022, pursuant to paragraphs 10 and 12 of the Rules, the Panel issued Administrative Panel Procedural Order No. 1 (the "Order") in which it invited the Complainant to make a further submission regarding the circumstances of its trademark rights in ABA by October 25, 2022. The Order allowed the Respondent to comment on the Complainant's submission by October 28, 2022, and also extended the due date for this Decision to November 3, 2022. The Complainant filed a submission in response to the Order on October 25, 2022. The Respondent did not comment on the Complainant's submission by the due date.

4. Factual Background

The Complainant, founded in 1875, is the principal trade association of the financial services industry in the United States. It offers training, certification, news, research, advocacy, and other services for its members. One of its major achievements was the development in 1910 of the "ABA number" or "ABA routing number" used on United States bank checks. The Complainant registered the domain name <aba.com> on September 23, 1993 and uses it in connection with its primary website where it provides information about itself and its activities, referring to itself as "ABA". The Complainant owns multiple trademark registrations, including United States trademark registration number 3217106 for AMERICAN BANKERS ASSOCIATION, registered on March 13, 2007 with a claim of first use in commerce in 1875, specifying services in classes 35 and 41. The Complainant owns United States trademark registrations for multiple ABA-formative marks, including number 3176834 for ABA TOOLBOX, registered on November 28, 2006, with a claim of first use in commerce on June 21, 1994, specifying goods in class 16; number 4655263 for ABA CREDIT CARD, registered on December 16, 2014, with a claim of first use in commerce on October 20, 2013, specifying services in class 36; number 4655266 for ABA PREPAID, registered on December 16, 2014, with a claim of first use in commerce on October 20, 2013, specifying services in class 36; and number 4940544 for ABA FOUNDATION, registered on April 19, 2016, with a claim of first use in commerce on June 17, 2015, specifying services in class 41. These trademark registrations remain current. According to website analytical data presented by the Complainant, its website received over 201,000 visits in July 2022.

The Respondent is an individual resident in China. According to information presented by the Complainant, the Respondent is the registrant of other domain names that incorporate third party trademarks, namely <axisbank-com.com>, <disneygiftccard.com>, <fordcars.net>, <hitachiltd.com>, and <snappletea.com>.

The disputed domain name was registered on October 30, 2021. It resolves to a website in Chinese that displays pornographic content and hyperlinks to gambling websites. The URL for one page on the site is virtually identical to the lengthy URL of a page on the Complainant's website (regarding advocacy for community programs) except for the insertion of the prefix "www" without a dot.

The Complainant sent cease-and-desist emails to the Respondent on January 27 and 28, 2022 in English and Chinese, respectively.

5. Parties' Contentions

A. Complainant

The Complainant is the owner of various registered trademarks, including AMERICAN BANKERS ASSOCIATION. The disputed domain name incorporates that mark. The term "aba" is an abbreviation of that mark. The Complainant's ABA brand is well-recognized and well-respected worldwide and in its industry. The Complainant has expended substantial time, effort, and money to use the ABA trademark and developed goodwill to fully confer rights in this trademark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not sponsored by, or affiliated with, the Complainant in any way. The Complainant has not given the Respondent any license, authorization, or permission to use its trademark in any manner. The Respondent is using the disputed domain name to direct to pornographic content and links to gambling websites which is not in connection with a *bona fide* offering of goods or services or legitimate noncommercial or fair use.

The disputed domain name was registered and is being used in bad faith. The disputed domain name is confusingly similar to the Complainant's trademark and domain name and includes a link almost identical to one on the Complainant's website. This is a prototypical "missing dot" typosquatting case. The website content is evidence of bad faith. The Respondent currently holds registrations for several other domain names that misappropriate the trademarks of well-known brands and businesses which demonstrates that the Respondent is engaging in a pattern of typosquatting and is evidence of bad faith registration and use of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

6.1 Language of the Proceeding

Paragraph 11(a) of the Rules provides that "unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative 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". The Registrar confirmed that the Registration Agreement for the disputed domain name is in Chinese.

The Complainant requests that the language of the proceeding be English. Its main arguments are that the translation of the Complaint would unfairly disadvantage and burden the Complainant and delay the proceeding; the website associated with the disputed domain name contains several terms in English; and the Respondent has not responded to the Complainant's cease-and-desist letters.

Paragraphs 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties (see, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. Ltd.*, WIPO Case No. [D2008-0293](#)).

In the present case, the Panel observes that the Complaint and amended Complaint were filed in English. Despite the Center having sent an email regarding the language of the proceeding, and the Notification of the Complaint, in both Chinese and English, the Respondent did not comment on the language of the proceeding or express any interest in participating in the proceeding. Therefore, the Panel considers that requiring the Complainant to translate the Complaint into Chinese would create an undue burden and delay whereas accepting the Complaint in English does not cause prejudice to either Party.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English. The Panel would have accepted a Response in Chinese, but none was filed.

6.2 Analysis and Findings

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements:

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

A. Identical or Confusingly Similar

Based on the evidence presented, the Panel finds that the Complainant has registered rights in various trademarks, including AMERICAN BANKERS ASSOCIATION.

On a side-by-side comparison, the Panel does not find the disputed domain name “wwwaba.com” to be confusingly similar to the AMERICAN BANKERS ASSOCIATION mark because that mark is not recognizable in the disputed domain name. The Complainant cites the prior UDRP panel decision in *Express Messenger Systems, Inc. v. Golden State Overnight*, WIPO Case No. [D2001-0063](#) but the Panel notes that in that prior case the domain name (<calovernight.com>) substituted a common abbreviation for one part of a combination mark (CALIFORNIA OVERNIGHT) while it reproduced the other part of the mark. That circumstance can be distinguished from the present case in which the disputed domain name incorporates the acronym of the Complainant’s mark (“aba”) but not a dominant part of the mark. Further, in view of the Panel’s findings below, it is unnecessary to compare the disputed domain name with the Complainant’s other registered trademarks.

The Complainant also claims unregistered or common law rights in ABA itself. To establish such rights, the Complainant must show that this mark has become a distinctive identifier that consumers associate with its services. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.3. The Complainant presents evidence of its widespread and longstanding use of “ABA” to refer to itself, including in its flagship publication “ABA Banking Journal”, published since 1908, on its website associated with <aba.com> since 1993, and more recently in its “ABA Banking Journal Podcast”, “ABA Compliance Network”, and “ABA Daily Newsbytes”. It presents evidence showing that third parties have long referred to it as “ABA”. The Complainant also provides evidence that it is referred to as “ABA” in its comments on legislation and amicus curiae briefs in court cases in the United States.¹

In the Panel’s view, the evidence on record is sufficient to demonstrate that members of the public in the United States associate “ABA” with the Complainant and its services in the financial services sector and that they have done so since before 2021. Accordingly, the Panel finds that the Complainant has rights in the ABA mark for the purposes of the first element of paragraph 4(a) of the Policy.

The disputed domain name wholly incorporates the ABA mark. It also includes the prefix “www” without a dot, which is a common error when typing an address in an Internet browser. Thus, the disputed domain name is an example of a practice sometimes known as “missing dot typosquatting”. Accordingly, the addition of this prefix does not dispel confusing similarity between the disputed domain name and the trademark that follows. See *Compagnie Gervais Danone, Bonafont S.A de C.V v. PrivacyProtect.org*, WIPO Case No. [D2009-1659](#); and *Groupe IRCEM v. Perfect Privacy, LLC / Milen Radumilo, White & Case*, WIPO Case No. [D2018-2330](#).

¹ The Panel takes note that “ABA” is a three-letter acronym that is also used to refer to third parties, including the American Bar Association, in different sectors.

The disputed domain name also contains the generic Top-Level Domain (“gTLD”) extension “.com”. As a standard requirement of domain name registration, the gTLD extension may be disregarded in the comparison between the disputed domain name and the Complainant’s trademark for the purposes of the first element of paragraph 4(a) of the Policy. See [WIPO Overview 3.0](#), section 1.11.

Therefore, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the Panel, shall demonstrate that the Respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (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 trademark 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 trademark or service mark at issue.

As regards the first and third circumstances set out above, the disputed domain name resolves to a website that displays pornographic content and hyperlinks to gambling websites. Nothing on the website has any apparent connection to the disputed domain name, “wwwaba” or “aba”. The Complainant submits that it has not given the Respondent any license, authorization, or permission to use its trademark in any manner and that the Respondent is not sponsored by, or affiliated with, the Complainant in any way. Accordingly, the Panel does not consider that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services. The hyperlinks operate for the commercial gain of the Respondent, if he is paid to direct traffic to the linked websites, or for the commercial gain of the operators of the linked websites, or both. Accordingly, this is not a legitimate noncommercial or fair use of the disputed domain name either.

As regards the second circumstance set out above, the Respondent’s name is listed in the Registrar’s Whois database as “kun Ren”, not the disputed domain name. Nothing indicates that the Respondent has been commonly known by the disputed domain name.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent failed to rebut that *prima facie* case because he did not respond to the Complaint.

Therefore, based on the record of this proceeding, the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that certain circumstances, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith, but these circumstances are not exhaustive. The fourth circumstance is as follows:

- (iv) by using the [disputed] domain name, [the respondent has] intentionally attempted 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.

As regards registration, the disputed domain name was registered in 2021, after the Complainant acquired rights in the ABA mark. The disputed domain name wholly incorporates the ABA mark, preceded only by the prefix "www" without a dot. There appears to be no other reason to register the disputed domain name than to approximate the address of the Complainant's primary website at "www.aba.com". The URL for one page on the Respondent's site is virtually identical to the lengthy URL of a page on the Complainant's website but for the insertion of an additional prefix "www". The possibility that this is a coincidence appears to be remote. Moreover, the Complainant provides evidence showing that the Respondent has registered a number of other domain names that target third party marks, which forms a pattern of conduct. The Respondent provides no explanation for his choice to register the disputed domain name. Accordingly, the Panel finds that the Respondent targeted the Complainant and its ABA mark when he registered the disputed domain name.

As regards use, the disputed domain name resolves to a website that displays pornographic content and hyperlinks to gambling websites. The disputed domain name is evidently intended to take advantage of Internet users who mistakenly type the address of the Complainant's primary website without the dot after the prefix and divert them to the Respondent's website. This use is for commercial gain. Given the Panel's findings in section 6.2B above, the Panel finds that, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his website by creating a likelihood of confusion with the Complainant's ABA mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website within the terms of paragraph 4(b)(iv) of the Policy.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) 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 <wwwaba.com> be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: November 3, 2022