

ADMINISTRATIVE PANEL DECISION

BA&SH v. Ygfgfr Wffrt / Kang Cao / yao feng
Case No. D2022-3418

1. The Parties

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

The Respondent is Ygfgfr Wffrt / Kang Cao / yao feng, Hong Kong, China.

2. The Domain Names and Registrar

The disputed domain names <bhsoldes.com>, <descuentobash.com>, <rebajasbash.com>, and <shopsbash.com> (the “Disputed Domain Names”) are registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 14, 2022. On September 15, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On September 16, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Names which differed from the named Respondent (Whois Agent, Domain Protection Services, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 19, 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 and added an additional Disputed Domain Name on September 21, 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 September 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 19, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 22, 2022.

The Center appointed Nicholas Weston as the sole panelist in this matter on October 31, 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 is a French company that operates a fashion business with products available in more than 400 retail points globally. The Complainant holds registrations for the trademark BA&SH in a number of countries including, for example, European Union Trade Mark registration No. 5679758 registered on February 10, 2012 in classes 3, 14, 18 and 25.

Having regard to the fact that the ampersand sign “&” is not a valid character in a domain name, the Complainant owns a number of domain names similar to the trademark BA&SH, including the domain name <ba-sh.com>, which resolves to its main website.

The Disputed Domain Name <bhsoldes.com> was registered on April 7, 2022, the Disputed Domain Name <descuentobash.com> was registered on February 9, 2022, the Disputed Domain Name <rebajasbash.com> was registered on February 9, 2022, and the Disputed Domain Name <shopsbash.com> was registered on November 22, 2021. Each resolved to a website where putative BA&SH branded fashion was offered for sale online.

5. Parties’ Contentions

A. Complainant

The Complainant cites its French Registered Trademark No. 3444110 dated August 1, 2006, and numerous other registrations around the world for the mark BA&SH, as *prima facie* evidence of ownership.

The Complainant says there is a pattern of irregularities with respect to the Disputed Domain Names, including the following points: the Registrant phone number and fax number are identical for all of the four Disputed Domain Names; two of the Disputed Domain Names were registered on the same day; all four are held with the same Registry through the same privacy service entity; and that all four domain names are “exploited in the same way, namely, to impersonate the Complainant by reproducing its trademarks directly on the home page and purportedly sell its products under its trademarks.” The Complainant also provides detailed analysis of various other factors, which it says show the Disputed Domain Names are under common control.

The Complainant submits that the trademark BA&SH is highly distinctive and that its rights in that trademark predate the Respondent’s registration of the Disputed Domain Names by some 15 years.

It submits that the Disputed Domain Names are confusingly similar to its trademark, including the Disputed Domain Name <bhsoldes.com> which, it submits, contains a phonetically similar version of its trademark, “bé-ache”, together with the word “soldes” meaning “reduction” or “discount” in the French language.

It submits that three of the Disputed Domain Names <descuentobash.com>, <rebajasbash.com>, and <shopsbash.com> incorporate in their entirety a recognizable version of the BA&SH trademark together with Spanish, and English dictionary terms (“discount”, “reduction” and “shops”, respectively) and can therefore not prevent a finding of confusing similarity, nor can the addition of the generic Top-Level Domain (“gTLD”) “.com”.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names and that “the disputed domain names are presumably used as e-commerce websites selling counterfeited ready to wear products and/or in a phishing scheme.”

Finally, the Complainant alleges that the registration and use of the Disputed Domain Names was, and currently is, in bad faith. On the issue of registration, it submits that “addition of the Complainant’s well-known trademarks with the descriptive term “soldes”, “shops”, “rebajas” and “descuento”, referring directly to its activities, especially for websites having a commercial activity identical to that of the Complainant, establish the blatant Respondent’s knowledge of the Complainant’s rights, so that the disputed domain name was registered in bad faith”. On the issue of use, the Complainant alleges that “the use of a website to offer for sale – or pretending to offer for sale – the same kind of products as the Complainant’s – or directly the Complainant’s products, under the Complainant’s trademarks and without the Complainant’s authorization constitutes bad faith use”.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Matters – Consolidation and common control

A complaint is allowed to proceed with multiple respondents when the domains or websites are under common control. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#)), section 4.11.2 where it states: “Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario.”

The Complainant has pointed to a pattern of irregularities that suggest that the Disputed Domain Names are under common control. Two of the Disputed Domain Names <descuentobash.com> and <rebajasbash.com> were registered on February 9, 2022 and the other two Disputed Domain Names were registered within a few months either side of that date; all use the same telephone number in Hong Kong, China as the contact phone number. The Disputed Domain Names are held with the same Registry through the same privacy service entity (Whois Agent, Domain Protection Services, Inc.), and are “exploited in the same way, namely, to impersonate the Complainant by reproducing its trademarks directly on the home page and purportedly sell its products under its trademarks.” Tellingly, the layout and content on the webpages that the Disputed Domain Names resolve to appear to be almost identical.

The Panel accordingly concludes that it is fair and equitable for the Complaint to proceed in respect of all the Disputed Domain Names as it is clear that substantially the same issues are raised in respect of all of the Disputed Domain Names and it is procedurally efficient to proceed in a single Complaint.

6.2 Substantive Matters

Under paragraph 4(a) of the Policy, the Complainant has the burden of proving the following:

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

A. Identical or Confusingly Similar

The Complainant has produced sufficient evidence to demonstrate that it has registered trademark rights in the mark BA&SH. The propriety of a domain name registration may be questioned by comparing it to a trademark registered in any country (see [WIPO Overview 3.0](#), section 1.2.1).

Turning to whether the Disputed Domain Names are identical or confusingly similar to the BA&SH trademark, the Panel observes that the Disputed Domain Names comprise:

- In the case of <bhsoldes.com> (a) the first and last letters of the Complainant's BA&SH trademark so that it is phonetically similar to that trademark; (b) followed by the French word "soldes"; and (c) followed by the generic Top-Level Domain ("gTLD") ".com".
- In the case of <descuentobash.com> (a) the Spanish word "descuento"; (b) followed by a version of the Complainant's BA&SH trademark, the word "bash"; and (c) followed by the gTLD ".com".
- In the case of <rebajasbash.com> (a) the Spanish word "rebajas"; (b) followed by a version of the Complainant's BA&SH trademark, the word "bash"; and (c) followed by the gTLD ".com".
- In the case of <shopsbash.com> (a) the English word "shops"; (b) followed by a version of the Complainant's BA&SH trademark, the word "bash"; and (c) followed by the gTLD ".com".

It is well established that the gTLD used as technical part of a domain name may be disregarded (see section 1.11.1 of the [WIPO Overview 3.0](#). The relevant comparison to be made is with the second-level portion of each Disputed Domain Name, specifically: "bhsoldes", "descuentobash", "rebajasbash" and "shopsbash", respectively.

Disputed domain names comprising phonetic variations of trademarks have been held to be "confusingly similar" in numerous WIPO cases, e.g. *VeriSign Inc. v. VeneSign C.A.*, WIPO Case No. [D2000-0303](#); *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Microsoft Corporation v. Mike Rushton*, WIPO Case No. [D2004-0123](#). The Complainant submits that "The disputed domain name <bhsoldes.com> reproduces phonetically very similarly the above-mentioned BA&SH trademarks whose owner is the Complainant, as following: [bé-ache]". The Panel notes the Respondent's targeting of the Complainant's trademark on the website at the disputed domain name <bhsoldes.com> (reproducing the BA&SH trademark in its entirety) along together with the registration of other disputed domain names reproducing the BA&SH trademark (except for the ampersand). Accordingly, the Panel is satisfied that the Respondent's targeting affirms the confusing similarity.

It is also well established that in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name (even on an aural or phonetic comparison), the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing. As the relevant mark is recognizable in each of the Disputed Domain Names, this Panel finds that the Disputed Domain Names are confusingly similar to the Complainant's BA&SH trademark for purposes of UDRP standing (see [WIPO Overview 3.0](#), section 1.7).

The Panel finds that the additional words "soldes", "descuento", "rebajas" and "shops", respectively do not avoid a finding of confusing similarity between the Disputed Domain Names and the Complainant's trademark.

The Panel finds that the Complainant has established paragraph 4(a)(i) of the Policy

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists the ways that the Respondent may demonstrate rights or legitimate interests in the Disputed Domain Names. The Policy also places the burden of proof on the Complainant to establish the absence of the Respondent's rights or legitimate interests in the Disputed Domain Names. Because of the inherent difficulties in proving a negative, the consensus view is that the Complainant need only put forward a *prima facie* case that the Respondent lacks rights or legitimate interests. The burden of production then shifts to the Respondent to rebut that *prima facie* case (see [WIPO Overview 3.0](#), section 2.1).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names because it has not licensed, permitted or authorized the Respondent to use the Complainant's trademark and for that reason the Respondent is not making a *bona fide* offering of goods or services. The Complainant submits that "there is no relationship whatsoever between the Parties as the Respondent is not related in any way to the Complainant's business even if the Respondent intends to suggest the opposite in order to capitalize on the Complainant's investments and notoriety, notably by prominently displaying Complainant's official BA&SH logo."

The Respondent is not an authorized reseller with legitimate interests in a domain name incorporating a Complainant's mark, and there is no disclaimer on the almost identical website each Disputed Domain Name resolves to, therefore it cannot meet the tests set out in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). Nor, alternatively, is the Respondent commonly known by any of the Disputed Domain Names. The Panel accepts the Complainant's uncontested submission that the Disputed Domain Names "incorporate the Complainant's highly distinctive trademarks BA&SH by associating them with descriptive terms of the Complainant's activity, namely the commercialization of ready-to-wear products ("soldes", "shops", "rebajas" and "descuento")."

This Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names because it is engaging in an illegitimate commercial use of the Disputed Domain Names by suggesting some association with the Complainant for the purpose of misleading consumers based on users seeking out the Complainant's mark BA&SH and opportunistically using the Complainant's trademark to divert Internet traffic to its web pages.

The Panel finds for the Complainant on the second element of the Policy

C. Registered and Used in Bad Faith

The third element of the Policy that a complainant must also demonstrate is that the disputed domain name has been registered and used in bad faith. Paragraph 4(b) of the Policy sets out certain circumstances to be construed as evidence of both.

The Panel finds that the evidence in the case shows the Respondent registered and has used the Disputed Domain Names in bad faith.

On the issue of registration, this Panel infers that the Respondent knew, or should have known, that its registration of the Disputed Domain Names would be confusingly similar to the Complainant's widely used trademark (see *BA&SH v. Yan Wei*, WIPO Case No. [D2019-2578](#) ("Even a cursory Internet search at the time of registration of the disputed domain name would have made it clear to the Respondent that the Complainant owned, and owns, trademarks in BA&SH and uses these extensively, including on the Internet"); *BA&SH v. Whois Agent, Domain Protection Services, Inc. / Yahoo Mo, Kang Cao*, WIPO Case No. [D2022-0236](#) ("Given Complainant's widespread (on the Internet and brick-and-mortar stores) and established use of the Mark worldwide, the Panel finds it is highly unlikely Respondents were unaware of the Mark when it registered the Domain Names").

Further, a gap of several years between registration of the Complainant's trademark and the Respondent's registration of the Disputed Domain Names (containing the trademark) can in certain circumstances be an indicator of bad faith (see *Asian World of Martial Arts Inc. v. Texas International Property Associates*, WIPO Case No. [D2007-1415](#)). In this case, the Complainant's rights in its trademark predate any rights that could possibly flow from the Respondent's registration by some 15 years.

On the issue of use, the Panel notes that the Disputed Domain Names resolve to an online website that purportedly offered what is purported to be the Complainant's products for sale, using the Complainant's logo along with images and artwork from the Complainant's main website. Targeting of this nature is a common example of use in bad faith as referred to in paragraph 4(b) of the Policy and identified in many previous UDRP decisions (see [WIPO Overview 3.0](#), sections 3.1.1, 3.1.4, and 3.2.1).

This Panel finds that the Respondent has taken recognizable versions of the Complainant's trademark BA&SH and incorporated it in the Disputed Domain Names without the Complainant's consent or authorization, for the very purpose of capitalizing on the reputation of the trademark by diverting Internet users for commercial gain.

The Panel also observes that the Respondent named as Kang Cao was a Respondent in two other UDRP proceedings. In *BA&SH v. Whois Agent, Domain Protection Services, Inc. / Yahui Mo, Kang Cao, supra* the proceeding involved, *inter alia*, a disputed domain name <bashsoldes.com> that was ultimately ordered to be transferred to the same Complainant involved in this proceeding. In *BA&SH v. Domain Protection Services, Inc. / Kang Cao / ming xia*, WIPO Case No. [D2022-0766](#), that proceeding involved, *inter alia*, a disputed domain name <soldesbash.com> that was ultimately ordered to be transferred to the same Complainant involved in this proceeding. These proceedings, located by a search of the Center's public website, support this Panel's finding that that the Respondent is a serial offender who deliberately targets the Complainant and is engaged in a pattern of bad faith conduct (section 3.1.2 of the [WIPO Overview 3.0](#)).

Accordingly, the Panel finds that the Complainant has satisfied the requirements of 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 Names, <bhsoldes.com>, <descuentobash.com>, <rebajasbash.com> and <shopsbash.com> be transferred to the Complainant.

/Nicholas Weston/

Nicholas Weston

Sole Panelist

Date: November 14, 2022