

## **ADMINISTRATIVE PANEL DECISION**

**Bonpoint v. Ecdjo Sned**  
**Case No. D2022-4194**

### **1. The Parties**

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

The Respondent is Ecdjo Sned, China.

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

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 4, 2022. On November 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 7, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name, 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 November 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 on November 10, 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 November 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 1, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 2, 2022.

The Center appointed Daniel Peña as the sole panelist in this matter on December 8, 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 in the field of children's fashion including clothing but also cosmetics and perfumes.

The Complainant owns the following marks:

- French Trademark BONPOINT (GRAPHIC) Registration No. 1379283, registered on November 12, 1986;
- US trademark BONPOINT (GRAPHIC) Registration No. 1233637, registered on April 5, 1983, covering clothing goods in class 25;
- European Union trademark BONPOINT (GRAPHIC) Registration No. 003837218, filed on May 14, 2004, and registered on February 12, 2007, covering, *inter alia*, "Clothing, footwear, headgear" in class 25;
- US trademark BONPOINT (GRAPHIC) Registration No. 6610531, filed on December 6, 2019, and registered on January 11, 2022;
- European Union trademark BONPOINT (GRAPHIC) Registration No. 018179633, filed on January 14, 2020, and registered on May 22, 2020, covering, *inter alia*, "Clothing, footwear, headgear[...]" in class 25.

The disputed domain name was registered on August 24, 2022, and resolves to a website with an online shop, which purportedly proposes identical goods to those, marketed by the Complainant under the BONPOINT trademarks, namely clothing for children and babies.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant has built, for over 40 years, a considerable reputation on the name of in the field of children's fashion including clothing but also cosmetics and perfumes.

The Complainant has used its BONPOINT house-brand since its creation and enjoys great popularity in France, but also on the international market. The trademark BONPOINT is a symbol of French chic and elegance for children and is a leader on the children's fashion market, with 120 stores across 30 countries.

The disputed domain name fully reproduces the trademark BONPOINT and only adds a descriptive word "baby" and the generic extension ".com". The term "baby" is an English word used to designate a very young child. The use of this descriptive word will merely lead Internet users to believe that the disputed domain name is used for the online shop of the Complainant. This confusion will be reinforced by the fact that selling goods, in particular children and baby's clothes, is one of the Complainant's chief commercial activities.

The Respondent resolves the disputed domain name to a misleading website for selling the same goods as those covered by the trademark BONPOINT, with the intent of creating at least a confusion as regards their origin. The registration and current use of the disputed domain name by the Respondent is in bad faith.

##### **B. Respondent**

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

## 6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is 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 respect of the disputed domain name; and (iii) the disputed domain name has been registered and is being used in bad faith. Considering these requirements, the Panel rules as follows:

### A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant has provided evidence of its rights in the BONPOINT trademarks on the basis of its multiple trademark registrations in several jurisdictions. A trademark registration provides a clear indication that the rights in the trademark belong to the Complainant (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([WIPO Overview 3.0](#)), section 1.2.1). It has also been established by prior UDRP panels that incorporating a trademark in its entirety into a domain name can be sufficient to establish that the domain name is confusingly similar to a trademark. Such finding is confirmed, for example, within section 1.7 of [WIPO Overview 3.0](#).

The disputed domain name is identical to BONPOINT trademark registered by the Complainant. On the other hand, mere fact of the addition of the term “baby”, to the Complainant’s trademark BONPOINT does not prevent a finding of confusing similarity with the Complainant’s marks. The Respondent’s incorporation of the Complainant’s trademark in full in the disputed domain name is sufficient to establish that the disputed domain name is confusingly similar to the Complainant’s trademarks. Furthermore, the addition of the generic Top-Level Domain “.com” does not prevent a finding of confusing similarity either.

The Panel is satisfied that the disputed domain name is identical or confusingly similar to the Complainant’s mark and the Complainant has satisfied the requirement of paragraph 4(a)(i) of the Policy.

### B. Rights or Legitimate Interests

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant bears the burden of proof in establishing this requirement. In view of the difficulties inherent in proving a negative and because the relevant information is mainly in the possession of the Respondent, it is enough for the Complainant to establish a *prima facie* case which, if not rebutted by sufficient evidence from the Respondent, will lead to this ground being set forth.

Refraining from submitting any Response, the Respondent has brought to the Panel’s attention no circumstances from which the Panel could infer that the Respondent has rights to or legitimate interests in the disputed domain name.

The Panel will now examine the Complainant’s arguments regarding the absence of rights or legitimate interests of the Respondent in connection with the disputed domain name. The Complainant claims that the Respondent has no connection or affiliation with the Complainant and has not received any license or consent, express or implied, to use the Complainant’s trademarks in a domain name or in any other manner. Furthermore, the disputed domain name directs to an online shop of the Respondent whereby it is purportedly selling goods covered by the trademarks registered on behalf of the Complainant, in particular, children and baby’s clothes. While Panels have recognized the limited rights of resellers and distributors, such rights are measured under the spectrum of the so-called “Oki Data test” that, when applied here, would ultimately determine that the Respondent’s use does not amount to a *bona fide* offering nor fair use, seeing as the disputed domain name effectively impersonates the Complainant and fails to disclose its lack of relationship to the Complainant (see [WIPO Overview 3.0](#), section 2.8).

The Panel also finds that the nature of the disputed domain name carries a risk of implied affiliation with the Complainant's trademarks (see [WIPO Overview 3.0](#), section 2.5.1).

The Respondent did not submit a Response or attempt to demonstrate any rights or legitimate interests in the disputed domain names, leaving the Complainant's *prima facie* case un rebutted, and the Panel draws adverse inferences from this failure, where appropriate, in accordance with the Rules, paragraph 14(b).

The Panel finds the Respondent has no rights or legitimate interests in respect of the disputed domain name and that paragraph 4(a)(ii) of the Policy is satisfied.

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

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration and use of a disputed domain name in bad faith:

(i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant (the owner of the trademark or service mark) or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name;

(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct;

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 its website or location.

In the Panel's view, a finding of bad faith may be made where the Respondent "knew or should have known" of the registration and/or use of the trademark prior to registering the disputed domain name. In this case, the widespread commercial recognition of the trademark BONPOINT is such that the Respondent must have had knowledge of the trademark before registering the disputed domain name.

The Respondent appears to have chosen the disputed domain name in order to deliberately attract Internet users to its website in the mistaken belief that it is a website of the Complainant, or otherwise linked to or authorized by the Complainant. Noting the Complainant's name and trademark is incorporated in the disputed domain name together with the prefix "baby", which is descriptive of children and baby-clothing sold by the Complainant, the Panel finds that the construction of the disputed domain name itself reflects the Respondent's intent to target and impersonate the Complainant. As such, the Panel is satisfied that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or of the products on its website.

Under paragraph 4(b)(iv) of the Policy, this circumstance shall be evidence of the registration and use of a domain name in bad faith.

Thus, the Panel concludes that the disputed domain name was registered and is being used in bad faith.

## 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, <babybonpoint.com>, be transferred to the Complainant.

*/Daniel Peña/*

**Daniel Peña**

Sole Panelist

Date: December 21, 2022