

## **ADMINISTRATIVE PANEL DECISION**

Fastylo Holding B.V. v. Bing Yue  
Case No. D2022-4455

### **1. The Parties**

The Complainant is Fastylo Holding B.V., Netherlands, represented by Rise NL, Netherlands.

The Respondent is Bing Yue, China.

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

The disputed domain name <isabelbernard-shop.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 22, 2022. On November 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 22, 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 for the disputed domain name.

The Center verified that the 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 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 19, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 20, 2022.

The Center appointed Miguel B. O’Farrell as the sole panelist in this matter on December 28, 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, Fastylo Holding B.V., is a Limited Liability Company organized under the laws of the Netherlands.

Since January 2017, the Complainant has been active in the fashion industry, manufacturing and marketing bags, jewelry, watches, sunglasses, clothing, footwear and other fashion accessories.

The Complainant owns the following trademark registrations for ISABEL BERNARD:

European Trade Mark Registration No. 017883040 ISABEL BERNARD, registered on September 7, 2018, in classes 9, 14, 18 and 25

United Kingdom Trademark Registration No. 00917883040 ISABEL BERNARD, registered on September 7, 2018, in classes 9, 14, 18 and 25.

In addition, the Complainant is the owner of the domain name <isabelbernard.com> registered on January 18, 2018, which resolves to a website in which the Complainant offers and sells its goods worldwide.

The Respondent registered the disputed domain name <isabelbernard-shop.com> on May 17, 2022 which resolves to a website on which the Respondent offers goods similar to those offered by the Complainant.

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

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

The Complainant claims that the disputed domain name is confusingly similar to its trademark ISABEL BERNARD in which the Complainant has rights and that the Respondent has no rights or legitimate interests in the disputed domain name, which was registered and is being used in bad faith.

More specifically, the Respondent is not affiliated with the Complainant in any way. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark ISABEL BERNARD. The Respondent is not commonly known by the disputed domain name and nor is there any trademark ISABEL BERNARD in the name of the Respondent.

The Respondent registered and is using the disputed domain name to create a site which is confusingly similar to the legitimate <isabelbernard.com> where it offers for sale goods similar to those offered by the Complainant, using the Complainant's logo and images without permission to confuse Internet users.

Finally, the Complainant has requested the Panel to issue a decision ordering the transfer of the disputed domain name to the Complainant.

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

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

#### **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove each of the following, namely that:

(i) the disputed domain name is identical or confusingly similar with 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 was registered and is being used in bad faith.

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

As set forth in section 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name to determine whether the disputed domain name is confusingly similar with the trademark. The test involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Panel considers that the disputed domain name is confusingly similar with the Complainant's ISABEL BERNARD trademark.

The disputed domain name incorporates the Complainant's trademark ISABEL BERNARD in its entirety with the addition of a hyphen and the term "shop", which certainly do not prevent a finding of confusing similarity.

Section 1.8 of [WIPO Overview 3.0](#) provides that when the relevant trademark is recognizable within the disputed domain name – as it occurs in this case – the addition of other terms would not prevent a finding of confusing similarity under the first element.

The ".com" generic Top-Level Domain ("gTLD") is viewed as a standard registration requirement and is generally disregarded under the first element confusing similarity test, as set forth in section 1.11.1 of [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademark ISABEL BERNARD in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy are fulfilled.

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

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a domain name by demonstrating any of the following non-exclusive defenses:

(i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established, as it is put in section 2.1 of [WIPO Overview 3.0](#), that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

There is no evidence in the present case that the Respondent has been commonly known by the disputed domain name, enabling it to establish rights or legitimate interests therein.

Furthermore, there is no evidence in the file to prove any of the circumstances mentioned in paragraph 4(c) of the Policy, nor any other circumstances to suggest that the Respondent has rights or legitimate interests in the disputed domain name.

Likewise, and as further discussed under section 6.C of this Decision, it does not seem that the Respondent is making any legitimate noncommercial or fair use of the disputed domain name, but rather that it intends to use the disputed domain name for the purpose of deriving unfair monetary advantage by confusing Internet users and leading them to believe that the website to which the disputed domain name relates is an official site of the Complainant.

As established in section 2.5 of [WIPO Overview 3.0](#): “Fundamentally, a respondent’s use of a domain name will not be considered ‘fair’ if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant’s mark is often central to this inquiry.” Here, the nature of the disputed domain name carries a risk of implied affiliation.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the disputed domain name (*Telstra Corporation Ltd. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

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

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

The Panel is satisfied that the Respondent must have been aware of the Complainant’s trademark when it registered the disputed domain name on May 17, 2022. By that time, the Complainant had been selling shoes and other goods with the ISABEL BERNARD trademark for several years and had registered the trademark ISABEL BERNARD in several jurisdictions. Moreover, the disputed domain name contains the Complainant’s mark and the website offers to sell goods very similar to those offered by the Complainant.

The Respondent when registering the disputed domain name was targeting the Complainant and its business by incorporating the trademark ISABEL BERNARD and the term “shop” with a hyphen, which leads Internet users to think that the website, to which the disputed domain name resolves, is the official website of the Complainant and thereby capitalize on the fame of the ISABEL BERNARD trademark for its own monetary benefit.

The fact that there is a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent’s choice of the disputed domain name is also a significant factor to consider that the disputed domain name was registered and is being used in bad faith, as stated in section 3.2.1 of [WIPO Overview 3.0](#).

Moreover, the Complainant has proved that a consumer from the Netherlands purchased shoes through the website of the Respondent thinking that it was related to the Complainant and never received them, despite having paid the price.

For the above reasons, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy have been fulfilled.

## 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 <isabelbernard-shop.com> be transferred to the Complainant.

*/Miguel B. O'Farrell/*

**Miguel B. O'Farrell**

Sole Panelist

Date: January 6, 2023