

## **ADMINISTRATIVE PANEL DECISION**

Aubade Paris v. Binglin Chen  
Case No. D2022-4921

### **1. The Parties**

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

The Respondent is Binglin Chen, China.

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

The disputed domain names <boutiqueaubade.com> and <soldesaubade.com> are registered with Gname.com Pte. Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on December 21, 2022. On December 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On December 27, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on December 28, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint.

On the same day, the Center transmitted another email communication to the Parties in English and Chinese regarding the language of the proceeding. The Complainant filed an amended Complaint in English on December 29, 2022, including a request for English to 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 Chinese and English of the Complaint, and the proceedings commenced on January 3, 2023. In accordance with the

Rules, paragraph 5, the due date for Response was January 23, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 24, 2023.

The Center appointed Joseph Simone as the sole panelist in this matter on February 1, 2023. 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, Aubade Paris, is a leading global provider of clothing, in particular underwear and accessories. Established in 1956, it has more than 50 stores in France and more than 10 in other countries.

The Complainant has an extensive global portfolio of AUBADE trade marks, including the following:

- International Trade Mark Registration No. 729774 for AUBADE in Class 25, designating a number of jurisdictions including China, registered on March 8, 2000;
- European Trade Mark Registration No. 001331479 for AUBADE in Class 25, registered on October 18, 2000; and
- China Trade Mark Registration No. 1076821 for AUBADE in Class 25, registered on August 14, 1997.

The disputed domain names were both registered on November 8, 2022.

The Complainant asserts that at the time of filing of the Complaint, the disputed domain names resolved to online shops which offer goods identical to those marketed by the Complainant under the AUBADE trademarks. At the time of this decision, the disputed domain names no longer resolve to an active website.

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

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

The Complainant asserts that it has prior rights in the AUBADE trade marks and that it has acquired a strong reputation in its field of business.

The Complainant further notes that the disputed domain names registered by the Respondent are confusingly similar to the Complainant's AUBADE trade marks, and the addition of the French dictionary terms "boutique" and "soldes" is insufficient to distinguish the disputed domain names from the Complainant's AUBADE trade marks.

The Complainant asserts that it has not authorized the Respondent to use the AUBADE mark, and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain names in connection with a *bona fide* offering of goods or services.

The Complainant presents evidence showing that the disputed domain names were used to promote lingerie under the AUBADE trade marks. The Complainant asserts that lingerie is offered at highly discounted prices, and that some of the goods and pictures appearing in the website were copied from the Complainant's own website. The Complainant therefore asserted that the registration and use of the disputed domain names must be in bad faith.

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

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

## 6. Discussion and Findings

### A. Language of Proceedings

In accordance with paragraph 11(a) of the Rules:

"[...] 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."

In this case, the language of the Registration Agreement for the disputed domain names is Chinese. Hence, the default language of the proceeding should be Chinese.

However, the Complainant filed the Complaint in English, and requested that English be the language of the proceeding, asserting that the Complainant is not familiar with the Chinese language, the disputed domain names only contain Latin letters instead of Chinese characters, the disputed domain names resolved to websites that had content in French language with prices displayed in EUR, and to proceed in the Chinese language the Complainant would have to retain specialized translation services at a cost that is likely to be higher than the overall cost of the present proceeding.

The Respondent was notified in both Chinese and English of the language of the proceeding and the Complaint, and the Respondent did not comment on the language of the proceeding or submit any response.

Considering the circumstances in this case, the Panel has determined that the language of the proceeding shall be English, and the Panel has issued this decision in English. The Panel further finds that such determination would not cause any prejudice to either Party and would ensure that the proceeding takes place with due expedition.

### B. Identical or Confusingly Similar

The Panel acknowledges that the Complainant has established rights in the AUBADE trade mark.

Disregarding the generic Top-Level Domain ("gTLD") ".com", each of the disputed domain names incorporates the Complainant's trade mark AUBADE in its entirety.

According to the Cambridge Dictionary, the word "boutique" means "a fashionable, usually small shop, especially one selling clothes", and the word "solde" means "in a shop, etc., an offer of goods at lowered prices for a short time". Notwithstanding their meaning, these additional words do not prevent a finding of confusing similarity pursuant to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8.

The Panel therefore finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in the AUBADE trade mark and in showing that the disputed domain names are confusingly similar to its mark.

### C. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a complainant is required to establish a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such a *prima facie* case has been made out, the respondent bears the burden of producing evidence in support of its rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant may be deemed to have satisfied paragraph 4(a)(ii) of the Policy. See [WIPO Overview 3.0](#), section 2.1.

The Complainant asserts that it has not authorized the Respondent to use its trade marks and there is no

evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain names in connection with a *bona fide* offering of goods or services.

Thus, the Complainant has established its *prima facie* case with satisfactory evidence.

The Respondent did not file a response and has therefore failed to assert factors or put forth evidence to establish that it enjoys rights or legitimate interests in the disputed domain names. As such, the Respondent has failed to rebut the Complainant's *prima facie* showing of the Respondent's lack of rights or legitimate interests in the disputed domain names, and none of the circumstances of paragraph 4(c) of the Policy is applicable in this case.

Therefore, the Respondent has not shown that prior to the notice of the dispute, it has used or has demonstrated its preparation to use the disputed domain names in connection with a *bona fide* offering of goods or services. There is also no evidence showing that the Respondent has been commonly known by the disputed domain names or that the Respondent is making legitimate noncommercial or fair use of the disputed domain names.

Furthermore, given the composition of the disputed domain name, which combines the Complainant's trademark with terms descriptive of its services, the disputed domain names carry a risk of implied affiliation, contrary to the facts, which cannot constitute fair use. [WIPO Overview 3.0](#), section 2.5.1. Moreover, given the use of the disputed domain names to impersonate the Complainant via nearly identical web stores, neither of which disclaim their lack of relation to the Complainant, the Panel finds that the Respondent is not using the disputed domain names for a *bona fide* offering of goods or services, but rather with illicit intent to impersonate the Complainant, which can never confer rights or legitimate interests upon the Respondent. [WIPO Overview 3.0](#), sections 2.8 and 2.13.

Accordingly, and based on the Panel's findings below, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names pursuant to paragraph 4(a)(ii) of the Policy.

#### **D. 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 as evidence of the registration and use of a 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 trade mark or service mark) or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the respondent registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) circumstances indicating that the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt 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.

For reasons discussed under this and the preceding heading, the Panel believes that the Respondent's conduct in this case constitutes bad faith registration and use of the disputed domain names.

When the Respondent registered the disputed domain names, the AUBADE trade marks were already widely known and directly associated with the Complainant's activities. UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely known trade mark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

Given the extensive prior use and fame of the Complainant's marks, in the Panel's view, the Respondent should have been aware of the Complainant's marks when registering the disputed domain names and ultimately, given the use of the disputed domain names, it is clear the Respondent was aware of the Complainant and intentionally targeted the Complainant when registering the disputed domain names.

Further, according to the Complainant's evidence, the disputed domain names previously resolved to websites promoting women underwear and accessories under the AUBADE trademarks and using the Complainant's product images. Such use falls squarely within the meaning of paragraph 4(b)(iv) of the Policy, namely the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the disputed domain name.

In light of the foregoing facts, there are no plausible good faith reasons for the Respondent to have registered the disputed domain names, especially considering the relevant circumstances. That said, while the disputed domain names no longer resolve to active websites, the doctrine of passive holding provides that the non-use of domain names does not necessarily prevent a finding of bad faith. Accordingly, given the prior bad faith use of the dispute domain names, the current passive holding of the disputed domain names does not prevent a finding of bad faith.

The Panel therefore finds that the Respondent registered and used the disputed domain names 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 names, <boutiqueaubade.com> and <soldesaubade.com>, be transferred to the Complainant.

*/Joseph Simone/*

**Joseph Simone**

Sole Panelist

Date: February 14, 2023