

ADMINISTRATIVE PANEL DECISION

BEABA v. Ljuedi Ojdeu

Case No. D2023-0488

1. The Parties

The Complainant is BEABA, France, represented by Ebrand France, France.

The Respondent is Ljuedi Ojdeu, China.

2. The Domain Names and Registrar

The disputed domain names <boutiquebeaba.com> and <soldesbeaba.com> 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 February 2, 2023. On February 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On February 2, 2023, 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 February 7, 2023, 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 amendment to the Complaint on February 7, 2023.

The Center verified that the Complaint together with the amendment to 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 February 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 28, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 1, 2023.

The Center appointed Anna Carabelli as the sole panelist in this matter on March 6, 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 is a French company created in 1989 and currently established in 70 countries. It designs, manufactures, and sells worldwide a range of baby care products.

The Complainant owns several international trademark registrations for BEABA designated for protection in numerous jurisdictions, including China, and especially:

- International trademark BEABA No. 748 867, registered on November 3, 2000 in classes 3, 7, 8, 9, 10, 11, 12, 15, 16, 18, 20, 21, 24, 25, 27, and 28;
- International trademark BEABA No. 995 497, registered on September 18, 2008 in classes 7, 9, 10, 11, 20, and 21;
- International trademark BEABA No. 1 464 864, registered on September 14, 2018 in classes 8, 12, 16, 18, 20, 21, 24, 25, and 27, designating China and Russia

The Complainant owns the domain names <beaba.com> (registered in 1997) and <beaba.fr> (registered in 2011), both redirecting to the Complainant's official website at "www.beaba.com", which functions as a platform for marketing and promoting the Complainant's products and activity. The Complainant also owns the domain names <beaba-family.com> and <beabausa.com>, respectively registered in 2021 and 2008.

The disputed domain names were registered on May 13, 2022. As per the evidence submitted with the Complaint, the disputed domain names resolve to webpages reproducing the Complainant's official website, brands, logos, and copyrighted photos, and allegedly selling BEABA-branded products.

5. Parties' Contentions

A. Complainant

The Complainant submits and contends that:

- the disputed domain names are confusingly similar to the BEABA trademark in which the Complainant has rights. Both domain names entirely incorporate the Complainant's trademark. The addition of the term "boutique" (meaning "store" in French) and "soldes" (meaning sales goods in French) does not remove the confusion or neutralize the similarity. On the contrary, these compositions, related to commercial activity, creates a risk of confusion in the mind of the Internet user who could wrongly think that these domain names are owned by the Complainant.

- the Respondent has no rights or legitimate interests in the disputed domain names. The Respondent has not been licensed or otherwise permitted by the Complainant to use the BEABA trademark, and is not commonly known by the disputed domain names which were registered long after the registration of the several trademarks composed with BEABA owned by the Complainant since 2000.

The disputed domain names redirect to a website reproducing the Complainant's trademark and logos without any license or authorization as well as copyrighted photos, and selling imitation and/or counterfeit BEABA products, as suggested by the fact that the BEABA branded products displayed on the Respondent's website are offered at prices that are considerably lower than those of original BEABA products.

- The disputed domain names were registered and are being used in bad faith by the Respondent to derive illegitimate commercial gains in an attempt to attract users who are familiar with the Complainant's products and reputation, 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. The disputed domain names were registered years after registration

of the several trademarks composed with BEABA owned by the Complainant, and the Respondent likely chose the disputed domain names with full knowledge of the Complainant's BEABA mark. In addition, the website at the disputed domain names is confusingly similar to the official BEABA website and reproduce copyrighted photos without the authorization, approval, or license of the Complainant. The Respondent furthers that confusion by falsely stating that these materials are its property by placing the mention "Copyright 2023 © www.soldesbeaba.com." or "Copyright 2023 © www.boutiquebeaba.com" at the bottom of the page.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the panel to decide the complaint based on the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Under paragraph 4(a) of the Policy, the complainant must prove each of the following:

- (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.

Paragraph 4(b) of the Policy sets out four illustrative circumstances, which for the purposes of paragraph 4(a)(iii) of the Policy, shall be evidence of registration and use of a domain name in bad faith.

Paragraph 4(c) of the Policy sets out three illustrative circumstances any one of which, if proved by the respondent, shall be evidence of the respondent's rights to or legitimate interests in a disputed domain name for the purpose of paragraph 4(a)(ii) of the Policy above.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has established rights over the trademark BEABA based on the evidence submitted in the Complaint.

As highlighted in section 1.11 of the WIPO Overview of WIPO Panels View on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the addition of the generic Top-Level Domain ("gTLD") ".com" is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test. Therefore, the relevant comparison to be made is with the second-level portion of the disputed domain names, *i.e.*; "boutiquebeaba" and "soldesbeaba".

The disputed domain names entirely incorporate the Complainant's mark BEABA and this is a sufficient element to establish confusing similarity, as held by previous UDRP panels (*e.g.*, *Banca Mediolanum S.p.A. v. Domains By Proxy, LLC / Marzia Chiarello*, WIPO Case No. [D2020-1955](#); *Virgin Enterprises Limited v. Domains By Proxy LLC, Domainsbyproxy.com / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2020-1923](#); *Patagonia, Inc. v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2019-1409](#)).

As recorded in section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other generic terms does not prevent a finding of confusing similarity under the first element.

In the light of all the above, the Panel finds that the disputed domain names are confusingly similar to the Complainant's trademark BEABA and the Complainant has established element 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, a respondent may demonstrate its rights or legitimate interests in a domain name by showing any of the following circumstances, in particular but without limitation:

- (i) before any notice to it of the dispute, its use of, or demonstrable preparation to use the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods and services;
- (ii) it has been commonly known by the domain name, even if it has acquired no trademark or service mark rights;
- (iii) it is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain names, based on the following: (a) the Complainant holds prior rights in the globally registered BEABA mark, (b) the Respondent has not been authorized to use the BEABA trademark in any way, (c) the disputed domain names resolve to a website which reproduces the Complainant's official website, brands, logos, and copyrighted photos without the Complainant's consent, and sells BEABA-labelled products (at a very low price, which according to the Complainant would suggest that they are counterfeit products) and (d) the use of a domain name for *per se* illegitimate activity - such as the sale of counterfeit goods - cannot confer rights or legitimate interests on a respondent.

According to section 2.1 of the [WIPO Overview 3.0](#), while the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

Here the Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names. By not submitting a response, the Respondent has failed to invoke any circumstance, which could have demonstrated any rights or legitimate interests in the disputed domain names under paragraph 4(c) of the Policy. While the Complainant has pointed to the discounted prices of the goods offered at the websites to which the disputed domain names resolve to reflect the potential counterfeit nature of the goods, the Panel needs not come to a determination on the nature of the goods being offered, noting that the disputed domain names have copied the Complainant's website content and reflect no information concerning the websites' relationship (lack thereof) to the Complainant. See sections 2.8 and 2.13.2 of the [WIPO Overview 3.0](#). Further to the so-called "Oki Data test" enshrined in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), even if the goods offered at the websites to which the disputed domain names resolved were of a genuine nature, the disputed domain names cannot constitute fair use given their lack of disclaimers. Moreover, given the impersonating nature of the websites, it is more likely than not that the disputed domain names are engaged in a fraudulent scheme to masquerade as the Complainant in a phishing scheme meant to collect payment information, rather than actually provide any goods for sale (be they genuine BEABA-labelled goods or not).

Therefore, the Panel finds that the Complainant has established paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must establish that the disputed domain names have been registered and are being used in bad faith.

The BEABA trademark is distinctive and the date of its first registration significantly precede the dates of registration of the disputed domain names. Moreover, given the use of the disputed domain names, the Panel concludes that the Respondent knew that the disputed domain names it registered would be confusingly similar to the Complainant's trademark.

The fact that the websites at the disputed domain names: (i) sells BEABA-branded products, (ii) is confusingly similar to the official BEABA website, and (iii) reproduces copyrighted photos without the Complainant's authorization, indicates that the Respondent targeted the Complainant when it registered the disputed domain names.

The above conduct constitutes opportunistic bad faith registration (see section 3.2.1 of the [WIPO Overview 3.0](#)), as well as bad faith use of the disputed domain names under the Policy. Indeed, Internet users who encounter the website to which the disputed domain names resolve may believe that they are dealing with the Complainant, or with a website somehow endorsed, authorized, or operated by the Complainant (see section 3.1.4 of the [WIPO Overview 3.0](#)).

In light of the above, the Panel finds that the disputed domain names were registered and are being used in bad faith by the Respondent, with a deliberate intent to create an impression of an association with the Complainant, and to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's websites or of the services offered on the Respondent's website.

On this basis, the Panel finds that the Complainant has satisfied the third and last element of the Policy, paragraph 4a(iii).

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 <boutiquebeaba.com> and <soldesbeaba.com> be transferred to the Complainant.

/Anna Carabelli/

Anna Carabelli

Sole Panelist

Date: March 20, 2023