

ADMINISTRATIVE PANEL DECISION

B.S.A. International v. Me Bo

Case No. D2023-0601

1. The Parties

The Complainant is B.S.A. International, Belgium, represented by Inlex IP Expertise, France.

The Respondent is Me Bo, Japan.

2. The Domain Name and Registrar

The disputed domain name <primevere-creation.com> is registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on February 9, 2023. On February 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 10, 2023, 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 Privacy Protection Service by MuuMuuDomain) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 10, 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 amended Complaint in English on February 10, 2023.

On February 10, 2023, the Center transmitted an email communication to the Parties in English and Japanese regarding the language of the proceeding. On February 10, 2023, the Complainant submitted a request that English 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 English and Japanese of the Complaint, and the proceedings commenced on February 16, 2023. In accordance

with the Rules, paragraph 5, the due date for Response was March 8, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 9, 2023.

The Center appointed Erica Aoki as the sole panelist in this matter on March 20, 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, B.S.A. INTERNATIONAL, is a subsidiary of the LACTALIS Group. LACTALIS Group was created in 1933. It has since become the world leader in the dairy industry.

The Complainant has widely been using its PRIMEVERE trademarks for 30 years to promote a range of vegetable margarine and has therefore built up a substantial reputation at least in France. The Complainant offers vegetable fats for cardiovascular health.

The Complainant is the owner of numerous rights on the denomination PRIMEVERE throughout the world, including French trademark PRIMEVERE No. 1457714 registered on March 28, 1988, and International trademark PRIMEVERE No. 349728 registered on October 16, 1968.

The Complainant also owns the domain name registered on November 11, 1998, which redirects to the Complainant's website "<https://primevere.com/>"

The disputed domain name was registered on December 20, 2022. The disputed domain name resolves to a fake Facebook login page, apparently to obtain the user's Facebook login details. The disputed domain name resolves to a website displaying a login page with the same look and feel as Facebook's official login page.

5. Parties' Contentions

A. Complainant

The Complainant has widely been using its PRIMEVERE trademarks for 30 years to promote a range of vegetable margarine and has therefore built up a substantial reputation at least in France. The Complainant offers vegetable fats for cardiovascular health.

The trademarks PRIMEVERE are well-known at least by French consumers. The brand PRIMEVERE was created in 1988. The portfolio of trademarks was then assigned to a company of the LACTALIS GROUP in 2002. LACTALIS GROUP has expended extensive time, effort, and resources to cultivate great notoriety in France through advertising, promotional media as well as websites.

The Complainant contends that the disputed domain name is confusingly similar to the Complainant's trademark, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered and is being used in bad faith. The disputed domain name was registered with aim of taking advantage of the reputation of the trademarks PRIMEVERE.

B. Respondent

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

6. Discussion and Findings

The Complainant is required to establish the requirements specified under paragraph 4(a) of the Policy:

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

A. Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Japanese. Paragraph 11(a) of the Rules provides that “unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, 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”. The Panel may also order that any documents submitted in a language other than that of the proceeding be translated.

However, as noted by previous UDRP panels, paragraph 11 of the Rules must be applied in accordance with the overriding requirements of paragraphs 10(b) and 10(c) of the Rules that the parties are treated equally, that each party is given a fair opportunity to present its case and that the proceeding takes place with due expedition (see, e.g., *General Electric Company v. Edison Electric Corp. General Energy a/k/a Edison GE GEEEEGE.COM a/k/a Edison-GE and Edison Electric Corp.*, WIPO Case No. [D2006-0334](#)).

In deciding whether to allow the proceeding to be conducted in a language other than the language of the Registration Agreement, and to require the Complainant in an appropriate case to translate the Complaint into the language of that Agreement, the Panel must have regard to all “the relevant circumstances” of the case. The factors that the Panel should take into consideration include *inter alia* whether the Respondent is able to understand and effectively communicate in the language in which the Complaint has been made and would suffer no real prejudice, and whether the expenses of requiring translation and the delay in the proceedings can be avoided without causing injustice to the Parties.

According to section 4.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), prior UDRP panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios include: (i) evidence showing that the respondent can understand the language of the complaint, (ii) the language/script of the domain name particularly where the same as that of the complainant’s mark, (iii) any content on the webpage under the disputed domain name, (iv) prior cases involving the respondent in a particular language, (v) prior correspondence between the parties, (vi) potential unfairness or unwarranted delay in ordering the complainant to translate the complaint, (vii) evidence of other respondent-controlled domain names registered, used, or corresponding to a particular language, (viii) in cases involving multiple domain names, the use of a particular language agreement for some (but not all) of the disputed domain names, (ix) currencies accepted on the webpage under the disputed domain name, or (x) other indicia tending to show that it would not be unfair to proceed in a language other than that of the registration agreement.

The Complainant has submitted a request that the language of the proceeding be English.

The Panel notes that the Center notified the Respondent in Japanese and English regarding the language of the proceeding and the Respondent was invited to present his objection to the proceeding being held in English and if the Center did not hear from the Respondent by the specified due date, the Center would proceed on the basis that the Respondent had no objection to the Complainant’s request that English be the language of the proceeding. The Respondent had the opportunity to raise objections or make known his preference but did not do so. The Panel further notes that the Center notified the Respondent in Japanese

and English of the Complaint, and the Respondent was informed that it could file a response either in Japanese or English, but the Respondent did not file any response.

Taking all these circumstances into account, the Panel finds that it is appropriate to exercise its discretion and allow the proceeding to be conducted in English.

B. Identical or Confusingly Similar

Based on the facts presented by the Complainant, this Panel finds that the Complainant has established its rights in PRIMEVERE through registration and use.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's registered trademark, as the disputed domain name includes the Complainant's mark in full, with only the addition of the word "creation," the two terms being separated by a hyphen "-" which does not prevent a finding of confusing similarity (see section 1.8 of the [WIPO Overview 3.0](#)).

C. Rights or Legitimate Interests

The Panel finds the following on record in this proceeding under the Policy:

The Respondent is in default and thus has made no affirmative attempt to show any rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy indicates that a registrant may have a right or legitimate interest in a domain name if it uses the domain name in connection with a *bona fide* offering of goods or services prior to notice of the dispute. In this regard, the Respondent is in no way connected with the Complainant and has no authorization to use any of the Complainant's trademarks. The disputed domain name resolves to a fake Facebook login page, apparently to obtain the user's Facebook login details.

There is no evidence on record that the Respondent is or was commonly known by the disputed domain name as an individual, business, or other organization.

There is no evidence on record that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's trademark.

The Panel therefore finds that the Complainant has established an un rebutted *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, under the Policy, paragraph 4(a)(ii).

Thus, the Respondent has no rights or legitimate interests in respect of the disputed domain name.

D. Registered and Used in Bad Faith

Use of a domain name containing a trademark in relation to a fake Facebook web page may constitute evidence of bad faith registration and use. Here, the use by the Respondent of the confusingly similar Domain Name to point to fake Facebook page appears intended to attract Internet users to unlawfully obtain Internet user's data, and as such constitutes registration and use in bad faith.

As held above the Domain Name appears to be confusingly similar to the Complainant's trademark

As such, the Panelist believes that the Complainant has made out its case that the Domain Name was registered and used in bad faith and has satisfied the third limb 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 Domain Name, <primevere-creation.com>, be transferred to the Complainant.

/Erica Aoki/

Erica Aoki

Sole Panelist

Date: April 19, 2023