

ADMINISTRATIVE PANEL DECISION

BASF SE v. su hua

Case No. D2024-0208

1. The Parties

Complainant is BASF SE, Germany, represented by IP Twins, France.

Respondent is su hua, China.

2. The Domain Name and Registrar

The disputed domain name <wwwbasf.com> (the “Domain Name”) is 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 January 18, 2024. On January 18, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 19, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to Complainant on January 19, 2024 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. On the same day, the Center informed the parties in Chinese and English, that the language of the registration agreement for the Domain Name is Chinese. Complainant filed an amended Complaint in English on January 22, 2024 including its request for English to be the language of the proceeding. Respondent did not submit any comment on Complainant’s submission.

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 Respondent of the Complaint, and the proceedings commenced on January 30, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 19, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on February 21, 2024.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on February 29, 2024. 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

Complainant, BASF SE, is a German chemical company listed on the Frankfurt Stock Exchange, London Stock Exchange, and Zurich Stock Exchange. The BASF Group comprises subsidiaries and joint ventures in over 80 countries and operates six integrated production sites and 390 other production sites in Europe, Asia, Australia, Americas and Africa. Complainant has customers in more than 200 countries and supplies products to a wide variety of industries, employing more than 112,000 people around the world.

Complainant also maintains operations in China, where Respondent is located, including 26 major wholly-owned subsidiaries, 10 major joint ventures, and maintains 25 sales offices. In the past 20 years, Complainant has invested over EUR eight billion in Greater China to build locally competitive production, marketing, sales, technical service and innovation network operations. In 2021, Complainant posted sales of approximately EUR 121 billion to customers in Greater China and employed more than 11,000 people. After the United States of America, Greater China is Complainant's largest market.

Complainant owns registered trademarks worldwide for the BASF mark, such as:

- International trademark no. 638794 for the BASF word mark, registered on May 3, 1995, designating, inter alia, China;
- International trademark no. 909293 for the BASF word mark, registered on October 31, 2006, designating, inter alia, China; and
- European Union trademark no. 000098020 for the BASF word mark, registered on October 15, 1998.

Complainant is also the owner of numerous domain names with the BASF mark alone or in combination, such as

- <basf.com>, registered in 1995;
- <basf.eu>, registered in 2006; and
- <basf-world.com>, registered in 2017.

The Domain Name was registered on November 19, 2023 and at the time of filing of the Complaint, resolved to a website offering online gaming and gambling services.

5. Parties' Contentions

A. Complainant

Complainant contends that (i) the Domain Name is identical or confusingly similar to Complainant's trademarks; (ii) Respondent has no rights or legitimate interests in the Domain Name; and (iii) Respondent registered and is using the Domain Name in bad faith.

In particular, Complainant contends that it has trademark registrations for BASF and that Respondent registered and is using the Domain Name with the intention to confuse Internet users looking for bona fide and well-known BASF products and services.

Complainant notes that it has no affiliation with Respondent, nor authorized Respondent to register or use a domain name, which includes Complainant's trademarks, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Name. Rather, Complainant contends that Respondent

has acted in bad faith in acquiring and setting up the Domain Name, when Respondent clearly knew of Complainant's rights.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

6.1. Preliminary Procedural Issue – Language of the Proceeding

The Rules, in paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement between the respondent and the registrar in relation to the disputed domain name, the language of the 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.

Complainant submitted its Complaint in English. In its email dated January 22, 2024, and its amended Complaint, Complainant requested that the language of the proceeding be English. According to the information received from the Registrar, the language of the Registration Agreement for the Domain Name is Chinese.

In exercising its discretion to use a language other than that of the Registration Agreement for the Domain Name, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both Parties, taking into account all relevant circumstances of the case, including matters such as the Parties' ability to understand and use the proposed language, time, and costs.

The Panel takes note of the fact that the Domain Name is registered in Latin characters and incorporated Complainant's BASF trademark in its entirety, with the BASF mark as the dominant term in the Domain Name. The Panel also notes that the Center notified the Parties in Chinese and English of the language of the proceeding as well as notified Respondent in Chinese and English of the Complaint. Respondent chose not to comment on the language of the proceeding nor did Respondent choose to file a Response.

The Panel is also mindful of the need to ensure that the proceeding be conducted in a timely and cost effective manner. Complainant may be unduly disadvantaged by having to translate the Complaint into Chinese and to conduct the proceeding in Chinese.

Having considered all the circumstances of this case, the Panel determines that English be the language of the proceeding.

6.2. Substantive Issues

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

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

Section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)) states that failure to respond to the complainant's contentions would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an

admission that the complainant's claims are true.

Thus, although in this case Respondent has failed to respond to the Complaint, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence. See, e.g., *The Knot, Inc. v. In Knot We Trust LTD*, WIPO Case No. [D2006-0340](#).

A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Complainant provided evidence of its rights in the BASF trademarks, as noted above. Complainant has therefore proven that it has the requisite rights in the BASF trademarks. With Complainant's rights in the BASF trademark established, the remaining question under the first element of the Policy is whether the Domain Name, typically disregarding the Top-Level Domain ("TLD") in which it is registered (in this case, ".com"), is identical or confusingly similar to Complainant's trademark. See, e.g., *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#).

Here, the Domain Name is confusingly similar to Complainant's BASF trademarks. The addition of the letters "www" prior to the BASF mark in the Domain Name <wwwbasf.com> does not prevent a finding of confusing similarity between the Domain Name and the BASF trademark as the latter recognizable in the Domain Name.

Thus, the Panel finds that Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make a prima facie showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes such a prima facie showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with relevant evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

From the record in this case, it is evident that Respondent was, and is, aware of Complainant and its BASF trademarks, and does not have any rights or legitimate interests in the Domain Name. Complainant has confirmed that Respondent is not authorized or licensed to use the BASF trademarks or to seek registration of any domain name incorporating the trademarks. Respondent is also not known to be associated with the BASF trademarks and there is no evidence showing that Respondent has been commonly known by the Domain Name.

In addition, Respondent has not used the Domain Name in connection with a bona fide offering of goods or services or a legitimate noncommercial or fair use. Rather, the evidence demonstrates that the Domain Name resolved to a website prominently featuring the terms "Asian Gaming", while offering gaming and online gambling services, which appeared to be associated with a network of international online casinos and online gambling companies, which have no connection with "basf". Such use does not constitute a bona fide offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Name. See, e.g., *Intesa Sanpaolo S.p.A. v. Charles Duke / Oneandone Private Registration*, WIPO Case No. [D2013-0875](#).

Accordingly, Complainant has provided evidence supporting its prima facie claim that Respondent lacks any rights or legitimate interests in the Domain Name. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Name.

Moreover, the composition of the Domain Name is inherently misleading as it effectively impersonates or suggests sponsorship or endorsement by Complainant. See [WIPO Overview 3.0](#), section 2.5.1.

Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Name and Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Respondent's actions indicate that Respondent registered and is using the Domain Name in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, namely:

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

(ii) you have 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 you have engaged in a pattern of such conduct; or

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

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your web site or location or of a product or service on your web site or location.”

The Panel finds that the available evidence on record shows that registration and use of the BASF trademarks predate the registration of the Domain Name. Complainant is also well established and known in the chemical industry. Indeed, Complainant's BASF trademarks and related products and services are widely known and recognized. Therefore, Respondent was aware of the BASF trademarks when registering the Domain Name, or knew or should have known that the Domain Name was confusingly similar to Complainant's trademarks. See [WIPO Overview 3.0](#), section 3.2.2; see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

The Panel further notes that the Domain Name differs from Complainant's official website at “www.basf.com” only by missing the element “.”, which further supports a finding that Respondent was targeting Complainant and its trademarks when registering the Domain Name.

The Panel therefore finds that Respondent's awareness of Complainant's trademark rights at the time of registration suggests bad faith. See *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#); *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#).

Further, UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

Moreover, Respondent registered and is using the Domain Name to confuse and mislead consumers looking for well-known BASF products and services of Complainant or authorized partners of Complainant. The use of the BASF trademarks in the Domain Name is intended to capture Internet traffic from Internet users who

are looking for Complainant's products and services. The use of the Domain Name to divert Internet users to a webpage featuring the terms "Asian Gaming", offering gaming and online gambling services, which appeared to be associated with a network of online casinos and online gambling companies, for commercial gain, by creating a likelihood of confusion with Complainant's mark is in bad faith. Furthermore, the content provided on the website to which the Domain Name resolved, may result in tarnishing Complainant's reputation.

Finally, the Panel also notes the failure of Respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and the implausibility of any good-faith use to which the Domain Name may be put.

Accordingly, the Panel finds that Respondent has registered and is using the Domain Name in bad faith and Complainant succeeds under the third element of paragraph 4(a) 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 <wwwbasf.com> be transferred to Complainant.

/Kimberley Chen Nobles/

Kimberley Chen Nobles

Sole Panelist

Date: March 14, 2024