

## ADMINISTRATIVE PANEL DECISION

Aubin & Wills Holdings Limited v. Name Redacted  
Case No. D2024-4230

### 1. The Parties

The Complainant is Aubin & Wills Holdings Limited, United Kingdom, represented by Pinsent Masons LLP, United Kingdom.

The Respondent is Name Redacted.<sup>1</sup>

### 2. The Domain Name and Registrar

The disputed domain name <aubinandwillsw.com> is registered with Sav.com, LLC (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 14, 2024. On October 15, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 15, 2024, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 17, 2024, 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 on October 18, 2024.

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”).

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<sup>1</sup>The Respondent appears to have used the name of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on October 22, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 11, 2024. On November 15, 2024, the Center notified the Parties that it would proceed to panel appointment.

The Center appointed Andrea Mondini as the sole panelist in this matter on November 20, 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

The Complainant was founded in 2008, is active in the men’s fashion industry under the trademark AUBIN, and its products are sold in Europe, the United States of America and in further countries.

The Complainant holds the domain name <aubinandwills.com> which was registered in 2007 and hosts its main website.

The Complainant owns several trademark registrations in several jurisdictions, including:

TRADEMARK	JURISDICTION	REGISTRATION NUMBER	REGISTRATION DATE	INTERNATIONAL CLASSES
AUBIN	United Kingdom	UK00003604120	July 9, 2021	9, 14, 18, 25, 35
AUBIN	European Union	018461962	September 2, 2021	9, 14, 18, 25

Because the Respondent did not file a Response, not much is known about the Respondent.

The disputed domain name was registered on May 25, 2024.

The disputed domain name resolves to a website purporting to sell clothing goods.

#### 5. Parties’ Contentions

##### A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends as follows:

The disputed domain name is confusingly similar to the AUBIN trademark in which the Complainant has rights, because it incorporates its trademark in its entirety and is almost identical to the Complainant’s business and trading name Aubin & Wills. The addition of the random letter “w” is nothing more than a typo squat.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The trademark AUBIN has been extensively used to identify the Complainant and its products, and there is no other reason for the registration of the disputed domain name other than to take advantage of the Complainant’s trademark and reputation. There is no evidence of the Respondent’s use, or demonstrable preparation to use, the disputed domain name in connection with a bona fide offering of goods and services.

The disputed domain name was registered in bad faith because it is obvious that the Respondent had knowledge of both the Complainant and its well-known trademark AUBIN at the time it registered the disputed domain name.

Respondent is using the disputed domain name in bad faith to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark and its products.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions. On October 24, 2024, and October 28, 2024, the Center received two emails from a third party apparently in receipt of the Center's written notice of the proceeding claiming to have no relationship with the disputed domain name.

## **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, in order to succeed, a complainant must establish each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to the 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.

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

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name.

Although the addition of other elements such as here "andwillsw" may bear on assessment of the second and third elements, the Panel finds that in the present case the addition of such element does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. The addition of the letter "w" to the disputed domain name is considered an intentional misspelling and does not prevent a finding of confusing similarity under the Policy. [WIPO Overview 3.0](#), sections 1.8 and 1.9.

The addition of the generic Top-Level Domain ("gTLD") ".com" in the disputed domain name is a standard registration requirement and as such may be disregarded under the confusing similarity test under the Policy, paragraph 4(a)(i). See [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds the first element of the Policy has been established.

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

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that for a complainant to prove that a respondent lacks rights or legitimate interests in a domain name may result in the difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Complainant contends that the Respondent posted a website under the disputed domain name offering clothing products copying the Complainant’s logo. Even if such products were genuine, the Respondent’s use of the disputed domain name does not meet the “Ok! Data Test”, established on *Ok! Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), because the website does not disclose the relationship between the Respondent and the Complainant. [WIPO Overview 3.0](#), section 2.8.

The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Based on the available record, the Panel finds the second element of the Policy has been established.

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

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the view of the Panel, noting that that the Complainant’s trademark predates the registration of the disputed domain name and considering that the disputed domain name is almost identical to the Complainant’s business name and resolves to a website purporting to offer clothing products with the Complainant’s logo, it is inconceivable that the Respondent could have registered the disputed domain name without knowledge of the Complainant’s well-known trademark. In the circumstances of this case, this is evidence of registration in bad faith.

The impression given by this website would cause Internet users to believe that the Respondent is somehow associated with the Complainant when, in fact, it is not. The Panel holds that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of its website in the sense of Policy, paragraph 4(b)(iv).

Moreover, on October 24, 2024, and October 28, 2024, the Center received two emails from a third party apparently in receipt of the Center’s written notice of the proceeding. It seems more likely than not that the Respondent used the contact details of a third party when registering the disputed domain name. Such identity theft is further evidence of registration and use in bad faith.

Based on the available record, the Panel finds that the Complainant has established the third element of the Policy with regard to the disputed domain name.

## **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 <aubinandwillsw.com> be transferred to the Complainant.

*/Andrea Mondini/*

**Andrea Mondini**

Sole Panelist

Date: November 28, 2024