

ADMINISTRATIVE PANEL DECISION

Breitling SA v. chun xue
Case No. D2022-4376

1. The Parties

The Complainant is Breitling SA, Switzerland, represented by IP Twins, France.

The Respondent is chun xue, China.

2. The Domain Name and Registrar

The disputed domain name <replicabreitling.com> 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 November 17, 2022. On November 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 18, 2022, 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 and contact information in the Complaint.

The Center sent an email communication to the Complainant on November 18, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On November 18, 2022, the Center transmitted another email communication to the Parties in English and Chinese regarding the language of the proceeding. The Respondent did not comment on the language of the proceeding. The Complainant filed the amended Complaints in English on November 21, 2022 including a request for English to be the language of the proceeding.

The Center verified that the Complaint together with the amended Complaints 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 Chinese of the Complaint, and the proceedings commenced on November 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 14, 2022. The Respondent did not

submit any response. Accordingly, the Center notified the Respondent's default on December 16, 2022.

The Center appointed Sok Ling MOI as the sole panelist in this matter on January 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, a Swiss company founded in 1884 by Léon Breitling, manufactures high-end chronographs, watches and related accessories. The Breitling brand is known for precision-made chronometers designed for aviators. With stores and distributors on all continents, the Complainant has built up a reputation as one of the best high-end luxury watchmakers worldwide.

The Complainant advertises its products through its official websites, in particular, at "www.breitling.com".

The Complainant owns numerous trade mark registrations worldwide for BREITLING. In particular, the Complainant is the owner of the following trade mark registrations:

- International Trade Mark Registration No. 279322, for BREITLING (device), registered on January 31, 1964;
- International Trade Mark Registration No. 160212, for B BREITLING (device), registered on March 10, 1952;
- China Trade Mark Registration No. 5944329, for 百年灵 (BREITLING in Chinese); BREITLING; 1884 (device), registered on November 14, 2013.

The disputed domain name was registered on November 18, 2021. According to the evidence submitted by the Complainant, the disputed domain name redirects to a landing page in Chinese with tags related to adult content and advertisements to various gambling websites.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to its BREITLING trade mark, the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith.

The Complainant requests for the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

6.1 Procedural Issue: Language of the Proceeding

Pursuant to paragraph 11(a) of the Rules, 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.

Paragraphs 10(b) and (c) of the Rules require the Panel to ensure that the proceeding takes place with due expedition and that the Parties are treated equitably and given a fair opportunity to present their respective cases.

The language of the Registration Agreement for the disputed domain name is Chinese. From the evidence on record, no agreement appears to have been entered into between the Complainant and the Respondent regarding the language issue. The Complainant filed its Complaint in English and has requested that English be the language of the proceeding. The Respondent did not respond on the issue of the language of the proceeding.

The Panel finds evidence in the present proceeding to suggest that the Respondent may have knowledge of English. In particular, the Panel notes that:

- (a) the disputed domain name is registered in Latin characters, rather than Chinese script; and
- (b) the disputed domain name incorporates the English word “replica”.

Additionally, the Panel notes that:

- (a) the Center has notified the Respondent of the language of the proceeding, and commencement of the proceeding in both Chinese and English;
- (b) the Center has informed the Respondent that it would accept a Response in either English or Chinese; and
- (c) the Respondent did not comment on the language of the proceeding nor file a Response.

Considering the above circumstances, the Panel finds that the choice of English as the language of the present proceeding is fair to all Parties and is not prejudicial to any of the Parties in their ability to articulate the arguments for this case. The Panel has taken into consideration the fact that to require the Complaint and all supporting documents to be translated into Chinese would, in the circumstances of this case, cause an unnecessary cost burden to the Complainant and would unnecessarily delay the proceeding.

In view of all the above, the Panel determines under paragraph 11(a) of the Rules that it shall accept the Complaint and all supporting materials as filed in English, that English shall be the language of the proceeding, and that the decision will be rendered in English.

6.2 Substantive Findings

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following three elements to obtain an order for the disputed domain name to be cancelled or transferred:

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

On the basis of the arguments and evidence introduced by the Complainant, the Panel concludes as follows:

A. Identical or Confusingly Similar

The Panel accepts that the Complainant has rights in the BREITLING mark by virtue of its use and registration of the same as a trade mark.

The disputed domain name effectively incorporates the Complainant's BREITLING trade mark in its entirety. The addition of the word "replica" does not prevent a finding of confusing similarity in this case as the Complainant's BREITLING trade mark is clearly recognisable within the disputed domain name. The addition of the generic Top-Level Domain ("gTLD") ".com" is a standard registration requirement and is generally disregarded for the purpose of the confusing similarity assessment.

Consequently, the Panel finds that the disputed domain name is confusingly similar to the Complainant's BREITLING trade mark.

Accordingly, the Complainant has satisfied the requirements of the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant bears the burden of establishing that the respondent lacks rights or legitimate interests in the disputed domain name. However, once the complainant makes a *prima facie* showing under paragraph 4(a)(ii) of the Policy, the burden of production shifts to the respondent to establish its rights or legitimate interests in the disputed domain name by demonstrating any of the following, without limitation, under paragraph 4(c) of the Policy:

- (i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the disputed domain name, even if it has acquired no trade mark or service mark rights; or
- (iii) 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 trade mark or service mark at issue.

See *Taylor Wimpey PLC, Taylor Wimpey Holdings Limited v. honghao Internet foshan co, ltd*, WIPO Case No. [D2013-0974](#).

The Complainant has confirmed that the Respondent is not in any way affiliated with the Complainant or otherwise authorized or licensed to use the BREITLING trade mark or to seek registration of any domain name incorporating the BREITLING trade mark. The Respondent appears to be an individual by the name of "chun xue". There is no evidence suggesting that the Respondent is commonly known by the disputed domain name or that the Respondent has any rights in the term "Breitling".

According to the evidence submitted by the Complainant, the disputed domain name redirects to a landing page in Chinese with tags related to adult content and advertisements to various gambling websites, which is likely to generate revenue for the Respondent. Using a domain name which incorporates a trade mark to divert Internet traffic to gambling websites does not constitute a *bona fide* offering of goods or services.

The Panel is satisfied that the Complainant has made out a *prima facie* case showing that the Respondent lacks rights or legitimate interests in the disputed domain name. The burden of production thus shifts to the Respondent to establish his rights or legitimate interests in the disputed domain name. Since the Respondent did not file a Response to the Complaint and has thus failed to offer any explanation for his registration of the disputed domain name, the *prima facie* case has not been rebutted.

Consequently, the Panel finds that the Respondent lacks rights or legitimate interests in the disputed domain name.

Accordingly, the Complainant has satisfied the requirements of the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out four circumstances which, without limitation, shall be evidence of the registration and use of a disputed domain name in bad faith, namely:

- (i) circumstances indicating that the respondent has registered or acquired the disputed 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 trade mark or service mark or to a competitor of the complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) the respondent has registered the disputed 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) the respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's 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 the respondent's website or location.

The Panel accepts that the Complainant and its trade mark BREITLING enjoy a strong reputation worldwide and have a significant online presence. The trade mark BREITLING is also highly distinctive of the Complainant's products. In this day and age of the Internet and advancement in information technology, the reputation of brands and trade marks transcends national borders. A cursory Internet search would have disclosed the BREITLING trade mark and its extensive use by the Complainant. A strong presumption thus arises that the Respondent was aware of the Complainant and its trade mark when he registered the disputed domain name. Registration of a domain name that incorporates a complainant's well-known trade mark suggests opportunistic bad faith.

According to the evidence submitted by the Complainant, the disputed domain name redirects to a landing page in Chinese with tags related to adult content and advertisements to various gambling websites. The consensus view of previous UDRP panels is that a domain name registrant is normally deemed responsible for content appearing on a website at its domain name, even if such registrant may not be exercising direct control over such content – for example, in the case of advertising links appearing on an “automatically” generated basis. The Panel notes the presumption that the Respondent or a third party stands to profit or make a “commercial gain” from advertising revenue by such an arrangement trading on third-party trade marks. The Panel therefore determines that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his website by creating a likelihood of confusion with the Complainant's mark as to source, sponsorship, affiliation, or endorsement of the Respondent's website, and the Panel finds that the circumstances referred to in paragraph 4(b)(iv) of the Policy are applicable to the present case.

Taking into account all the circumstances, the Panel is satisfied that the Respondent's registration and use of the disputed domain names are both in bad faith.

Accordingly, the Complainant has satisfied the requirements of the third element under 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 disputed domain name <replicabreitling.com> be transferred to the Complainant.

/Sok Ling MOI/

Sok Ling MOI

Sole Panelist

Date: February 8, 2023