

## **ADMINISTRATIVE PANEL DECISION**

Le Club v. Cong wang, wangcong  
Case No. D2022-4440

### **1. The Parties**

The Complainant is Le Club, France, represented by Casalonga Avocats, France.

The Respondent is Cong wang, wangcong, China.

### **2. The Domain Name and Registrar**

The disputed domain name <lesbriconautes79.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 with the WIPO Arbitration and Mediation Center (the “Center”) on November 21, 2022. On November 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 22, 2022, the Registrar transmitted by email to the Center its verification response, confirming that the Respondent is listed as the registrant and providing the contact details.

On November 24, 2022, the Center notified the Parties in both English and Japanese that the language of the registration agreement for the disputed domain name is Japanese. On November 25, 2022, the Complainant requested for English to be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

The Center verified that 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 December 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 28, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 30, 2022.

The Center appointed Masato Dogauchi as the sole panelist in this matter on January 9, 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**

Whereas the Respondent has not submitted any response, the following information from the Complaint is found to be the factual background of this case.

The Complainant is a subsidiary of the French company, Mr. Bricolage. The Complainant is managing in France over 100 retail stores specialized in DIY products, home improvement, gardening, decoration and home and garden design. The brand name of the store is Les Briconautes. The total turnover was EUR 14,427,200 in 2019.

The Complainant has trademarks of LES BRICONAUTES or terms including LES BRICONAUTES, among others, as follows:

- European Union trademark, No. 001184712 98762440, LES BRICONAUTES MA MAISON, MA PLANÈTE, registered on October 17, 2000;
- French trademark, No.3298464, LES BRICONAUTES, registered on June 18, 2004.

The disputed domain name was registered on June 2, 2022 and it used to direct to a website promoting pornographic content. On October 10, 2022, the Complainant sent a formal notice to the Respondent, where the Complainant requested the Respondent to:

- cease and desist from any use of the sign “Les Briconautes” or any variation thereof, for any reasons, in any manner and by any means;
- assign the disputed domain name to the Complainant without any financial compensation.

However, the Complainant did not receive any answer from the Respondent.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant’ contentions are divided into three parts as follows:

First, the Complainant asserts that the disputed domain name is confusingly similar to its trademark and their domain names associated. The Top-Level Domain (“TLD”) suffix “.com” is not of distinguishing effect and must be removed from analysis. And, the Complainant’s LES BRICONAUTES trademark is identically reproduced within the disputed domain name. Moreover, the addition of the number “79” can lead the Internet users to believe that this disputed domain name is legitimate or designates the location of one of the Complainant’s stores. Indeed, the Complainant has a store in Coulonges-sur-l’Autize in France in the 79 department.

Second, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. No license, permission nor authorization to use the wording LES BRICONAUTES was ever granted to the Respondent by the Complainant. The use of the disputed domain name resolving to a website promoting pornographic content does not constitute a *bona fide* offering of goods and services, a legitimate noncommercial or fair use. Hence, the Respondent has no rights and legitimate interest in the disputed domain name.

Third, the Complainant asserts that the Respondent registered and used the disputed domain name in bad faith. The Complainant's LES BRICONAUTES trademark was registered long before the disputed domain name was registered by the Respondent, and the trademark has been extensively used for more than twenty years for DIY products, home improvement, gardening, decoration and home and garden design. As a result, there is no doubt that the Respondent knew or should have known about the existence of the Complainant's LES BRICONAUTES trademarks. Furthermore, the Complainant asserts that the Respondent is using the disputed domain name in order to misdirect Internet users searching for information about the Complainant or searching for the Complainant's authorized goods and services by creating a likelihood of confusion with the Complainant's trademarks. Hence, the disputed domain name has been registered in bad faith and is being used in bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1. Preliminary Issue: Language of Proceedings**

In respect of the language to be used in the administrative proceeding, in accordance with the Rules, paragraph 11(a), the language of the administrative proceeding shall be, in principle, the language of the registration agreement. However, the same provision allows the panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

In this case, the Registrar has confirmed that the language of the Registration Agreement is Japanese.

The Panel determines that the language of this proceeding shall be English rather than Japanese on the following grounds:

- the Complainant's request to that effect;
- the Respondent did not reply to the Center's Language of Proceedings email or Notification of Complaint in English and Japanese;
- the disputed domain name is in Latin script and not in Japanese script; and
- the use of Japanese language would produce undue burden on the Complainant in consideration of the absence of a Response from the Respondent.

### **6.2. Substantive Matters**

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

The disputed domain name includes the Complainant's LES BRICONAUTES trademark in its entirety. Such inclusion is by itself enough to consider the disputed domain name confusingly similar to the Complainant's LES BRICONAUTES trademark. The addition of the term "79" in the disputed domain name does not prevent a finding of confusing similarity. Further, as well-established in prior UDRP decisions, the generic TLD ("gTLD") ".com" contained in the disputed domain name is typically irrelevant in the determination of the confusing similarity.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the trademark in which the Complainant has rights. So, the above requirement provided for in paragraph 4(a)(i) of the Policy is accordingly satisfied.

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

There is no evidence that shows the Respondent is commonly known by the name “lesbriconautes” or “lesbriconautes79”. And no evidence is found showing that the Respondent is affiliated with the Complainant or authorized or licensed to use the Complainant’s trademark.

Moreover, no *bona fide* offering of goods or services, or legitimate noncommercial or fair use has been made of the disputed domain name. Rather, the evidence shows that the disputed domain name directed to a website promoting pornographic content.

Since the Respondent did not reply to the Complaint in this proceeding, the Panel finds on the available record that the Complainant has established an un rebutted *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. So, the above requirement provided for in paragraph 4(a)(ii) of the Policy is accordingly satisfied.

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

The Complainant is a retailer specialized in DIY products, home improvement, gardening, decoration and home and garden design, and has over 100 stores in France. In consideration of the Complainant’s business using the LES BRICONAUTES trademark, it is highly unlikely that the Respondent would not have known of the Complainant’s rights in the trademark at the time of the disputed domain name’s registration. In addition, in light of the fact that nothing in the disputed domain name bears a reasonable relevance to the name of the Respondent and the lack of a respondent’s own rights to or legitimate interests in the disputed domain name , there can be found no reasonable possibility of the Respondent’s own rights or legitimate interests in the Respondent’s registration of the disputed domain name.

Moreover, the Complainant claims that the Respondent is using the disputed domain name to misdirect Internet users searching for information about the Complainant or searching for the Complainant’s authorized goods and services by creating a likelihood of confusion with the Complainant’s trademarks. The Respondent did not show that the Respondent is not using the disputed domain name in bad faith and did not rebut the assertion of the Complainant in this proceeding.

Therefore, based on the available record, the Panel finds that the disputed domain name has been registered in bad faith and is being used in bad faith. So, the above requirement provided for in paragraph 4(a)(iii) of the Policy is accordingly satisfied.

In conclusion, all three cumulative requirements as provided for in paragraph 4(a) of the Policy are determined to be satisfied.

## **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 <lesbriconautes79.com> be transferred to the Complainant.

*/Masato Dogauchi/*

**Masato Dogauchi**

Sole Panelist

Date: January 19, 2023