

## **ADMINISTRATIVE PANEL DECISION**

Breitling AG v. Clara C Clark Clara, Solution Realty  
Case No. D2024-2385

### **1. The Parties**

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

The Respondent is Clara C. Clark Clara, Solution Realty, United States of America ("United States").

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

The disputed domain name <breitling1.com> is registered with Gname.com Pte. Ltd. (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 11, 2024. The next day, June 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 13, 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 (Redacted for privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on the same day 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 June 14, 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").




In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 18, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 8, 2024. The Respondent did not submit any response. Accordingly, to the absence of response, the Center notified the Respondent's default on July 9, 2024.

The Center appointed Ada L. Redondo Aguilera as the sole Panelist in this matter on July 16, 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 1884 by Léon Breitling in Saint-Imier, Switzerland, and has a rich history marked by innovation and precision in chronographs, particularly for aviation.

The Complainant has registered its BREITLING trademark in numerous countries around the world. Accordingly, the Complainant's reputation extends worldwide. For example, the Complainant and its related entities own the following trademarks, registered prior to the disputed domain name:

Territory	Name	Number of registrations	Date of registration	Class
United Kingdom		UK00000643005	December 18, 1945	14
United States of America	" <i>Breitling</i> "	526421	June 13, 1950	14
International registration	BREITLING	279322	January 31, 1964	14
Brazil		818596961	March 2, 2004	28
International registration	BREITLING	890749	June 1, 2006	14
United Kingdom		UK00810613794	December 1, 2020	14

Correspondingly, The Complainant and its related entities own a significant number of domain names, including, for instance, the following ones:

Domain Name	Registration Date
<breitling.com>	June 1, 1995
<breitling.cn>	May 14, 2009
<breitling.eu>	July 6, 2006

The disputed domain name was registered on August 7, 2023.

The disputed domain name resolves to a webpage containing an "AliExpress" logo associated with the word "Sale", below which a login form is displayed.

#### 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 that the disputed domain name is confusingly similar to its trademark due to the fact that the disputed domain name incorporates the Complainant's trademark BREITLING in its entirety. The addition of the number "1" does not prevent a finding of confusing similarity.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant contends that the disputed domain name was registered and has been used in bad faith. Given the long use and the widespread recognition of the Complainant's trademark, it is implausible that the Respondent was unaware of the Complainant's trademark when registering the disputed domain name. The

website displayed at the disputed domain name could be used to engage in fraudulent transactions or to obtain personal information from consumers.

The Complainant requests that the disputed domain name be transferred to it.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”. Paragraph 4(a) of the Policy requires a complainant to prove each of the following three elements in order to obtain an order that the disputed domain name be transferred or canceled:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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.

The Panel will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

### **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 the trademark BREITLING for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

In the present case the disputed domain name includes the Complainant's trademark BREITLING together with the number “1”. Although the addition of other letters or numbers, in the present case the number “1”, may bear on assessment of the second and third elements, the Panel finds that the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Additionally, it is well established that the generic Top-Level Domain “gTLD” (in this case “.com”) is generally disregarded when considering whether a disputed domain name is confusingly similar to the trademark in which the complainant has rights. Section 1.11.1 of the [WIPO Overview 3.0](#) states that “the applicable Top-Level Domain (‘TLD’) in a domain name (e.g., ‘.com’, ‘.club.’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusion similarity test”.

The Panel finds that 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 proving 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 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.

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.

The Panel finds that the Complainant’s earliest BREITLING trademark registration predates the creation date of the disputed domain names by at least 70 years. Having reviewed the record, the Panel considers that the Complainant has accrued substantial goodwill and recognition since the Complainant’s establishment.

Noting the reputation of the Complainant’s trademark, it would be difficult to believe any claim that the Respondent’s choice of the disputed domain name was wholly innocent and coincidental. Therefore, the Panel finds the Respondent knew or should have known the Complainant’s trademark when registering the disputed domain name.

Having reviewed the record, the Panel finds the Respondent’s registration and use of the disputed domain name constitutes bad faith under the Policy. In the present case, the Panel finds that the paragraph 4(b)(iv) of the Policy applies as the Respondent was seeking to achieve commercial gain by resolving the disputed domain name to a login page containing an “AliExpress” logo. The Respondent has intentionally attempted to attract, for commercial gain, Internet users to the disputed domain name by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website.

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.

The display of a login form without clear context or purpose raises concerns about phishing or data harvesting, which may be a further indication of bad faith use. Panels have held that the use of a domain name for illegal activity here, claimed phishing, unauthorized account access/hacking, or other types of fraud, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

The Panel also noted that the Respondent has not filed a Response and has not used the opportunity to present any case of good faith that it might have.

Accordingly, the Panel finds that the Complainant has established the third element 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 <breitling1.com> be transferred to the Complainant.

*/Ada L. Redondo Aguilera/*

**Ada L. Redondo Aguilera**

Sole Panelist

Date: July 30, 2024