

ADMINISTRATIVE PANEL DECISION

BA&SH v. Lu Ni La
Case No. D2024-4495

1. The Parties

The Complainant is BA&SH, France, represented by Cabinet Bouchara, France.

The Respondent is Lu Ni La, United States of America.

2. The Domain Name and Registrar

The disputed domain name <ba-shonline.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 November 4, 2024. On November 4, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 5, 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 (Gname.com Pte. Ltd) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 5, 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 November 5, 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 November 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 2, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 3, 2024.

The Center appointed Roger Staub as the sole panelist in this matter on December 17, 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 is BA&SH, a French *Société par actions simplifiée*. It has been operating in the field of design, manufacture and distribution of ready-to-wear goods for women as well as fashion accessories since 2003. The Complainant runs under the domain name <ba-sh.com> an online shop, where consumers from all over the world can purchase such products. The Complainant submits that it is notoriously known on social networks under the pseudonym “bashparis” where it is followed by more than 1,200,000 people.

The Complainant owns various trademark registrations consisting of, or containing, the term “BA&SH” in various jurisdictions. The Complainant’s portfolio of “BA&SH” trademark registrations includes, inter alia, the following trademark registrations:

- International trademark No. 1440828 BA&SH, registered on May 7, 2018, in Classes 3, 9, 14, 18, 21, 25 and 35, covering, inter alia, the United States of America (i.e., the jurisdiction where the Respondent is located); and
- European Union trademark No. 005679758 BA&SH, registered on February 10, 2012, in Classes 3, 14, 18 and 25.

The disputed domain name was registered on February 2, 2024.

At the time the Complaint was filed, the disputed domain name resolved to an active website. That website contains an online shop for clothing and accessories. The Complainant’s word/device mark BA&SH is depicted at various places of that website. It is the same logo, which the Complainant uses on its own website accessible under <ba-sh.com>.

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:

First, the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. Previous panels have considered that the Complainant had shown trademark rights in the BA&SH sign. The disputed domain name was registered in 2024, more than fifteen years after the Complainant’s earliest trademarks invoked and includes – almost identically – the Complainant’s BA&SH trademarks, by replacing the ampersand sign “&” by the hyphen-minus sign. It is acknowledged that the ampersand sign “&” is not a valid character in a domain name and registrants, when registering a sign comprising an ampersand as a domain name will typically either omit it or spell it out as “and”. Thus, the omission of an ampersand or its conversion to the word “and” in a domain name should not result in a sign which is distinguishable from the original. The only difference between the disputed domain name and the BA&SH trademarks was the addition of the English descriptive term “online”. This does not prevent the disputed domain name from being confusingly similar to the Complainant’s trademarks. The BA&SH trademark is readily recognizable and distinctive as incorporated into the disputed domain name.

Second, the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent does not own any rights to the trademarks that it reproduces, which belong exclusively to the

Complainant. The Respondent did not obtain any authorization, on any ground whatsoever, to reproduce and imitate the Complainant's trademarks within a domain name. The Respondent has no right to use the trademarks of the Complainant in the course of a commercial activity, especially to designate goods that are identical to those of the Complainant. Moreover, there is no relationship whatsoever between the Parties as the Respondent is not related in any way to the Complainant's business. The disputed domain name is presumably used as an e-commerce website selling ready-to-wear products and/or in a phishing scheme, which shows the Respondent's intention to divert consumers to the disputed domain name for commercial gain.

Third, the disputed domain name was registered and is being used in bad faith by the Respondent. The Respondent could not possibly have been unaware of the Complainant's activities and the Complainant's trademark. The Respondent is free riding on the worldwide reputation of the Complainant and the Complainant's trademark in order to attract Internet users to the website, to which the disputed domain name redirects, by creating a likelihood of confusion with the Complainant's trademark for commercial gain. That website reproduces, without any authorization, the Complainant's trademark on all its pages, highly suggesting that the Complainant is affiliated with or, sponsors, the Respondent's website. The Respondent is using the Complainant's trademark and associating the same with goods (i.e., clothing) that are infringing BA&SH's copyrights and design rights, since infringing clothing goods are offered for sale on the website. These products are identical to the Complainant's products but were never authorized.

B. Respondent

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

6. Discussion and Findings

According to the Policy, to qualify for a cancellation or transfer, the Complainant must prove each of the following:

First, the disputed domain name is identical or confusingly similar to a trademark or service mark to which the Complainant has rights.

Second, the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Third, the disputed domain name has been registered and is being used in bad faith.

Since the Respondent did not submit a reply, the Panel may choose to accept the reasonable contentions of the Complainant as true. This Panel will determine whether those facts constitute a violation of the Policy that is sufficient to order the transfer of the disputed domain name (see *Joseph Phelps Vineyards LLC v. NOLDC, Inc., Alternative Identity, Inc., and Kentech*, WIPO Case No. [D2006-0292](#)).

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 mark is recognizable 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.

Although the addition of other terms (here: “online”) may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The same applies to the replacement of the ampersand sign “&” by the minus sign “-”. The ampersand sign cannot be used in domain names, which is why it is often replaced by the minus sign. Such replacement does not have any impact on the finding that the mark is recognizable within the disputed domain name. To the contrary, the mark is still recognizable in the disputed domain name.

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 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.

Panels have held that the use of a domain name for illegitimate activity (here, claimed: impersonation/passing off) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

In the present case, the Panel notes that disputed domain almost completely incorporates the Complainant’s trademark, which has a certain reputation. The only difference is the replacement of the ampersand sign “&” by the minus sign “-”, which is quite usual and due to the fact that the ampersand sign cannot be part of a domain name. For this very reason, also the Complainant itself made such a replacement in its own domain name <ba-sh.com>. The disputed domain name contains the Complainant’s trademark (with that replacement) and has combined it with a descriptive term (“online”) only, which is a usual term for online presences. This suggests to consumers that the disputed domain name is one of the Complainant’s Internet addresses, where the consumers can purchase the products from the Complainant. This wrong impression is further supported by the fact that consumers, when visiting the website, which is accessible under the disputed domain name, can see a logo containing the Complainant’s word mark in an almost identical

representation to the one used by the Complainant. Moreover, at least parts of the products offered for sale on the Respondent's website are identical to the ones offered by the Complainant on its own website at the domain name <ba-sh.com>, whereas the other products belong at least to the same class of products (ready-to-wear products). All these create a likelihood of confusion. There are no plausible indications for a possible good faith use of the disputed domain name by the Respondent. The Respondent failed to submit a response and, thus, any evidence of an actual or contemplated good faith use.

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.

Panels have held that the use of a domain name for illegitimate activity (here, claimed: impersonation/passing off) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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 <ba-shonline.com> be transferred to the Complainant.

/Roger Staub/

Roger Staub

Sole Panelist

Date: December 31, 2024