

## ADMINISTRATIVE PANEL DECISION

ETAM SAS v. 胡娜 (Na Hu)

Case No. D2025-1597

### 1. The Parties

The Complainant is ETAM SAS, France, represented by Domgate, France.

The Respondent is 胡娜 (Na Hu), China.

### 2. The Domain Name and Registrar

The disputed domain name <etamsale.com> is registered with Vantage of Convergence (Chengdu) Technology Co., Ltd. (the "Registrar").

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on April 21, 2025. On April 22, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 23, 2025, 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 (No information) and contact information in the Complaint. The Center sent an email communication in Chinese and English to the Complainant on April 25, 2025, 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 in English on May 14, 2025.

On April 25, 2025, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the disputed domain name is Chinese. On May 14, 2025, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant's submission.

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 in Chinese and English of the Complaint, and the proceedings commenced on May 15, 2025. In accordance with the Rules, paragraph 5, the due date for Response was June 4, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 9, 2025.

The Center appointed Rachel Tan as the sole panelist in this matter on June 16, 2025. 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 a French company and is one of the world's most popular international lingerie brands. With its products sold in 57 countries through over 1,500 stores worldwide, the Complainant has a strong global presence. The Complainant's first store was opened in 1916 in Germany and in 1928 in France.

The Complainant launched its business in China in 1994 and opened its first store in 2015. As of 2018, there were 1,600 points of sales across 300 cities all over China in addition to an online presence on leading Chinese platforms.

The Complainant is the owner of its ETAM trade mark worldwide, including French Trade Mark No. 97674673 for ETAM registered on November 21, 1997 in Classes 3, 14, 18, 21, 24, 25, and 26; European Union Trade Mark No. 000874313 for ETAM registered on July 6, 2001 in Classes 3, 18, and 25; and International Registration No. 744378 for ETAM registered on July 21, 2000 in Classes 3, 9, 18, and 25 designating inter alia, China.

The Complainant is also the registrant of the domain name <etam.com> for its official website (registered on August 20, 2019). The Complainant has used its ETAM mark on the website.

The disputed domain name was registered on November 22, 2024. Based on the evidence submitted by the Complainant, the disputed domain name previously resolved to a website in French and English which allegedly offered for sale, clothes and shoes under the brand name "ETAMSALE" at discounted prices. At the time of this Decision, the disputed domain name does not resolve to an active website.

#### **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 identical or confusingly similar to the Complainant's ETAM mark. The Complainant's ETAM mark is incorporated in the disputed domain name in its entirety. The additional descriptive term "sale" and the generic Top-Level Domain ("gTLD"), i.e. ".com" do not prevent a finding of confusing similarity.

The Complainant further alleges that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has not received any licence or authorisation of any kind to use the Complainant's trade mark in a domain name or otherwise. Moreover, the Complainant has submitted evidence and argues that the disputed domain name was previously used to operate a counterfeit website which sells clothes and shoes under the "ETAMSALE" brand. The Complainant alleges that the Respondent was using a false "Trusted Store" logo on this fraudulent website that did not engage in the genuine sale of goods. Accordingly, the Respondent is not using the disputed domain name for a bona fide offering of goods or services.

Finally, the Complainant argues that the disputed domain name was registered and is being used in bad faith. The disputed domain name was registered long after the use and registration of the Complainant's ETAM mark. The disputed domain name incorporates the Complainant's well-known mark in full. The Complainant argues that the Respondent is using it to intentionally attract Internet users to the Respondent's website for the purposes of commercial gain, causing disruption of the Complainant's business and creating a likelihood of confusion regarding the source, sponsorship, affiliation, or endorsement of the website at the disputed domain name.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1. Preliminary Issue: Language of the Proceeding**

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that (i) the disputed domain name is in Roman characters and incorporates the Complainant's mark in entirety with a descriptive term in English; (ii) the website displays content in English; (iii) the Complainant has no knowledge of Chinese and requiring a translation of the Complaint in Chinese would place a high financial burden on the Complainant and cause undue delay.

The Respondent did not make any specific submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

### **6.2. Substantive Issues**

#### **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 trade mark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trade mark or service mark 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.

Although the addition of other terms here, “sale”, 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.

Lastly, it is permissible for the Panel to disregard the applicable gTLD in the disputed domain name, i.e., “.com”. [WIPO Overview 3.0](#), section 1.11.1.

Based on the available records, 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.

The Respondent has not provided evidence of a legitimate noncommercial or fair use of the disputed domain name or reasons to justify the choice of the disputed domain name that is confusingly similar to the Complainant’s ETAM mark. There is also no indication to show that the Respondent is commonly known by the disputed domain name or otherwise has rights or legitimate interests in it. Moreover, the Complainant has not granted the Respondent any licence or authorisation to use the Complainant’s ETAM mark or register the disputed domain name.

At the time of this Decision, the disputed domain name resolves to an inactive page. Based on the undisputed submission and evidence provided by the Complainant, the disputed domain name previously resolved to an alleged counterfeit website offering clothing and shoes products at reduced prices under the ETAMSALE brand which will mislead customers into believing the Respondent is in connection or association with the Complainant. The Complainant suspects that “it is a false website and that they are not sending the articles, only obtain the money”. Even if the Respondent delivered products to consumers, the Respondent’s website offered for sale clothing and shoes, which are different types of products from those of the Complainant. Therefore, the facts do not support a claim of a bona fide offering of goods or services under the “Oki Data test”. See *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), and [WIPO Overview 3.0](#), section 2.8.

Furthermore, the nature of the disputed domain name, comprising the Complainant’s ETAM mark with the addition of the dictionary term “sale”, carries a risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

None of the circumstances in paragraph 4(c) of the Policy are present in this case. For these reasons, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Based on the available records, 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 the disputed domain name was registered around 100 years after the first use of the Complainant's ETAM mark. Search results using the key word "ETAM" on search engines direct Internet users to the Complainant and its business, which indicates that an exclusive connection between the mark and the Complainant has been established. The Panel notes that the disputed domain name previously resolved to a website that displayed the ETAM mark together with the additional term "sale". As such, the Respondent clearly knew or should have known of the Complainant's marks when registering the disputed domain name. [WIPO Overview 3.0](#), section 3.2.2.

Furthermore, the Panel considers the mere registration of a domain name that is confusingly similar to a well-known trade mark by an unaffiliated person can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), sections 3.1.4 and 3.2.1.

The Panel notes that the disputed domain name previously resolved to a website purportedly offering clothing and shoes products under the brand "ETAMSALE". The disclaimer that the Respondent is not affiliated with the Complainant is noticeably absent. The Panel is satisfied that the Respondent intentionally attempted to create, for commercial gain, a likelihood of confusion with the Complainant's ETAM mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. This demonstrates bad faith registration and use of the disputed domain name, as provided in paragraph 4(b)(iv) of the Policy.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's trade mark, the composition of the disputed domain name, and the prior use of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Based on the available records, 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 <etamsale.com> be transferred to the Complainant.

*/Rachel Tan/*

**Rachel Tan**

Sole Panelist

Date: June 27, 2025