

ADMINISTRATIVE PANEL DECISION

Barry Callebaut Schweiz AG v. jiang cong
Case No. D2025-2925

1. The Parties

Complainant is Barry Callebaut Schweiz AG, Switzerland, represented by Adlex Solicitors, United Kingdom.

Respondent is jiang cong, China.

2. The Domain Name and Registrar

The disputed domain name <massaticino.com> (the “Domain Name”) 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 July 23, 2025. On July 24, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On July 25, 2025, the Registrar transmitted by email to the Center its verification response, disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Redacted for privacy) and contact information in the Complaint. The Center sent an email communication to Complainant on August 4, 2025, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint.

On August 4, 2025, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the Domain Name is Chinese. Complainant filed an amended Complaint in English on August 5, 2025 containing a request for English to be the language of the proceedings. Respondent did not submit any comment on 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 Respondent in English and Chinese of the Complaint, and the proceedings commenced on August 6, 2025. In accordance with the Rules, paragraph 5, the due date for Response was August 26, 2025. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on August 29, 2025.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on September 4, 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

Complainant, incorporated in Switzerland, is part of an international group of companies (the “Group”) that manufactures chocolate and cocoa products. The Group has over 13,000 employees operating in more than 40 countries and maintains over 62 production facilities and 25 chocolate academy centers globally. In the year 2023/2024, the Group generated sales of approximately USD 11.7 billion. Since the 1960s, a company now owned by the Group has produced a sugar paste product called “Massa Ticino” which may be used to decorate, color and flavor good products such as cakes. In 2014, this company introduced a colored product range that allows users to create over 60 shades from nine colors.

Complainant owns numerous registered trademarks for the MASSA TICINO mark, including:

- Swiss registered trademark number 2P-497292, for the MASSA TICINO word mark, registered on April 4, 2002; and
- International registered trademark number 1162848 for the MASSA TICINO word mark, registered on March 8, 2013 (designating among others, China, where Respondent reportedly resides).

The Domain Name was registered on September 30, 2023 and it resolves to a website that displays pornographic content. Complainant has provided evidence showing that it has owned the Domain Name as of at least 2014 to July 2023.

5. Parties’ Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

Notably, Complainant contends that (i) the Domain Name is identical or confusingly similar to Complainant’s trademarks; (ii) Respondent has no rights or legitimate interests in the Domain Name; and (iii) Respondent registered and is using the Domain Name in bad faith.

In particular, Complainant contends that it has trademark registrations for the MASSA TICINO marks and that Respondent registered and is using the Domain Name to take unfair advantage of Complainant’s distinctive mark by profiting from traffic generated by Complainant’s previous use of the Domain Name.

Complainant notes that it has no affiliation with Respondent, nor authorized Respondent to register or use the Domain Name, which includes Complainant’s trademarks, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Name. Rather, Complainant contends that Respondent has acted in bad faith in acquiring and setting up the Domain Name, when Respondent clearly knew of Complainant’s rights.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

6.1. Preliminary Issue: Language of the Proceedings

The Rules, in paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement between the respondent and the registrar in relation to the disputed domain name, the language of the proceedings 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 proceedings.

Complainant submitted its original Complaint and amended Complaint in English. According to the information received from the Registrar, the language of the Registration Agreement for the Domain Name is Chinese.

Complainant requested that the language of the proceedings be English for several reasons, including the fact that the Domain Name and Complainant's trademark are both in English; that Respondent has been found to have registered and used at least two other English-script domain names in bad faith; that Respondent has not appeared in the current proceedings to object to Complainant's request that English be the language of the proceedings; and that it would be unduly expensive and burdensome, and cause unwarranted delay, to require Complainant to translate the Complaint into Chinese.

Respondent did not comment on Complainant's request for the language of the proceedings be English

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).

The Panel accepts Complainant's submissions regarding the language of the proceedings. The Panel notes that the Domain Name does not have any specific meaning in the Chinese language, and that the Domain Name is formed using Latin characters, contains Complainant's MASSA TICINO trademark in its entirety. The Panel further notes that the Center notified the Parties in Chinese and English of the language of the proceedings as well as notified Respondent in Chinese and English of the Complaint. Respondent chose not to comment on the language of the proceedings, nor did Respondent choose to file a Response in Chinese or English.

Having considered all the circumstances of this case, the Panel determines under paragraph 11(a) of the Rules that the language of the proceedings shall be English.

6.2. Substantive Issues

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name was registered and is being used in bad faith.

Section 4.3 of the [WIPO Overview 3.0](#) states that failure to respond to the complainant's contentions would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true.

Thus, although in this case Respondent has failed to respond to the Complaint, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence. See, e.g., *The Knot, Inc. v. In Knot We Trust LTD*, WIPO Case No. [D2006-0340](#).

A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Complainant has provided evidence of its rights in the MASSA TICINO trademarks, as noted above.

With Complainant's rights in the MASSA TICINO trademarks established, the remaining question under the first element of the Policy is whether the Domain Name, typically disregarding the Top-Level Domain ("TLD") in which it is registered (in this case, ".com"), is identical or confusingly similar to Complainant's trademark. See, e.g., *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#).

Here, the Domain Name is identical to Complainant's MASSA TICINO mark and includes Complainant's MASSA TICINO trademark in its entirety.

Thus, the Panel finds that Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make a prima facie showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes such a prima facie showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with relevant evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

From the record in this case, it is evident that Respondent was, and is, aware of Complainant and its trademarks, and does not have any rights or legitimate interests in the Domain Name. Complainant has confirmed that Respondent is not affiliated with Complainant or otherwise authorized or licensed to use Complainant's trademarks or to seek registration of any domain name incorporating the trademarks. Respondent is also not known to be associated with the MASSA TICINO trademarks and there is no evidence showing that Respondent has been commonly known by the Domain Name. Further, the nature of the Domain Name comprising Complainant's trademarks in their entirety, indicates an awareness of Complainant.

In addition, Respondent has not used the Domain Name in connection with a bona fide offering of goods or services or a legitimate noncommercial or fair use. Rather, the evidence demonstrates that at the time of the filing of the Complaint, the Domain Name directed to a page featuring adult or pornographic content, which had no connection with the trademark MASSA TICINO. Such use does not constitute a bona fide offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Name.

Accordingly, Complainant has provided evidence supporting its prima facie claim that Respondent lacks any rights or legitimate interests in the Domain Name. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Name. Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Name and Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Respondent's actions indicate that Respondent registered and is using the Domain Name in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, namely:

“(i) circumstances indicating that you have registered or you have acquired the 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 trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location.”

The Panel finds that Complainant provided ample evidence to show that registration and use of the MASSA TICINO trademarks long predate the registration of the Domain Name. Complainant is also well established and known. In addition, as noted above, the Domain Name is identical to Complainant's MASSA TICINO trademarks. Thus, the Panel finds Respondent was aware of the MASSA TICINO trademarks when it registered the Domain Name.

The Panel therefore finds that Respondent's awareness of Complainant's trademark rights at the time of registration suggests bad faith. See *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#); and *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#).

Moreover, Respondent registered and is using the Domain Name to confuse and mislead consumers looking for MASSA TICINO products and services of Complainant or authorized partners of Complainant. The use of the MASSA TICINO trademarks in the Domain Name is intended to capture Internet traffic from Internet users who are looking for Complainant's products and services. In this regard, the Panel takes into account that Complainant was a previous owner of the Domain Name, at least between 2014 and mid-2023. The use of the Domain Name to divert users to the webpage with adult or pornographic content, for commercial gain, by creating a likelihood of confusion with Complainant's mark is bad faith. Furthermore, the content provided on the website the Domain Name reverts to, may result in tarnishing Complainant's reputation.

Finally, considering the distinctiveness and reputation of the MASSA TICINO trademarks, the failure of Respondent to submit a response or to provide any evidence of actual or contemplated good faith use, the Panel finds that Respondent has registered and is using the Domain Name in bad faith and Complainant succeeds under the third element of 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 Domain Name <massaticino.com> be transferred to Complainant.

/Kimberley Chen Nobles/

Kimberley Chen Nobles

Sole Panelist

Date: September 17, 2025