

ADMINISTRATIVE PANEL DECISION

BA&SH v. xigen12 chen
Case No. D2022-4081

1. The Parties

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

The Respondent is xigen12 chen, China.

2. The Domain Name and Registrar

The disputed domain name <thebash.shop> is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 28, 2022. On October 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 29, 2022, 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 (“UNKNOWN, CALIFORNIA (US)”) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 2, 2022 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 3, 2022.

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 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 27, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 28, 2022.

The Center appointed Daniel Peña as the sole panelist in this matter on December 5, 2022. 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, founded in 2003, that operates in the field of design, manufacture and distribution of ready to wear goods for women as well as fashion accessories.

The Complainant is the owner of the following trademarks:

- French trademark registration No. 3444110 for BA&SH (semi-figurative mark) filed and registered on August 1, 2006, in international classes 3, 14, 18. and 25;
- French trademark registration No. 4236723 for BA&SH (semi-figurative mark) filed and registered on December 28, 2015, in international classes 9, 24, 35;
- French trademark registration No. 4403492 for BA&SH (semi-figurative mark) filed and registered on November 10, 2017, in international classes 3, 9, 14, 18, 21, 25. and 35;
- International trademark registration No. 923450 for BA&SH (figurative mark), registered on January 24, 2007, in international classes 3, 14, 18. and 25;
- International trademark registration No. 1327823 for BA&SH (work mark), filed and registered on June 20, 2016 and registered on March 2, 2017, in classes 9, 24. and 35, and designating notably the United States of America;
- International trademark No. 1440828 for BA&SH (figurative mark), filed and registered on May 7, 2018, in classes 3, 9, 14, 18, 21, 25. and 35;
- International trademark No. 1641311 for BA&SH (figurative mark), filed and registered on July 21, 2021, duly registered in classes 4, 12, 16, 20, 21, 24. and 27, and designating notably the United States of America; and
- European Union trademark registration No. 5679758, for BA&SH (semi-figurative mark), filed on January 30, 2007 and registered on February 10, 2012, in international classes 3, 14, 18. and 25.

The disputed domain name was registered on June 28, 2022 and resolves to the e-commerce website at where the Respondent is advertising and offering for sale ready to wear products under the trademark BA&SH

5. Parties' Contentions

A. Complainant

The Complainant contends that disputed domain name is confusingly similar to the trademark BA&SH in which the Complainant has rights as they reproduce the trademark in its entirety, with the mere addition of the prefix "the" and the generic Top-Level Domain ".shop".

The Complainant states that the Respondent has no rights or legitimate interests in respect of the disputed domain names, since it does not own any rights to the trademark it reproduces in the disputed domain names and it has not obtained any authorization, on any ground, to reproduce or imitate the Complainant's trademarks within a domain name.

The Complainant contends that the Respondent is in no way related to the Complainant even if the Respondent intends to suggest the opposite in the intent to capitalize on the Complainant's notoriety.

The use of the disputed domain name to direct Internet users to another website, in itself would demonstrate that the Respondent has no legitimate interests in such disputed domain name.

The Complainant asserts that the Respondent could not have ignored the Complainant's trademarks at the time it registered the disputed domain names since its trademark is so widely known.

The Complainant points out that the trademarks have a meaning of their own and cannot simply be invented since they are made up by the initials of their founders Barbara Boccara and Sharon Krief, so it would be

hard to believe that the Respondent could have invented the terms when registering the disputed domain names.

The Complainant indicates that, considering that the Respondent was most likely aware of the Complainant at the time of registering the disputed domain name and that the Respondent was most likely riding on the Complainant's worldwide reputation, in order to attract Internet users to its website by creating a likelihood of confusion with the Complainant's trademarks for commercial gain, the registrations were undoubtedly performed in bad faith.

The disputed domain name currently resolves to the e-commerce website at where the Respondent is advertising and offering for sale ready to wear products under the trademark BA&SH.

Moreover, the Complainant underlines that the use of the website to sell and promote the same type of products as the Complainant under the same trademark and without the Complainant's authorization, constitutes bad faith registration.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel's decision be made "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". It has been a consensus view in previous UDRP decisions that a respondent's default (*i.e.*, failure to submit a response) 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 (See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). A complainant must prove each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely that: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (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.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant has provided evidence of its rights in the BA&SH trademarks on the basis of its multiple trademark registrations. A trademark registration provides a clear indication that the rights in the trademark belong to the Complainant (see [WIPO Overview 3.0](#), section 1.2.1). It has also been established by prior UDRP panels that incorporating a trademark in its entirety into a domain name can be sufficient to establish that the domain name is confusingly similar to a trademark. Such finding is confirmed, for example, within section 1.7 of [WIPO Overview 3.0](#). Without the ampersand sign, the BA&SH trademark registered by the Complainant is clearly recognizable in the disputed domain name. The Respondent's incorporation of the Complainant's trademark in full in the disputed domain name is sufficient to establish that the disputed domain name is confusingly similar to the Complainant's trademarks. Furthermore, the addition of the prefix "the" does not prevent a finding of confusing similarity.

The generic Top-Level Domain ("gTLD") ".shop" is disregarded.

The Panel is satisfied that the disputed domain name is confusingly similar to the Complainant's mark and the Complainant has satisfied the requirement of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant bears the burden of proof in establishing this requirement. In view of the difficulties inherent in proving a negative and because the relevant information is mainly in the possession of the Respondent, it is enough for the Complainant to establish a *prima facie* case which, if not rebutted by sufficient evidence from the Respondent, will lead to this ground being set forth. Refraining from submitting any Response, the Respondent has brought to the Panel's attention no circumstances from which the Panel could infer that the Respondent has rights to or legitimate interests in the disputed domain name. The Panel will now examine the Complainant's arguments regarding the absence of rights or legitimate interests of the Respondent in connection with the disputed domain name. The Complainant claims that the Respondent has no connection or affiliation with the Complainant and has not received any license or consent, express or implied, to use the Complainant's trademarks in a domain name or in any other manner.

The Panel also finds that the nature of the disputed domain name carries a risk of implied affiliation with the Complainant's trademarks (see [WIPO Overview 3.0](#), section 2.5.1). The Respondent did not submit a Response or attempt to demonstrate any rights or legitimate interests in the disputed domain names, leaving the Complainant's *prima facie* case un rebutted, and the Panel draws adverse inferences from this failure, where appropriate, in accordance with the Rules, paragraph 14(b).

The Panel finds the Respondent has no rights or legitimate interests in respect of the disputed domain name and that paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration and use of a disputed domain name in bad faith: (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant (the owner of the trademark or service mark) or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; (ii) the respondent has 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 the respondent has engaged in a pattern of such conduct; (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 the respondent's website or location or of a product or service on its website or location.

With regard to the bad faith at the time of registration, the Panel notes that it is not likely that the Respondent was not aware of the Complainant and its trademark. On the contrary, the Panel finds that it is likely that the Respondent was aware of the Complainant and its rights and reputation in the BA&SH mark at the time the disputed domain name was registered. Bad faith can be presumed based on the widely evidenced recognition of the Complainant's marks, such that the Respondent was aware or should have been aware of the Complainant's well-known marks and claims of rights thereto.

The Panel is satisfied that by directing the disputed domain names to a commercial website, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark BA&SH as to the source, sponsorship, affiliation, or endorsement of its website or of the products on its website (see section 3.1.3 of the [WIPO Overview 3.0](#)). Under paragraph 4(b)(iv) of the Policy, this circumstance shall be evidence of the registration and use of a domain name in bad faith. Having considered the Complainant's submissions and in the absence of a Response, the Panel accepts the Complainant's submission that the Respondent has tried to create a likelihood of confusion with the Complainant, the purpose of which was to inevitably affiliate itself to the Complainant and/or illegitimately make use of its presence/address.

Consequently, the Panel finds that the disputed domain name was registered and used by the Respondent in bad faith within paragraph 4(a)(iii) 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 <thebash.shop> be transferred to the Complainant

/Daniel Peña/

Daniel Peña

Sole Panelist

Date: December 19, 2022