

ADMINISTRATIVE PANEL DECISION

Nardobel v. zong he heng
Case No. D2022-4364

1. The Parties

Complainant is Nardobel, France, represented by In Concreto, France.

Respondent is zong he heng, China.

2. The Domain Name and Registrar

The disputed domain name <isostar-shop.com> (the “Domain Name”) is registered with DropCatch.com 871 LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 16, 2022. On November 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On November 18, 2022, 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 and contact information in the Complaint. The Center sent an email communication to Complainant on November 18, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on November 23, 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 Respondent of the Complaint, and the proceedings commenced on November 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 14, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on December 16, 2022.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on December 22, 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

Complainant Nardobel, registered in 2006 in France, is a holding company of the Nutrition & Sante group of companies, which manufactures and produces health foods. As of 2022, Nutrition & Sante exports its products to nearly 15 countries through the world and has 1,500 employees. In 2021, the group's turnover was 418 million Euros.

The Nutrition & Sante Sas company in France developed the ISOSTAR brands, which is a sports nutrition brand in Europe. ISOSTAR was created in 1977 to market a range of food products and sports accessories adapted to sportsmen and women.

Complainant owns numerous registered trademarks for the ISOSTAR mark throughout the world, including:

- International trademark number 725084 for ISOSTAR word mark registered on November 25, 1999;
- International trademark number 394563 for ISOSTAR word mark registered on December 18, 1972;
- International trademark number 688708 for ISOSTAR word mark registered on January 13, 1998;
- International trademark number 504910 for ISOSTAR word mark registered on July 9, 1986;
- International trademark number 606726 for ISOSTAR design and word mark registered on August 11, 1993;
- International trademark number 1047759 for ISOSTAR design and word mark registered on July 19, 2010;
- French registered trademark number 3706220 for ISOSTAR design and word mark registered on June 25, 2010;
- European Union registered trademark number 004311131 for ISOSTAR word mark registered on April 4, 2006; and
- European Union registered trademark number 000677682 for ISOSTAR word mark registered on June 7, 1999.

Complainant also owns and operates several domain names, including:

- <isostar-shop.eu> created on October 9, 2013;
- <isostar-eshop.fr> created on January 8, 2013;
- <isostar-eshop.com> created on January 8, 2013;
- <isostar.com> created on July 16, 1997; and
- <isostar.biz> created on November 16, 2001.

The Domain Name was registered on October 6, 2022 and reverts to a website providing pornographic content.

5. Parties' Contentions

A. Complainant

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 ISOSTAR marks and owns domain names incorporating the ISOSTAR mark. Complainant contends that Respondent registered and is using the Domain Name, to confuse Internet users looking for *bona fide* and well-known ISOSTAR products and services.

Complainant notes that it has no affiliation with Respondent, nor authorized Respondent to register or use a domain name, which includes Complainant's mark, 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

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; and
- (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 of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)) states:

"Does a respondent's default/failure to respond to the complainant's contentions automatically result in the complaint succeeding?"

Noting the burden of proof on the complainant, a respondent's default (i.e., failure to submit a formal 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."

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 provided evidence of its rights in the ISOSTAR marks, which have been registered since at least as early as 1972, well before Respondent registered the Domain Name on October 6, 2022 as noted above. Complainant has also submitted evidence, which supports that ISOSTAR is a widely known trademark and a distinctive identifier of Complainant's products and services. Complainant has therefore proven that it has the requisite rights in the ISOSTAR marks.

With Complainant's rights in the ISOSTAR marks 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 mark. 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 confusingly similar to Complainant's ISOSTAR marks. These marks, which are fanciful and inherently distinctive, are recognizable in the Domain Name. The complete incorporation of the ISOSTAR mark and the voluntary addition of the word "-shop" in the Domain Name <isostar-shop.com> does not prevent a finding of confusing similarity between Complainant's trademarks and the Domain Name registered by Respondent.

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 at least 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 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, the Panel finds that Respondent knew, or should have known, of Complainant and the ISOSTAR marks, 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 the ISOSTAR trademarks or to seek registration of any domain name incorporating the trademarks. Respondent is also not known to be associated with or commonly known by the ISOSTAR marks.

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 resolved to a page featuring adult content along with advertising links to pornographic websites. 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. See, e.g., *Intesa Sanpaolo S.p.A. v. Charles Duke / Oneandone Private Registration*, WIPO Case No. [D2013-0875](#). Moreover, there is no evidence showing that Respondent has been commonly known by the Domain Name.

Further, the nature of the Domain Name carries a risk of implied affiliation with Complainant (see [WIPO Overview 3.0](#), section 2.5.1).

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 ISOSTAR marks predate the registration of the Domain Name by Respondent. Complainant is also well established and known. Indeed, the record shows that Complainant's ISOSTAR marks and related services are widely known and recognized. Further, the Domain Name incorporates Complainant's ISOSTAR mark in its entirety, which suggests Respondent's knowledge of Complainant's rights in the ISOSTAR mark at the time of registration of the Domain Name and its effort to opportunistically capitalize on the registration and use of the Domain Name.

The Panel therefore finds that Respondent knew, or should have known, that the registration of the Domain Name would be confusingly similar to Complainant's ISOSTAR mark, which suggests bad faith. See [WIPO Overview 3.0](#), section 3.2.2. See also *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 *bona fide* and well-known ISOSTAR products and services of Complainant or authorized partners of Complainant. The use of the ISOSTAR mark as the dominant part of the Domain Name is intended to capture Internet traffic from Internet users who are looking for Complainant's products and services. Such use and association of the Domain Name to divert users to a webpage featuring adult content with advertising links to pornographic websites could result in causing confusion with Complainant's business and activities. It may confuse Internet users who are looking for Complainant's legitimate website and deceive Internet users into thinking that Respondent is somehow connected to Complainant, which is not the case.

In particular, Respondent's use of the Domain Name to offer pornographic content is a significant indicator of bad faith. See *VIVENDI v. Guseva Svetlana*, WIPO Case No. [D2018-2631](#); and *CHRISTIAN DIOR COUTURE v. Paul Farley*, WIPO Case No. [D2008-0008](#). Such conduct is known as " pornosquatting", the practice whereby confusion with a trademark is used to divert Internet users to a website with pornographic content. See *Prada S.A. v. Roberto Baggio*, WIPO Case No. [D2009-1187](#). Here Respondent created a Domain Name that incorporated the ISOSTAR mark to capitalize on its reknown and to have the Domain Name resolve to a pornographic website for commercial gain. Respondent attempted to attract Complainant's customers to its pornographic website by creating a likelihood of confusion with Complainant's ISOSTAR mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website and thus generate revenue through the unauthorized use of the ISOSTAR Mark. See [WIPO Overview 3.0](#), section 3.1 (iv). In addition, Respondent's registration and use of the Domain Name indicate that such registration and use had been done for the specific purpose of trading on the name and reputation of Complainant and its ISOSTAR mark. See *Madonna Ciccone, p/k/a Madonna v. Dan Parisi and "Madonna.com"*, WIPO Case No. [D2000-0847](#) ("[t]he only plausible explanation for Respondent's actions appears to be an intentional effort to trade upon the fame of Complainant's name and mark for commercial gain").

Respondent's failure to file a response, its registration of over 1400 domain names within a single month, its use of a privacy shield to shield its actions, are all further indicative of Respondent's bad faith.

Accordingly, 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 <isostar-shop.com> be transferred to Complainant.

/Kimberley Chen Nobles/

Kimberley Chen Nobles

Sole Panelist

Date: January 5, 2023