

## **ADMINISTRATIVE PANEL DECISION**

Whispering Smith Limited v. Iiu Jia  
Case No. D2023-1016

### **1. The Parties**

The Complainant is Whispering Smith Limited, United Kingdom, represented by Irwin Mitchell LLC, United Kingdom.

The Respondent is Iiu Jia, China.

### **2. The Domain Name and Registrar**

The disputed domain name <nuevobradesoul.com> is registered with Name.com, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 7, 2023. On March 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 9, 2023, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 20, 2023, 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 March 24, 2023.

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 March 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 17, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 19, 2023.

The Center appointed Miguel B. O’Farrell as the sole panelist in this matter on May 2, 2023. 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 leading international fashion company founded in Manchester, England in 1967. Since then, it has grown into one of the largest suppliers of fashion apparel with its products being sold in more than 240 countries and territories across the globe.

The Complainant is the owner of the BRAVE SOUL brand which aims to bridge the gap between catwalk fashion and the high street.

The Complainant owns several trademark registrations in many jurisdictions around the world for the BRAVE SOUL mark, including among many others, the following.

Spain Trademark Registration No. M3555317 BRAVE SOUL, registered on August 4, 2015, in classes 3, 18, 25, and 35;

European Union Trade Mark Registration No. 003315711 BRAVE SOUL, registered on December 17, 2004, in class 25;

European Union Trade Mark Registration No. 013879424 BRAVE SOUL, registered on February 28, 2023, in classes 14, 18, and 35;

United Kingdom Trademark Registration No. UK00002340327 BRAVE SOUL, registered on February 6, 2004, in class 25.

Also, the Complainant owns several domain names which include the BRAVE SOUL mark, such as <bravesoul.es>, <bravesoul.co.uk>, <bravesoul.uk>, <bravesoul.uk.com> and many others.

The disputed domain name <nuevobradesoul.com> was registered on June 10, 2022, and resolves to a webpage which simply reads "BRAVE SOUL", using the same stylization as the Complainant's BRAVE SOUL products and reproducing their names and images, without the Complainant's consent.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant claims that the disputed domain name is confusingly similar to its trademark BRAVE SOUL in which the Complainant has rights and that the Respondent has no rights or legitimate interests in the disputed domain name, which was registered and is being used in bad faith.

More specifically, the Respondent does not have any consent, license, or authority to use the Complainant's BRAVE SOUL mark, nor has the Complainant granted the Respondent any right to market or sell BRAVE SOUL products.

The Respondent is using the disputed domain name as a means of diverting Internet customers searching for sale of BRAVE SOUL products to the website located at the disputed domain name, seeking to profit from the fame of the Complainant's mark.

Extremely concerned to discover this, prompted the Complainant to place a notice in the official Spanish website "bravesoul.es" advising that it is the only Spanish website for BRAVE SOUL brand, and warning customers against making purchases from the website hosted at the disputed domain name.

Indeed, the Complainant has been contacted by customers who have attempted to purchase products from the website located at the disputed domain name but have not received the products despite paying for them.

Furthermore, the Complainant understands that the Respondent is also the registrant of the domain name <jordanrebaja.com>. The Respondent appears to be using the website at that domain name to take advantage of legendary basketball player Michael Jordan's well known Nike, Inc. "AIR JORDAN" brand and list for sale "AIR JORDAN" products. This shows a pattern of bad faith conduct on the part of the Respondent. The Respondent's registration and use of the disputed domain name must therefore be similarly in bad faith.

Finally, the Complainant has requested the Panel to issue a decision ordering the transfer of the disputed domain name to the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove each of the following, namely that:

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

### **A. Identical or Confusingly Similar**

As set forth in section 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name to determine whether the disputed domain name is confusingly similar with the trademark. The test involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Panel considers that the disputed domain name is confusingly similar to the Complainant's BRAVE SOUL trademark.

The disputed domain name incorporates the Complainant's trademark BRAVE SOUL in its entirety with the addition of the Spanish term "nuevo" ("new" in English), which does not prevent a finding of confusing similarity. Section 1.8 of [WIPO Overview 3.0](#) provides that when the relevant trademark is recognizable within the disputed domain name – as it occurs in this case – the addition of a term would not prevent a finding of confusing similarity under the first element.

The ".com" generic Top-Level Domain ("gTLD") is viewed as a standard registration requirement and is generally disregarded under the first element confusing similarity test, as set forth in section 1.11.1 of [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademark BRAVE SOUL in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy are fulfilled.

## B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a domain name by demonstrating any of the following non-exclusive defenses:

- (i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established, as it is put in section 2.1 of [WIPO Overview 3.0](#), that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

There is no evidence in the present case that the Respondent has been commonly known by the disputed domain name, enabling it to establish rights or legitimate interests therein.

Furthermore, there is no evidence in the file to prove any of the circumstances mentioned in paragraph 4(c) of the Policy, nor any other circumstances to suggest that the Respondent has rights or legitimate interests in the disputed domain name.

Likewise, and as further discussed under section 6.C of this Decision, it does not seem that the Respondent is making any legitimate noncommercial or fair use of the disputed domain name, but rather that it intends to use the disputed domain name for the purpose of deriving unfair monetary advantage by confusing Internet users and leading them to believe that the site to which the disputed domain name relates is an official site of the Complainant.

As established in section 2.5 of [WIPO Overview 3.0](#): "Fundamentally, a respondent's use of a domain name will not be considered 'fair' if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant's mark is often central to this inquiry". Here, the nature of the disputed domain name carries a risk of implied affiliation.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the disputed domain name (*Telstra Corporation Limited. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

The Panel finds that the Respondent has no rights nor legitimate interests in the disputed domain name and that the requirements of 4(a)(ii) of the Policy are fulfilled.

## C. Registered and Used in Bad Faith

The Panel is satisfied that the Respondent must have been aware of the Complainant's trademark BRAVE SOUL mentioned in section 4 above (Factual Background) when it registered the disputed domain name on

July 10, 2022. By that time, the Complainant had many years before registered and intensely used the trademark BRAVE SOUL.

By registering the disputed domain name that includes the Complainant's trademark BRAVE SOUL in its entirety the Respondent was targeting the Complainant and its business. The addition of the Spanish word "nuevo", which in English means "new", only contributes to confuse Internet users and leads them to think that the relevant website belongs to or is endorsed by the Complainant with the intention to capitalize on the fame of the Complainant's trademark for its own benefit.

The fact that there is a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent's choice of the disputed domain name, the nature of the disputed domain name and the use of the disputed domain name to resolve to a website which simply reads "BRAVE SOUL", using the same stylization as the Complainant's BRAVE SOUL products and reproducing their names and images, without the Complainant's consent are indicative of bad faith registration and use (as stated in section 3.2.1 of the [WIPO Overview 3.0](#)).

For the above reasons, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy have been fulfilled.

## **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 <nuevobradesoul.com> be transferred to the Complainant.

*Miguel B. O'Farrell*

**Miguel B. O'Farrell**

Sole Panelist

Date: May 12, 2023