

## ADMINISTRATIVE PANEL DECISION

Bel v. 林珂

Case No. D2022-3558

### 1. The Parties

The Complainant is Bel, France, represented by DBK Law Firm, France.

The Respondent is 林珂, China.

### 2. The Domain Name and Registrar

The disputed domain name <babybelkids.com> (the “Domain Name”) is registered with Eranet International Limited (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 26, 2022. On September 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On September 29, 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 the Complainant on September 29, 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 September 29, 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 September 30, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 20, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 21, 2022.

The Center appointed Olga Zalomiy as the sole panelist in this matter on October 31, 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.

On October 31, 2022, the Center received an email stating: "Hello, I don't understand your meaning here?" On November 1, 2022, the Center received two emails that read: "hello [sic] What's wrong with the babybelkids.com domain name? Can you tell me more?" and "hello How do you prove your identity?" On November 3, 2022, the Center received another email that read: "The domain name is currently disabled. I don't understand what you want to do here. Can you briefly describe it?"

#### 4. Factual Background

The Complainant is a French company that manufactures, and markets processed cheeses. The Complainant owns several trademark registrations for its well-known BABYBEL trademark, such as:

- The International trademark MINI BABYBEL (words and design) No. 1025114 registered on December 7, 2009;
- The International trademark BABYBEL No. 331904 registered on February 2, 1967;
- The European trademark BABYBEL No. 003530466 registered on April 5, 2005;
- The French trademark BABYBEL No. 1343455 registered on February 20, 1986.

The Respondent registered the Domain Name on May 13, 2022. The Domain Name used to direct users to a website displaying pornographic and gambling content.

On May 31, 2022, the Complainant send a cease and desist letter to the Respondent, which remained without an answer.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant, BEL, is a French limited company that manufactures and markets of processed cheeses. The Complainant alleges that it owns several BABYBEL trademark registrations and that the mark is well-known. The Complainant claims that the Domain Name is confusingly similar to its trademark because the BABYBEL trademark is recognizable within the Domain Name. The Complainant argues that because the Domain Name incorporates the BABYBEL trademark in its entirety, the addition of the word "kids" in the Domain Name, is not sufficient to prevent a finding of confusing similarity. The Complainant requests that the generic Top-Level Domain ("gTLD") ".com" in the Domain Name be disregarded under the confusing similarity test as a standard registration requirement.

The Complainant alleges that the Respondent lacks rights or legitimate interests in the Domain Name for the following reasons: (i) the Respondent has not received any license from the Complainant to use the BABYBEL trademark in the Domain Name; (iii) The Respondent is not using the Domain Name in connection with a *bona fide* offering of goods or services because the Domain Name is used to host a website that displayed pornographic content.

The Complainant contends that the Respondent both registered and is using the Domain Name in bad faith. The Complainant alleges that its earliest BABYBEL trademark registration predates the registration date of the Domain Name. The Complainant argues that its trademark is well-known, so the registration of the Domain Name containing the Complainant's well-known trademark is *per se* evidence of bad faith. The Complainant asserts that the Respondent is using the Domain Name in bad faith. The Complainant asserts that the Respondent's use of the Domain Name to display pornographic content is in bad faith. The

Complainant argues that the Respondent's use of a privacy service to hide its identity is an additional evidence of bad faith.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions on the merits; the above-mentioned emails received after the notification of the panel appointment are noted.

## **6. Discussion and Findings**

Pursuant to paragraph 4(a) of the UDRP, to succeed in this proceeding, the Complainant must prove each of the following elements with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to 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 Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

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

Pursuant to paragraph 4(a)(i) of the UDRP, the Complainant must prove that the Domain Name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights.

The submitted evidence shows that the Complainant owns several trademark registrations for the BABYBEL trademark. Pursuant to section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), this satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case.

"Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element." Section 1.8, [WIPO Overview 3.0](#). It is well-established that the applicable gTLD should be disregarded under the confusingly similarity test as a standard registration requirement. Section 1.11.1, [WIPO Overview 3.0](#).

The Domain Name consists of the Complainant's BABYBEL trademark in its entirety, the word "kids" and the gTLD ".com". Because the Complainant's BABYBEL trademark is recognizable within the Domain Name, the addition of the word "kids" does not prevent a finding of confusing similarity. The gTLD ".com" is disregarded as a standard registration requirement. Therefore, the Domain Name is confusingly similar to the Complainant's BABYBEL trademark.

The Complainant has satisfied the first element of the UDRP.

### **B. Rights or Legitimate Interests**

To succeed under the second UDRP element, the Complainant must make out a *prima facie* case in respect of the lack of rights or legitimate interests of the Respondent.

To demonstrate rights or legitimate interests in a domain name, non-exclusive respondent defenses under the UDRP, paragraph 4(c) include the following:

(i) before any notice 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 (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent 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 or to tarnish the trademark or service mark at issue.

The evidence on file shows that the Complainant has not licensed or permitted the Respondent to use the Complainant's BABYBEL trademark in domain names, or for any other purpose. There is no evidence that the Respondent has ever been commonly known by the Domain Name. There is no evidence that the Respondent is making a legitimate noncommercial or fair use of the Domain Name. The Respondent is not using the Domain Name in connection with a *bona fide* offering of goods or services because the Domain Name is used to host a website that displays pornographic and gambling content. Even assuming that the Respondent had been engaged in legitimate business activities related to the marketing and promotion of lawful adult content, there is no apparent or legitimate reason for the Respondent's selection of a domain name comprised of the BABYBEL trademark for websites advertising pornographic and gambling content.

The Panel finds that the Complainant has made out the *prima facie* case and the burden of producing evidence demonstrating it has rights or legitimate interests in the Domain Name has shifted to the Respondent. Section 2.1, [WIPO Overview 3.0](#). Since the Respondent failed to present any rebutting evidence, the Complainant is deemed to have satisfied the second element of the UDRP.

### **C. Registered and Used in Bad Faith**

Pursuant to paragraph 4(a)(iii) of the Policy, the Complainant must prove that the Domain Name was registered and is being used in bad faith.

The UDRP establishes that, for purposes of paragraph 4(a)(iii), "bad faith" registration and use of a domain name can be established by a showing of circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to the respondent's website or other online location, by creating a likelihood of confusion with the complainant's mark as to source, sponsorship, affiliation or endorsement of the respondent's website or location, or of a product or service on the respondent's website or location. See Policy, paragraph 4(b)(iv).

The Domain Name used to direct to a website featuring a variety of sexually explicit images. Therefore, it is likely, that the Respondent used the Domain Name to intentionally attract, for commercial gain, Internet users to its websites, by creating likelihood of confusion with the Complainant's mark. See *Red Bull GmbH v. Whois Agent, Domain Protection Services, Inc. / esco escortlar, escort sitesi*, WIPO Case No. [D2017-1639](#) (finding the respondent's use of the domain for a pornographic website constituted "a strong indication of bad faith registration and use", because it showed respondent's main purpose was "to create a likelihood of confusion among customers and/or to tarnish the Complainant's RED BULL trademark for commercial gain or any other illegitimate benefit"); *Bank of Jerusalem Ltd. v. Shek Cheung Chung*, WIPO Case No. [D2017-1153](#) (finding bad faith where the domain resolved to a website "at which adult content and links to websites at which pornographic contact [was] being offered, tarnishing Complainant and its trademark, and for which Respondent [was] likely receiving commercial gain").

Currently, the Domain Named does not point to an active website. It is well-established that non-use of a domain name does not prevent finding of bad faith. Section 3.3, [WIPO Overview 3.0](#). In similar situations, UDRP panels look into the totality of circumstances in a specific case, including the following: "(i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement),

and (iv) the implausibility of any good faith use to which the domain name may be put.” Section 3.3, [WIPO Overview 3.0](#).

The following circumstances further support finding of the Respondent’s bad faith registration and use of the Domain Name: 1) the Complainant’s trademark is well-known and the Complainant’s earliest trademark registrations for the BABYBEL trademarks predate the Domain Name’s registration by the Respondent by over 50 years; 2) the Respondent’s failure to respond to the Complainant’s cease and desist letter; 3) the Respondent’s failure to submit a response in this case or to provide any evidence of good faith registration and use; 3) the Respondent’s prior use of the Domain Name for a Chinese website featuring pornographic and gambling content, which makes any good faith use of the Domain Name implausible; and 4) the change in use of the Domain Name during the proceeding.

Based on the above, the Complainant has satisfied the third element of the UDRP.

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

*/Olga Zalomiy/*

**Olga Zalomiy**

Sole Panelist

Date: November 8, 2022