

ADMINISTRATIVE PANEL DECISION

Société des Produits Nestlé S.A. v. wen wei feng
Case No. D2023-4302

1. The Parties

The Complainant is Société des Produits Nestlé S.A., Switzerland, represented by Studio Barbero S.p.A, Italy.

The Respondent is wen wei feng, China.

2. The Domain Name and Registrar

The disputed domain name <purinabusy.com> 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 October 17, 2023. On October 17, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 19, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 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 amendment to the Complaint in English on October 23, 2023.

On October 20, 2023, the Center informed the parties in Chinese and English, that the language of the registration agreement for the disputed domain name is Chinese. On October 23, 2023, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

The Center verified that the Complaint together with the amendment to the 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 in English and Chinese of the Complaint, and the proceedings commenced on November 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 22, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 23, 2023.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on November 28, 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 part of the Nestlé Group, which was founded in 1866 by Henri Nestlé and is the main intellectual property owning subsidiary of the Nestlé Group. Today, the Nestlé Group sells products and provides services all over the world in various industries, primarily in the food industry, including baby foods, breakfast cereals, chocolate & confectionery, coffee & beverages, bottled water, dairy products, ice cream, prepared foods, food services as well as pet food. The Complainant markets its products worldwide in over 190 countries. The Nestlé Group has about 328,000 employees and it is present in more than 80 countries with more than 400 production centers worldwide. The Complainant and its group also have significant operations in the Respondent's jurisdiction China, where it has subsidiaries manufacturing and offering for sale pet food products. The Complainant's brand PURINA is a well known brand for products related to animal food, veterinary, and pet-care products. Amongst the products manufactured and sold by the Complainant's subsidiary Nestlé Purina Petcare are the PURINA BUSY BONES chew treats.

The Complainant provides evidence that it owns an international portfolio of trademark registrations for PURINA and BUSY, including, but not limited to, International Trademark Registration No. 1423984 for PURINA (word mark), registered on August 8, 2018; European Union Trademark Registration No. 000153114 for PURINA (word mark), registered on April 20, 2000; International Trademark Registration No. 1228054 for BUSY (word mark), registered on November 3, 2014; and United States Trademark Registration No. 3391709 for BUSY (word mark), registered on March 4, 2008. The Panel notes that the Complainant also has an extensive online presence and that the Complainant is also the owner of several domain names encompassing the trademark PURINA, including <purina.com>, registered on January 2, 1996; <purina.cn> registered on March 17, 2003; and <purina.com.cn>, registered on January 16, 2006.

The disputed domain name was registered on December 2, 2021, and is therefore of a later date than the abovementioned trademarks of the Complainant. The Panel notes that the disputed domain name directed to an array of websites, including websites containing pornographic content and links, containing advertising for a company manufacturing construction machinery products (but still displaying links to adult content in the footer), and also to a website containing gambling and pornographic content and links. The Panel notes that on the date of this Decision, the disputed domain name is not linked to an active website.

The Panel also notes that the Complainant sent a number of cease-and-desist letters to the Respondent in an attempt to settle this matter amicably, but that the Respondent did not reply to those letters.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to its trademarks for PURINA and BUSY, that the Respondent has no rights or legitimate interests in respect of the disputed

domain name, and that the disputed domain name was registered, and is being used in bad faith to divert Internet users to the Respondent's webpage containing pornographic and gambling material.

The Complainant essentially contends that the disputed domain name is confusingly similar to the Complainant's well known and distinctive trademarks as it incorporates the Complainant's PURINA and BUSY trademarks in their entirety. The Complainant also provides evidence that the disputed domain name was linked to an array of webpages containing both gambling and pornographic content, which, the Complainant argues, confers no legitimate interest in the disputed domain name on the Respondent, and which means that the Respondent is tarnishing the Complainant's trademarks and gaining a commercial benefit through such use of the Complainant's marks. Moreover, the Complainant argues that the Respondent had or can be expected to have had prior notice of the Complainant's trademarks at the time the disputed domain name was registered, since the Complainant has significant business operations in the Respondent's jurisdiction China, registered its trademarks many years prior to the registration of the disputed domain name and made intensive use of them through which they have become well known. The Complainant contends that the use made of the disputed domain name by the Respondent does not confer any rights or legitimate interests in respect of the disputed domain name, and that it constitutes use in bad faith of the disputed domain name.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that the Complainant would be disadvantaged by proceeding in the language of the Registration Agreement; the Complainant would be prejudiced by undue expense, delay, or complication by proceeding in the language of the Registration Agreement and the fact that the disputed domain name is registered in Latin characters and includes the English term "busy", which suggests that the Respondent, despite being apparently based in China, is familiar with English.

The Respondent did not make any submissions with respect to the language of the proceeding.

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).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of both of the Complainant's marks PURINA and BUSY are reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to these marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Moreover, upon review of the facts and evidence, the Panel notes that the disputed domain name directed to an array of websites, including websites containing pornographic content and links, containing advertising for a company manufacturing construction machinery products (but still displaying links to adult content in the footer), and also to a website containing gambling and pornographic content and links. In the Panel's view, no rights or legitimate interests derive from using a third party trademark to divert Internet users for commercial gain to a pornographic or gambling website, see in this regard also several prior UDRP decisions such as *Kudelski S.A. v. duanbingbing*, WIPO Case No. [D2023-0331](#); *Barnes Europe Consulting Kft.*, and *Heidi Barnes-Watson v. jianhua Wang*, WIPO Case No. [D2022-3059](#); and *Seintec Norte, S.L. v. yu Liu, wangluochuanmei*, WIPO Case No. [D2021-1815](#).

However, the Panel notes that on the date of this Decision, the disputed domain name directs to an inactive website. In this regard, the Panel finds that holding a domain name passively, without making any use of it, also does not confer any rights or legitimate interests in the disputed domain name on the Respondent (see in this regard earlier UDRP decisions such as *Bollere SE v. 赵竹飞 (Zhao Zhu Fei)*, WIPO Case No. [D2020-0691](#); and *Vente-Privee.Com and Vente-Privee.com IP S.à.r.l. v. 崔郡 (jun cui)*, WIPO Case No. [D2021-1685](#)).

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent has registered a domain name which is confusingly similar to the Complainant's internationally well known, intensely used and distinctive trademarks. The Panel deduces from this fact that by registering the disputed domain name, the Respondent deliberately and consciously targeted the Complainant's prior trademarks for PURINA and BUSY. The Panel finds that this creates a presumption of bad faith. In this regard, the Panel refers to the [WIPO Overview 3.0](#), section 3.1.4, which states "[p]anelists have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith." The Panel also notes that the Complainant has a significant business presence in the Respondent's jurisdiction China, that the Complainant's trademarks in this case predate the registration date of the disputed domain name by many years, and that the Respondent could not have been reasonably unaware of them. The Panel considers that the Respondent has intentionally and opportunistically targeted the Complainant's trademark for PURINA and BUSY. The Panel deduces from these efforts to consciously target the Complainant's prior registered trademarks that the Respondent knew, or at least should have known, of the existence of the Complainant's trademarks at the time of registering the disputed domain name. The Panel also notes that even a cursory Internet search at the time of registration of the disputed domain name would have made it clear to the Respondent that the Complainant owned prior rights in its trademarks for PURINA and BUSY. In the Panel's view, these elements clearly indicate bad faith on the part of the Respondent, and the Panel therefore finds that it has been demonstrated that the Respondent registered the disputed domain name in bad faith.

As to use of the disputed domain name in bad faith, the Panel notes that the disputed domain name directed to an array of websites, including websites containing pornographic content and links, containing advertising for a company manufacturing construction machinery products (but still displaying links to adult content in the footer), and also to a website containing gambling and pornographic content and links. In the Panel's view, this shows that the Respondent is abusing the Complainant's trademark to mislead and divert Internet users for commercial gain to such website, and thereby also tarnishes the Complainant's marks (see in this regard also previous UDRP decisions such as *Kudelski S.A. v. duanbingbing*, WIPO Case No. [D2023-0331](#); *Barnes Europe Consulting Kft., and Heidi Barnes-Watson v. jianhua Wang*, WIPO Case No. [D2022-3059](#) and *Averitt Express, Inc. v. Protection of Private Person / Roman Emec*, WIPO Case No. [D2018-0249](#)). The Panel concludes from these facts that the Respondent is intentionally attracting Internet users for commercial gain to such website, by creating consumer confusion between the disputed domain name and the Complainant's trademarks. This constitutes direct evidence of the Respondent's bad faith under paragraph 4(b)(iv) of the Policy. On the basis of the foregoing elements, the Panel finds that the Respondent is using the disputed domain name in bad faith.

However, on the date of this Decision, the disputed domain name links to an inactive website. Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the record, the Panel finds that the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (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, [WIPO Overview 3.0](#), section 3.3. Having reviewed the record, the Panel notes the internationally well known nature of the Complainant's marks, their distinctiveness and intensive use, the apparently tarnishing use made of the disputed domain name by the Respondent before it was deactivated, the composition of the disputed domain name (clearly containing the

Complainant's PURINA and BUSY marks in their entirety, thereby apparently referring to the Complainant's product PURINA BUSY BONES) and the implausibility of any good faith use to which the disputed domain name may be put. The Panel finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Based on the available record, the Panel finds that the Complainant has established the third element 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 <purinabusy.com> be transferred to the Complainant.

/Deanna Wong Wai Man/

Deanna Wong Wai Man

Sole Panelist

Date: December 11, 2023