

ADMINISTRATIVE PANEL DECISION

NBA Properties, Inc. v. Ming Guo
Case No. D2023-4328

1. The Parties

The Complainant is NBA Properties, Inc., United States of America, represented by Greenberg Traurig, LLP, United States of America.

The Respondent is Ming Guo, China.

2. The Domain Name and Registrar

The disputed domain name <nbaantasy.com> is registered with DropCatch.com LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 18, 2023. On October 19, 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 confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 of the Complaint, and the proceedings commenced on November 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 22, 2023.

The Center appointed Luca Barbero as the sole panelist in this matter on November 27, 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, along with its affiliates National Basketball Association and NBA Media Ventures, LLC (collectively, "NBA"), is a global sports and media business that has established a major international presence with games and programming in 214 countries and territories in over 50 languages. The NBA merchandise is offered for sale in more than 125,000 stores in 200 countries on 6 continents.

NBA is the pre-eminent men's professional basketball league, which is followed by millions of fans spanning virtually every country in the world. It consists of thirty franchised member clubs, of which twenty-nine are located in the United States and one in Canada. NBA rosters at the start of the 2022-23 season featured 120 international players from 41 countries and territories.

During the 2022-23 NBA regular season, NBA teams played 82 games that were seen by more than 22 million total live spectators and millions more television viewers.

The Complainant has created one of the largest social media communities in the world, with more than 1.3 billion likes and followers globally across all league, team, and player platforms. Over 78 million people follow NBA on Instagram making it the 8th most-followed brand on the platform, 39 million people follow the NBA on Facebook and over 44 million people follow the NBA on X (formerly Twitter) alone.

The Complainant is the owner of numerous trademark registrations for NBA, including the following:

- China trademark registration No. 6409695 for NBA (word mark), filed on November 30, 2007, and registered on August 21, 2015, in international class 3;
- China trademark registration No. 13112048 for NBA (word mark), filed on August 21, 2013, and registered on January 28, 2015, in international class 6;
- China trademark registration n. 1017934 for NBA word mark, filed on December 19, 1995, and registered on May 28, 1997, in international class 9;
- China trademark registration n. 9922935 for NBA (word mark), filed on September 02, 2011, and registered on January 21, 2013, in international class 11.

The Complainant is also the owner of the domain name <nba.com>, which was registered on November 28, 1994, and is pointed to a website featuring general information regarding the NBA's member teams and their respective players, including statistics, schedules, TV and Internet broadcast information, and information regarding the NBA's many programs and events, and offers visitors the ability to purchase officially licensed products featuring the trademarks and logos of the NBA and its member teams.

The Complainant also owns and operates a website where the Complainant hosts its fantasy basketball game in which participants serve as owners and general managers of virtual professional basketball teams, select rosters by participating in a draft where all relevant NBA players are available, and are awarded points on a weekly basis based on the performance of those players which is published at "<https://NBAFantasy.nba.com>".

The disputed domain name <nba.com> was registered on December 26, 2021. According to the screenshots submitted by the Complainant, the disputed domain name resolved to a registrar page where it was stated that the disputed domain name was available for sale. The disputed domain name was offered for sale on the Afternic.com domain name sales and auction platform at "www.afternic.com" ("the Afternic platform") for USD 35,000. At the time of the drafting of the Decision, the disputed domain name is pointing to a webpage of the Dan.com domain name sales and auction platform at "www.dan.com" ("the Dan platform"), where the disputed domain name is offered for sale at USD 30,899.

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.

The Complainant states that the disputed domain name <nba**fantasy.com**> is confusingly similar to the trademark NBA in which the Complainant has rights as it reproduces the trademark in its entirety with the mere addition of the dictionary term "fantasy" and the generic Top-Level Domain ("gTLD") ".com".

With reference to the use of the generic term "fantasy", the Complainant claims it does not distinguish the disputed domain name but instead actually increases the likelihood of confusion based on the direct association of the word with the Complainant's fantasy basketball game.

With reference to rights or legitimate interests in respect of the disputed domain name, the Complainant states that the Respondent has not been authorized, licensed, or otherwise permitted by the Complainant to register and/or use the disputed domain name and is not commonly known by the disputed domain name.

The Complainant further submits that, in light of the fact that the disputed domain name was pointed to a registrar parking page stating the disputed domain name was available for sale, the Respondent has not used the disputed domain name for a *bona fide* offering of goods or services or a legitimate noncommercial or fair use.

The Complainant also claims that the circumstance that the disputed domain name was being offered for sale for USD 35,000.00 on the Afternic platform demonstrates the Respondent's lack of rights or legitimate interests.

With reference to the circumstances evidencing bad faith, the Complainant indicates that passive holding of the disputed domain name by the Respondent demonstrates the Respondent's bad faith. The Complainant submits that, considering the world renown of the Complainant's trademark NBA and the registration and use of the Complainant's trademark also in China, where the Respondent is based, the Respondent was undoubtedly aware of the Complainant at the time of registering the disputed domain name. The Complainant also asserts that that it is not aware of any use of the acronym "NBA" as a trademark in China in any other way than in connection with the Complainant and submits that the Respondent acted in opportunistic bad faith since the only plausible connection would be with the Complainant and its services.

The Complainant further states that the Respondent's listing of the disputed domain name for sale for USD 35,000 on the Afternic platform, the configuration of MX records in connection with the disputed domain name – suggesting possible use for email communication – and the Respondent's lack of reply to a cease-and-desist letter sent by the Complainant's counsel on September 15, 2023, further demonstrate the Respondent's bad faith registration and use.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules: "A Panel shall decide a complaint 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." Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

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

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[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.

Indeed, the Complainant has demonstrated ownership of several trademark registrations for NBA. The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here "fantasy", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Therefore, 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.

The Panel notes that there is no relation, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant's trademarks. Moreover, there is no element from which the Panel could infer the Respondent's rights and legitimate interests over the disputed domain name, or that the Respondent might be commonly known by the disputed domain name.

The Panel notes that the Respondent redirected the disputed domain name, prior to the start of the proceeding, to a registrar parking page where the disputed domain name was offered for sale, whilst currently it points the disputed domain name to a webpage of the Dan platform where the disputed domain name is offered for sale at USD 30,899. The Panel finds that the Respondent's use does not amount to a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name without intention to misleadingly divert the consumers or to tarnish the Complainant's trademark.

Moreover, the Panel finds that the disputed domain name is inherently misleading as it combines the Complainant's trademark NBA with the term "fantasy", used by the Complainant to identify its fantasy basketball game. Even where a domain name consists of a trademark plus an additional term UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

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

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In view of the prior registration and widespread use of the Complainant's trademark NBA in connection with the Complainant's basketball game and considering the well-known character of the trademark worldwide, including in China where the Respondent is based, the Panel finds that the Respondent was or could have been aware of the Complainant and its trademark at the time of registration of the disputed domain name. The mere registration of a domain name that is identical or confusingly similar to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4.

Moreover, considering the composition of the disputed domain name, combining the trademark NBA with the dictionary term "fantasy", the Panel finds that the Respondent very likely registered the disputed domain name having the Complainant and its NBA fantasy basketball game in mind.

Furthermore, in light of the fact that the Respondent offered the disputed domain name for sale, previously for USD 35,000 on the Afternic platform and, currently, for USD 30,899 on the Dan platform, the Panel finds that the Respondent clearly registered the disputed domain name in order to sell it, to the Complainant or another third party, for amounts exceeding the mere out-of-pocket costs.

Lastly, the Panel finds that the Respondent's failure to respond to the Complainant's cease-and-desist letter sent by the Complainant's counsel on September 15, 2023, and to the Complaint further supports a finding of the Respondent's bad faith registration.

Therefore, 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 <nba**fantasy**.com> be transferred to the Complainant.

/Luca Barbero/

Luca Barbero

Sole Panelist

Date: December 11, 2023