

## **ADMINISTRATIVE PANEL DECISION**

Breitling SA v. 李红波 (Li Hong Bo)

Case No. D2022-0764

### **1. The Parties**

Complainant is Breitling SA, Switzerland, represented by Brandstock Domains GmbH, Germany.

Respondent is 李红波 (Li Hong Bo), China.

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

The disputed domain name <breitling.com> (the “Domain Name”) is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

### **3. Procedural History**

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 4, 2022. On March 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 7, 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 March 7, 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 in English on March 8, 2022.

On March 7, 2022, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. Complainant confirmed its request that English be the language of the proceeding on March 8, 2022. Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on March 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 3, 2022. Respondent did not submit any response.

Accordingly, the Center notified Respondent's default on April 5, 2022.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on April 11, 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, Breitling SA, a Swiss company founded in 1884, manufactures chronographs, watches and related accessories, and is known for precision-made chronometers designed for aviators. Complainant has stores and distributors on all continents, and owns numerous registered trademark rights worldwide for the mark BREITLING, including:

- International trademark number 279322, for BREITLING & design, registered on January 31, 1964, covering timepieces and parts thereof, in International Class 14;
- International trademark number 160212, for BREITLING & design, registered on March 10, 1952, covering all watch products, watches and chronographs in International Class 14;
- International trademark number 613794 for BREITLING & design, registered on January 7, 1994, covering precious metals, jewelry, horological and chronometric instruments in International Class 14;
- International trademark registration No. 890749, for BREITLING (designating China), registered on June 1, 2006, covering precious metals, jewelry, horological and chronometric instruments in International Class 14.

Complainant also owns various domain names, including <breitling.com>, which resolves to its official website "www.breitling.com".

Respondent registered the Domain Name on May 23, 2021. At the time of the filing of the Complaint, the Domain Name resolved to a website featuring various including "WATCH", "WOMEN'S MICHAEL KORS WATCHES", and "ROLEX URE". These links appear to be pay-per-click ("PPC") links to these third party websites. At the time of the decision, the Domain Name resolved to a website with PPC links, including "BREITLING WATCHES" and "BREITLING WATCHES FOR MEN".

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

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

Complainant contends that (i) the Domain Name is identical and 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 rights in the registrations for BREITLING and owns domain names incorporating the BREITLING trademarks. Complainant contends that Respondent registered and is using the Domain Name to confuse Internet users looking for *bona fide* and well-known BREITLING products and services.

Complainant notes that it has no affiliation with Respondent, nor authorized Respondent to register or use domain names, which includes Complainant's trademarks, 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 the Domain Name and setting up the corresponding websites, when Respondent clearly knew of Complainant's rights.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

### **6.1. Preliminary Procedural Issue – Language of the Proceeding**

The Rules, in paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement between the respondent and the registrar in relation to the disputed domain name, the language of the proceeding shall be the language of the registration agreement, subject to the authority of the panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

Complainant submitted its original Complaint in English. In its Complaint, Complainant requests that the language of the proceeding should be English. According to the information received from the Registrar, the language of the Registration Agreements for the Domain Name is Chinese.

Complainant contends that it is a Swiss company and cannot communicate in Chinese. Complainant also contends that it would be unfairly burdensome for Complainant to translate and conduct the proceeding in Chinese and would also cause unnecessary delay in the proceeding.

In exercising its discretion to use a language other than that of the Registration Agreements for the Domain Name, 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.

The Panel accepts Complainant's submissions regarding the language of the proceeding. The Panel notes that the Center notified the Parties in Chinese and English of the language of the proceeding as well as notified Respondent in Chinese and English of the Complaint. Respondent chose not to comment on the language of the proceeding nor did Respondent choose to file a Response.

The Panel also notes that the Domain Name resolves to an English language website providing sponsored links in English, and that Respondent is targeting websites and businesses in Complainant's language of operation, which is English.

The Panel is also mindful of the need to ensure that the proceeding is conducted in a timely and cost-effective manner. Complainant may be unduly disadvantaged by having to translate the Complaint into Chinese and to conduct the proceeding in Chinese.

Having considered all the circumstances of this case, the Panel determines that English be the language of the proceeding.

### **6.2. Substantive Issues**

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 are 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 that failure to respond to the complainant's contentions 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.

#### **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 BREITLING trademarks, as noted above. Complainant has also submitted evidence, which supports that the BREITLING trademarks are widely known and a distinctive identifier of Complainant's products and services. Complainant has therefore proven that it has the requisite rights in the BREITLING trademarks.

With Complainant's rights in the BREITLING trademark 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 trademark. 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 BREITLING trademarks. These trademarks, which are fanciful and inherently distinctive, are recognizable in the Domain Name.

In particular, the Domain Name includes Complainant's trademark BREITLING in its entirety with a misspelling, which involves the inversion of the letters "t" and "i" in the Domain Name. Such misspelling or inversion of the two letters as noted, does not prevent a finding of confusing similarity between the Domain Name <breitling.com> and the BREITLING trademark.

See [WIPO Overview 3.0](#), section 1.9.

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 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 relevant 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, it is evident that Respondent was, and is, aware of Complainant and the BREITLING trademarks, 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 BREITLING trademark or to seek registration of any domain name incorporating the trademark. Respondent is also not known to be associated with or commonly known by the BREITLING trademark.

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 filing the Complaint, the Domain Name resolved to PPC websites displaying advertisements, many of which are related to watches, which is the industry of Complainant's business.

The [WIPO Overview 3.0](#), section 2.9 notes that: "Applying UDRP paragraph 4(c), panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users." Furthermore, an abundance of other UDRP panels have recognized that no rights or legitimate interests derive from using another's trademark to divert Internet users to websites displaying sponsored links, see, e.g., *Virgin Enterprises Limited v. LINYANXIAO aka lin yanxiao*, WIPO Case No. [D2016-2302](#), in which the panel held: "The consensus view of previous UDRP panels is that use of a domain name to post parking and landing pages or pay-per-click links may be permissible in some circumstances, but would not of itself confer rights or legitimate interests arising from a '*bona fide* offering of goods or services' or from 'legitimate noncommercial or fair use' of the domain name."

Thus, such use by Respondent 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. Moreover, there is no evidence showing that Respondent has been commonly known by the Domain Name.

Accordingly, Complainant has established its *prima facie* case 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 on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location."

The Panel finds that Complainant provided ample evidence to show that registration and use of the BREITLING trademarks predate the registration of the Domain Name. Complainant's reputation is also well established and known. Indeed, the record shows that Complainant's BREITLING trademarks and related services are widely known and recognized. Therefore, and also noting the composition of the Domain Name is confusingly similar to Complainant's domain name <breitling.com>, Respondent was likely aware of the BREITLING trademark when he registered the Domain Name, or knew or should have known that the Domain Name was confusingly similar to Complainant's trademark. See [WIPO Overview 3.0](#), section 3.2.2; see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

The Panel therefore finds that Respondent's awareness of Complainant's trademark rights at the time of registration suggests bad faith. See *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](#); *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#).

Further, the registration of the Domain Name incorporating a misspelled version of Complainant's BREITLING trademark suggests Respondent's actual knowledge of Complainant's rights in the BREITLING trademark at the time of registration of the Domain Name and its effort to opportunistically capitalize on the reputation of Complainant's trademark.

In addition, as noted in Section 6.3.B above, 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. The Panel finds that the use of the Domain Name indicates the obvious purpose of generating click-through revenues from the PPC links displayed at the websites to which the Domain Name resolves. In particular, at the time of the filing of the Complaint, the Domain Name resolved to a website featuring various including "WATCH", "WOMEN'S MICHAEL KORS WATCHES", and "ROLEX URE". At the time of the decision, the Domain Name resolved to a website with PPC links, including "BREITLING WATCHES" and "BREITLING WATCHES FOR MEN". These links feature watches, which are products that are directly in Complainant's field of business. This is a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to its own websites by creating a likelihood of confusion with Complainant's BREITLING trademark as to the source, sponsorship, affiliation or endorsement of these websites. Moreover, some of the PPC links (e.g. "ROLEX URE") direct the Internet users to Complainant's competitor's website, which further indicates Respondent is using the Domain Name in bad faith.

Lastly, in the present circumstances, including the distinctiveness and reputation of the BREITLING trademark, the failure of Respondent to submit a Response or to provide any evidence of actual or contemplated good-faith use of the Domain Name, and the implausibility of any good-faith use to which the Domain Name may be put, support a finding of 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, <breitling.com>, be transferred to Complainant.

*/Kimberley Chen Nobles/*  
**Kimberley Chen Nobles**  
Sole Panelist  
Date: April 21, 2022