

ADMINISTRATIVE PANEL DECISION

BA&SH v. Domain Protection Services, Inc. / Kang Cao / ming xia
Case No. D2022-0766

1. The Parties

The Complainant is BA&SH, France, represented by Cabinet Bouchara – Avocats, France.

The Respondent is Domain Protection Services, Inc. United States of America / Kang Cao, Hong Kong, China / ming xia, Hong Kong, China.

2. The Domain Names and Registrar

The disputed domain names <bash-es.com> and <soldesbash.com> (“Domain Name” or “Domain Names”) are 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 4, 2022. On March 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On March 6, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names, 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 on March 7, 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 Respondent of the Complaint, and the proceedings commenced on March 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 30, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on March 31, 2022.

The Center appointed Marina Perraki as the sole panelist in this matter on April 4, 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. Procedural Issue: Consolidation of Multiple Respondents

The Panel has considered the possible consolidation of the Complaint for the Domain Names. According to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2, "Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario".

The Panel notes the following features of the Domain Names and arguments submitted by Complainant in favor of the consolidation of the Domain Names:

- according to the Whois details, the Domain Names were registered using the same proxy company, namely Domain Protection Services, Inc.;
- the phone number, city and country of the registered Respondents are the same;
- registered Respondents have both email addresses following the same structure, namely "word + number + @163.com", hosted by the same email provider, namely the company Guangzhou NetEase Computer System Co., Ltd (163.com);
- both Domain Names are registered through the same Registrar, the company Name.com, Inc.;
- both Domain Names share identical, or at least similar, NS records listed at parent services and retrieved from local nameservers;
- the Domain Names were registered at close dates, namely November 22, 2021 and December 12, 2021; and
- both Domain Names share the same structure, targeting the Complainant's BA&SH trademark, namely: trademark + descriptive term + ".com" and descriptive term + trademark + ".com" respectively; and are used in the same way, as websites apparently selling Complainant's products, reproducing its photos and displaying its trademarks.

In view of all the above, the Panel finds that the consolidation of the Domain Names is fair to the Parties, and Respondents have been given an opportunity to object to consolidation through the submission of pleadings to the Complaint (if indeed there is more than one Respondent for these Domain Names), but have chosen not to rebut the consolidation (see [WIPO Overview 3.0](#), section 4.11.2; *Virgin Enterprises Limited v. LINYANXIAO aka lin yanxiao*, WIPO Case No. [D2016-2302](#)). Based on the Complaint, the Panel finds that it is more likely than not that the Domain Names are in common control of one entity; hence, the Panel grants the consolidation for the Domain Names (and will refer to these Respondents as "Respondent").

5. Factual Background

Complainant is a French company, active in the women clothes industry, selling its clothes through physical stores and online, under the brand BA&SH, also through its main website at "www.ba-sh.com", where consumers can purchase original ready-to-wear products under Complainant trademarks worldwide. Complainant is active in social media under the name "bashparis", followed by more than 862,000 Internet users. Complainant's brand BA&SH is a made up word consisting of the two initial letters of the name and surname of its two founders. Complainant has a strong presence in Spain with 16 physical shops and a website dedicated to sales in Spain.

Complainant is the holder of BA&SH trademarks, which include the following:

- French trademark registration No. 3444110, BA&SH (figurative), filed on August 1, 2006, and registered for goods in international classes 3, 14, 18 and 25;
- European Union trademark registration No. 5679758, BA&SH (figurative), filed on January 30, 2007, and registered on February 10, 2012 for goods in international classes 3, 14, 18 and 25.

Complainant is also the holder of the domain name <ba-sh.com>, registered on November 9, 2004.

The Domain Name <soldesbash.com> was registered on December 20, 2021, and the Domain Name <bash-es.com> was registered on November 22, 2021. Both Domain Names lead to websites (“the Websites”) mimicking that of Complainant, purportedly selling Complainant’s products and reproducing Complainant’s logo, photos, while displaying its trademarks on the landing page and all their pages, both having a copyright disclaimer, “© CopyRight 2022, bash-es.com - All Rights Reserved”, and “© CopyRight - 2022, soldesbash.com - All Rights Reserved”.

6. Parties’ Contentions

A. Complainant

Complainant asserts that it has established all three elements required under paragraph 4(a) of the Policy for a transfer of the Domain Names.

B. Respondent

Respondent did not reply to Complainant’s contentions.

7. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (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 has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Complainant has demonstrated rights through registration and use in the BA&SH mark.

The Panel finds that the Domain Names that incorporate Complainant’s trademark BA&SH main elements, namely the verbal elements BASH, plus the additional letters “es”, short for Spain along with a hyphen and “soldes” which means “sales” in French, respectively, are confusingly similar to the BA&SH trademark of Complainant (see [WIPO Overview 3.0](#), sections 1.7 and 1.8).

The generic Top-Level-Domain (“gTLD”) “.com” is disregarded, as gTLDs typically do not form part of the comparison on the grounds that they are required for technical reasons (*Rexel Developpements SAS v. Zhan Yequn*, WIPO Case No. [D2017-0275](#)).

Complainant has established Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

(i) before any notice to Respondent of the dispute, 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) Respondent (as an individual, business, or other organization) has been commonly known by the Domain Name, even if it has acquired no trademark or service mark rights; or

(iii) 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 Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Names.

Respondent has not submitted any response and has not claimed any such rights or legitimate interests with respect to the Domain Names. As per Complaint, Respondent was not authorized to register the Domain Names and Respondent has not been commonly known by the Domain Names.

Prior to the notice of the dispute, Respondent did not demonstrate any use of the Domain Names or a trademark corresponding to the Domain Names in connection with a *bona fide* offering of goods or services.

On the contrary, as Complainant demonstrated, the Domain Names resolve to the Websites, which suggest falsely that they are of an affiliated entity or of an authorized partner of Complainant.

Per Complaint, Respondent is not an affiliated entity or an authorized distributor or partner of Complainant and no agreement, express or otherwise, exists allowing the use of Complainant's trademarks on the Website and the use of the Domain Names by Respondent.

A distributor or reseller can be making a *bona fide* offering of goods and thus have a legitimate interest in a domain name only if the following cumulative requirements are met (*Okidata Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); [WIPO Overview 3.0](#), section 2.8.1: (i) respondent must actually be offering the goods at issue; (ii) respondent must use the site to sell only the trademarked goods; (iii) the site must accurately and prominently disclose the registrant's relationship with the trademark holder; and (iv) respondent must not try to "corner the market" in domain names that reflect the trademark.)

These requirements are not cumulatively fulfilled in the present case. The Domain Names falsely suggest that the Websites are official sites of Complainant or of an entity affiliated to or endorsed by Complainant. The Websites extensively reproduce, without authorization by Complainant, Complainant's trademark and photos, without any disclaimer of association (or lack thereof) with Complainant. Instead, the copyright disclaimers on both Websites do not disclose the lack of relationship with Complainant and, on the contrary, if anything, contribute to the risk of confusion.

The Panel finds that these circumstances do not confer upon Respondent any rights or legitimate interests in respect of the Domain Names.

Complainant has established Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, “in particular but without limitation”, are evidence of the registration and use of the Domain Name in “bad faith”:

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) Respondent has 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 Respondent has engaged in a pattern of such conduct; or
- (iii) Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent’s website or other on line location, by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of Respondent’s website or location or of a product or service on Respondent’s website or location.

The Panel concludes that Respondent has registered and used the Domain Names in bad faith. Because the BA&SH mark was registered prior to the Domain Names’ registration and it is reproduced in its entirety within the Domain Names, the Panel finds it more likely than not that Respondent had Complainant’s mark in mind when registering the Domain Names (*Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whois Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc.*, WIPO Case No. [D2014-1754](#); *Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net*, WIPO Case No. [D2000-0226](#)). The Panel further notes that Complainant’s domain name <ba-sh.com> was also registered before the Domain Name <bash-es.com>, and the only difference between this Domain Name and Complainant’s domain name is the additional “-es” in the Domain Name.

As regards bad faith use of the Domain Names, Complainant has demonstrated that the Domain Names resolve to the Websites, which prominently display Complainant’s registered trademark and logo, offering for sale identical and/or similar goods bearing Complainant’s trademarks, thereby giving the false impression that they are operated by Complainant, or a company affiliated to Complainant, or an authorised reseller or a partner of Complainant. Respondent therefore is using the Domain Names to intentionally create a likelihood of confusion with Complainant’s trademark and business as to the source, sponsorship, affiliation or endorsement of the Websites. This supports the finding of bad faith use as described under paragraph 4(b)(iv) of the Policy (*AB Electrolux v. Begad Negad*, WIPO Case No. [D2014-2092](#); *Aktiebolaget Electrolux v. electroluxmedellin.com, Domain Discreet Privacy Service / Luis Rincon*, WIPO Case No. [D2014-0487](#); *Aktiebolaget Electrolux v. Priscilla Quaiotti Passos*, WIPO Case No. [D2011-0388](#); and [WIPO Overview 3.0](#), section 3.1.4).

Under these circumstances and on this record, the Panel finds that Respondent has registered and is using the Domain Names in bad faith.

Complainant has established Policy, paragraph 4(a)(iii).

8. 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 names, <bash-es.com> and <soldesbash.com>, be transferred to Complainant.

/Marina Perraki/

Marina Perraki

Sole Panelist

Date: April 17, 2022