

ADMINISTRATIVE PANEL DECISION

Bonduelle SA v. Moses Mawanda

Case No. D2022-0809

1. The Parties

The Complainant is Bonduelle SA, France, represented by IP Twins, France.

The Respondent is Moses Mawanda, Uganda.

2. The Domain Name and Registrar

The disputed domain name <bonduelle.com> is registered with Internet Domain Service BS Corp (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 8, 2022. On March 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 9, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on March 9, 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 March 9, 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 March 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 30, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 31, 2022.

The Center appointed George R. F. Souter 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. Factual Background

The Complainant is a French company, founded in 1835, primarily involved in the processing and distribution of vegetables. The Complainant's ready-to-use products are sold in almost 100 countries, and its turnover in 2021 was EUR 2.779 million.

The Complainant has provided the Panel with details of circa 300 registrations of its BONDUELLE trademark, including International Registration No. 347667, registered on August 29, 1968.

The disputed domain name was registered on January 17, 2022, and resolves to an inactive page.

5. Parties' Contentions

A. Complainant

The Complainant alleges that the disputed domain name is confusingly similar to its BONDUELLE trademark, comprising only the Complainant's BONDUELLE trademark in its entirety, with the letter sequence "UE" transposed as "EU".

The Complainant alleges that the Respondent lacks rights or legitimate interests in the disputed domain name, in particular that, to the Complainant's knowledge, the Respondent is not generally known by the disputed domain name, and that the Complainant has never granted the Respondent permission to use its BONDUELLE trademark in connection with a domain name registration, or otherwise.

The Complainant alleges that the disputed domain name was registered in bad faith, and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements that the Complainant must prove to merit a finding that the disputed domain name be transferred to the Complainant:

- (i) the disputed 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 disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has sufficient trademark rights to its BONDUELLE trademarks for the purposes of these proceedings.

It is well established in prior decisions under the UDRP, with which the Panel agrees, that a generic Top-Level-Domain ("gTLD") may generally be disregarded when comparing a trademark with a disputed

domain name. The Panel considers the gTLD “.com” to be irrelevant in the circumstances of the present case, and finds that it may be disregarded here.

The Complainant’s BONDUELLE trademark is clearly recognizable in the disputed domain name, rendering the disputed domain name confusingly similar to the Complainant’s trademarks, and the mere transposition of the two letters “u” and “e” in the disputed domain name does not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s trademark. The Panel has no hesitation in finding that the disputed domain name is confusingly similar to the Complainant’s trademark

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in connection with the disputed domain name at issue.

B. Rights or Legitimate Interests

It is the consensus view of the prior UDRP panels, with which the Panel agrees, that a *prima facie* case advanced by the complainant will generally be sufficient for the complainant to be deemed to have satisfied the requirement of paragraph 4(a)(ii) of the Policy, provided the respondent does not come forward with evidence demonstrating rights or legitimate interests in the domain name and the complainant has presented a sufficient *prima facie* case to succeed under paragraph 4(a)(ii) of the Policy.

The Respondent did not advance any claim of rights or legitimate interests in the disputed domain name to rebut this *prima facie* case. The disputed domain name consists of a typographical variation of the Complainant’s mark, merely transposing the letters “u” and “e” in a nigh indistinguishable alteration that could be easily overlooked by Internet users. The misleading nature of the disputed domain name and the lack of any *bona fide* offering at the disputed domain name, which is inactive, support a finding that the Respondent has no rights or legitimate interests, nor is using the disputed domain name for a *bona fide* offering.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy, in connection with the disputed domain name.

C. Registered and Used in Bad Faith

The Panel is of the view that the finding that a respondent has no rights or legitimate interests in a disputed domain name can lead, in appropriate circumstances, to a finding of registration of a disputed domain name in bad faith. The circumstances of the present case, in which the Panel regards it as self-evident that the Complainant’s BONDUELLE trademark was deliberately appropriated in the disputed domain name, are such that the Panel concludes that a finding of registration in bad faith is justified, in connection with the disputed domain name and so finds.

Although the website operated under the disputed domain name currently does not offer goods or services commercially, since the decision in *Telstra Corporation Limited v Nuclear Marshmallows*, WIPO Case [D2000-0003](#), it has become well established in subsequent decisions under the Policy that the passive holding of a disputed domain name does not prevent a finding of bad faith under certain circumstances, such as the nature and notoriety of a complainant’s mark and the lack of any credible good faith explanation by a respondent. In the circumstances of the present case, the Panel considers such circumstances are present, noting that the Complainant’s trademark is well known and in light of the Respondent’s default, there is no credible good-faith explanation to which the typosquatting disputed domain name could be put that would not infringe the Complainant’s rights.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) 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 <bondeulle.com>, be transferred to the Complainant.

/George R. F. Souter/

George R. F. Souter

Sole Panelist

Date: April 18, 2022