

ADMINISTRATIVE PANEL DECISION

Bobo Choses, S.L. v. Xuemei Wang
Case No. D2022-2240

1. The Parties

The Complainant is Bobo Choses, S.L., Spain, represented by March Trade Mark, S.L., Spain.

The Respondent is Xuemei Wang, China.

2. The Domain Name and Registrar

The disputed domain name <newbobochoses.com> is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 20, 2022. On June 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 28, 2022, 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 June 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 19, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 21, 2022.

The Center appointed Zoltán Takács as the sole panelist in this matter on July 28, 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 Spanish company founded in 2008 by two art directors with a strong background in advertising and graphic design. The Complainant's markets creative and fun clothes for kids.

Among others, the Complainant's owns the Chinese Trademark Registration No. 13072200 for the word mark BOBO CHOSSES registered on February 28, 2016, for *inter alia* child clothing of International Class 25 of the Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of the Registration of Marks.

Since January 3, 2007, the Complainant owns the domain name <bobochooses.com>, which links to its principal website.

The disputed domain name was registered on March 19, 2022, and has been linked to a website offering for sale BOBO CHOSSES children's clothing and other fashion goods.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name, which incorporates its BOBO CHOSSES trademark is confusingly similar to it.

The Complainant further alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and is unable to rely on any of the circumstances set out in paragraphs 4(c)(i), (ii) or (iii) of the Policy.

The Complainant claims that the Respondent registered the disputed domain name with knowledge of its BOBO CHOSSES trademark and has been using it to deceive consumers looking for goods offered by the Complainant to its website without any authorization, which is evidence of bad faith registration and use of the disputed domain name.

The Complainant requests that the disputed domain name <newbobochooses.com> be transferred from the Respondent to the Complainant.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel's decision be made "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".

It has been a consensus view in UDRP decisions that a respondent's default (*i.e.*, failure to submit a response) 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. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

A complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely that;

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (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

Under paragraph 4(a)(i) of the Policy, there are two requirements which the Complainant must establish, first that it has rights in a trademark or service mark, and second that the disputed domain name is identical or confusingly similar to the trademark or service mark.

It has been a consensus view among UDRP panels that if the complainant owns a trademark, then it generally satisfies the threshold requirement of having trademark rights.

The Complainant produced proper evidence of having registered rights in the BOBO CHOSSES trademark and for the purpose of this proceeding, the Panel finds that the Chinese Trademark Registration No. 13072200 satisfies the requirement of having trademark rights for the purpose of the Policy.

Having determined the presence of the Complainant's trademark rights, the Panel next assesses whether the disputed domain name is identical or confusingly similar to the Complainant's trademark.

According to section 1.7 of the [WIPO Overview 3.0](#), 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. This test typically involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

According to section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.

According to section 1.11.1 of the [WIPO Overview 3.0](#), the applicable Top-Level Domain ("TLD") in a domain name (".com" in the present case) is viewed as a standard registration requirement and as such is generally disregarded under the first element confusingly similar test.

The Complainant's BOBO CHOSSES trademark is clearly recognizable within the disputed domain name. It differs from the Complainant's trademark only in the addition of the term "new" before the trademark, which addition does not prevent a finding of confusing similarity between the Complainant's trademark and the disputed domain name.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark and that requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, a respondent may demonstrate its rights or legitimate interests in a domain name by showing any of the following circumstances, in particular but without limitation:

- (i) its use of, or demonstrable preparation to use the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services;
- (ii) it has been commonly known by the domain name;

(iii) it is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

In the present case, the Complainant has submitted sufficient and uncontested evidence that it holds well-established rights in the BOBO CHOSSES trademark.

The Respondent is not a licensee or distributor of the Complainant. The Respondent is not affiliated with the Complainant in any way. The Complainant has not granted any authorization for the Respondent to make use of its BOBO CHOSSES trade mark, in a domain name or otherwise.

According to section 2.1 of the [WIPO Overview 3.0](#), while 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 often impossible 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 the relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Respondent defaulted and failed to respond, and by doing so failed to offer the Panel any type of evidence set forth in paragraph 4(c) of the Policy, or otherwise counter the Complainant’s *prima facie* case.

The Respondent has been using the disputed domain name to promote a web shop selling BOBO CHOSSES branded clothing and fashion products. Even if these products are genuine, the website still does not qualify as fair use. In this instance, the disputed domain name fails under the *Oki Data* criteria for its failure to include any disclaimer as to its relation to the Complainant, further exacerbating the risk of implied affiliation caused by the identical replication of the trademark in the construction of the disputed domain name. See *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); section 2.5.1 of the [WIPO Overview 3.0](#).

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name in accordance with paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists a number of factors which, if found by the panel to be present, shall be evidence of registration and use of a domain name in bad faith. This non-exclusive list includes:

- (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 online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.

The evidence presented by the Complainant convinces the Panel that the Respondent has registered and is using the disputed domain name in bad faith.

The Respondent operates a website at the disputed domain that closely resembles the Complainant's website, offering for sale BOBO CHOSSES branded clothing and other fashion goods.

The Respondent is apparently holding itself out as the Complainant or an entity connected to the Complainant, which is false.

The Respondent is not affiliated with the Complainant and has never been authorized to make use of the Complainant's inherently distinctive BOBO CHOSSES trademark in any way.

These facts in view of the Panel show that the Respondent clearly had prior knowledge of the Complainant's trademark at the time of registration of the disputed domain name and had registered it in order to take unfair advantage of it.

The Panel finds that the Respondent is intentionally attracting for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the website at the disputed domain name within the meaning of paragraph 4(b)(iv) of the Policy.

Accordingly, the Panel finds that paragraph 4(a)(iii) of the Policy is satisfied.

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 <newbobochoses.com> be transferred to the Complainant.

/Zoltán Takács/

Zoltán Takács

Sole Panelist

Date: August 11, 2022