

ADMINISTRATIVE PANEL DECISION

Dorel France v. Super Privacy Service LTD c/o Dynadot / Scot G. Komar
Case No. D2022-2633

1. The Parties

The Complainant is Dorel France, France, represented by Bignon Lebray, France.

The Respondent is Super Privacy Service LTD c/o Dynadot, United States of America ("USA") / Scot G. Komar, USA.

2. The Domain Names and Registrar

The disputed domain names <bebeconfort-poussette.com> and <bebe-confort.shop> are both registered with Dynadot, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 19, 2022. On July 19, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On July 20, 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 the Complainant on July 20, 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 July 22, 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 July 25, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 14, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 16, 2022.

The Center appointed Luca Barbero as the sole panelist in this matter on August 19, 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 established in 1962 and is part of the Dorel group, that operates two distinct business segments, “juvenile” and “home”. The juvenile segment includes the brands Maxi-Cosi, Quinny, Tiny Love, Safety 1st, Cosco, Infanti and BEBE CONFORT.

The Complainant is the owner, amongst others, of the following trademark registrations:

- European Union Trademark Registration No. 018450649 for BEBECONFORT (figurative mark), filed on April 9, 2021 and registered on October 27, 2021, in classes 5, 6, 8, 9, 10, 11, 12, 16, 18, 19, 20, 21, 22, 24, 25, 28 and 35;
- French Trademark Registration No.1525997 for BEBE CONFORT (word mark), filed on April 25, 1989, in classes 10, 12, 20, 21 and 25;
- French Trademark Registration No.1692658 for BÉBÉ CONFORT (word mark), filed on September 10, 1991, in classes 3, 5, 8, 10, 11, 12, 16, 18, 20, 21, 22, 24, 25, 28, 29, 30 and 32.

The Complainant is also the owner of the domain name <bebeconfort.com>, registered on March 25, 1998 and used by the Complainant to promote its products under the trademark BEBE CONFORT.

The disputed domain names <bebe-confort.shop>, registered on June 14, 2022, and <bebeconfort-poussette.com>, registered on June 21, 2022, are currently not resolving to active websites. According to the screenshots submitted by the Complainant, which have not been contested by the Respondent, they both previously pointed to websites where the Complainant’s trademarks were displayed and purported BEBE CONFORT products were offered at discounted prices.

5. Parties’ Contentions

A. Complainant

The Complainant contends that disputed domain names are confusingly similar to the trademark BEBE CONFORT in which the Complainant has rights, for the following reasons:

- <bebe-confort.shop> reproduces the trademark in its entirety with the mere addition of a hyphen to separate the words “bebe” and “confort” and the generic-Top-Level Domain (“gTLD”) “.shop”.
- <bebeconfort-poussette.com> reproduces the trademark in its entirety with the addition of a hyphen to separate the trademark from the descriptive word “poussette” (which is French for “stroller” – thus also descriptive of the Complainant’s activity) and the gTLD “.com”.

With reference to rights or legitimate interests in respect of the disputed domain names, the Complainant states that the Respondent is not commonly known by the disputed domain names, has not acquired any trademark or service mark rights in the trademark BEBE CONFORT and has not been authorized, licensed, or otherwise permitted by the Complainant, to use the disputed domain names or its trademark in any way.

The Complainant submits that the Respondent has not made demonstrable preparations to use the disputed domain names or a name corresponding to the disputed domain names in connection with a *bona fide* offering of goods or services as the disputed domain names resolved to websites with a look and feel similar

to the Complainant's official website, displaying the Complainant's products and logo without authorization and inviting users to enter personal information and credit card numbers.

The Complainant asserts that the Respondent registered the disputed domain names in bad faith considering that i) the Complainant registered its BEBE CONFORT trademarks long before the Respondent registered the disputed domain names and such trademarks can be found via searches on online trademark databases, that ii) due to the national and international reputation of the trademark BEBE CONFORT, it is listed as the first hit on popular search engines, such as Google, when searching for "bebe confort" and that iii) the Respondent is clearly registered the disputed domain names in an attempt to target the Complainant, since the trademark BEBE CONFORT is entirely reproduced in the disputed domain names and the Complainant's trademarks and products are displayed on the websites at the disputed domain names.

The Complainant submits that the Respondent's selection of a domain name that is so obviously connected to the Complainant's trademark strongly suggests 'opportunistic bad faith' and claims that the Respondent is intentionally attempting to take advantage of the trademark BEBE CONFORT of the Complainant in order to deceive consumers.

The Complainant also asserts that it is clear from the Respondent's use of the disputed domain names that the sole intention of Respondent was to mislead Internet users as to its affiliation with the Complainant and to trade off the Complainant's rights and reputation by impersonating the Complainant, appearing to offer products on behalf of the Complainant. The Complainant further highlights that there was nothing on the Respondent's websites and in the disputed domain names which indicated to online users that the disputed domain names were not affiliated with the Complainant.

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 names registered by the Respondent are 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 names; and
- (iii) that the disputed domain names have been registered and are being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has established rights over the trademark BEBE CONFORT based on the trademark registrations cited under section 4 above.

It is well accepted that the first element functions primarily as a standing requirement, and that the threshold test for confusing similarity involves a reasoned but relatively straightforward comparison between a complainant's trademark and the disputed domain names to assess whether the trademark is recognizable within the disputed domain name (section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). Moreover, as found in a number of prior cases decided under the Policy, where a trademark is recognizable within a domain name, the addition of generic

or descriptive terms does not prevent a finding of confusing similarity under the first element. See section 1.8 of the [WIPO Overview 3.0](#).

The Panel finds that the disputed domain names are confusingly similar to the Complainant's trademark BEBE CONFORT as they reproduce the trademark in its entirety with the gTLDs ".shop" and ".com", which can be disregarded when comparing the domain name and a trademark under the first element, and the mere addition of hyphens to separate, in one case, the words "bebe" and "confort", and in the other case, to separate the trademark BEBECONFORT from the additional word "poussette" (being the French word for "stroller"), does not prevent a finding of confusing similarity.

Therefore, the Panel finds that the Complainant has proven that the disputed domain names are confusingly similar to a trademark in which the Complainant has established rights according to paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant must show that the Respondent has no rights or legitimate interests in respect of the disputed domain names. The Respondent may establish a right or legitimate interest in the disputed domain names by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

"(i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are 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."

In the case at hand, by not submitting a Response, the Respondent has failed to invoke any circumstance that could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain names.

Furthermore, it has been repeatedly stated that when a respondent does not avail himself of its right to respond to a complaint, it can be assumed in appropriate circumstances that the respondent has no rights or legitimate interests in the disputed domain names.

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.

In addition, there is no element from which the Panel could infer a respondent's right over the disputed domain name, or that the Respondent might be commonly known by the disputed domain names.

The Panel also finds that the Complainant has proven that the Respondent has not used the disputed domain names in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use.

According to the screenshots submitted by the Complainant – which have not been challenged by the Respondent –, the disputed domain names were pointed to websites displaying the Complainant's trademarks and offering purported BEBE CONFORT products for sale. The Panel notes that the Respondent's use of the disputed domain names did not fulfill the requirements that, according to the "Oki Data test", a reseller or distributor should meet in order to make a *bona fide* offering of goods and services and thus have a legitimate interest in a domain name incorporating a third-party trademark (see the leading

case *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), and section 2.8.1 of the [WIPO Overview 3.0](#)). Indeed, the Respondent, besides reproducing on its website the Complainant's trademarks and product visuals, has failed to accurately and prominently disclose its lack of relationship with the trademark holder.

Moreover, since the Respondent's activity on the websites to which the disputed domain names resolved was clearly commercial in nature, the Respondent cannot claim to have made a legitimate noncommercial or fair use of the disputed domain name.

As to the current redirection of the disputed domain names to inactive websites, as held *i.a.*, in *Teachers Insurance and Annuity Association of America v. Wreaks Communications Group*, WIPO Case No. [D2006-0483](#), “[a]bsent some contrary evidence from Respondent, passive holding of a domain name does not constitute legitimate noncommercial or fair use”.

Furthermore, the Panel finds that the disputed domain names <bebe-confort.shop> and <bebeconfort-poussette.com>, being respectively substantially identical and confusingly similar to the Complainant's trademark BEBE CONFORT with an additional term which is related to the Complainant's business, carry a high risk of implied affiliation. As stated in section 2.5.1 of the [WIPO Overview 3.0](#), “UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation. Even where a domain name consists of a trademark plus an additional term (at the second- or top-level), 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”.

Therefore, the Panel finds that the Complainant has proven that the Respondent has no rights or legitimate interests in the disputed domain names according to paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the Complainant prove that the disputed domain names were registered and are being used by the Respondent in bad faith.

As to bad faith at the time of the registration, the Panel finds that, in light of i) the prior registration and use of the Complainant's trademark BEBE CONFORT in connection with the Complainant's products, which have been promoted also online via the Complainant's official website at “www.bebeconfort.com” and ii) the fact that a search for “BEBE CONFORT” on main search engines shows the Complainant's website as a first result, the Respondent was or could have been aware of the Complainant's trademark at the time of registration.

Moreover, considering the disputed domain names <bebe-confort.shop> and <beneconfort-poussette.com> are respectively substantially identical and confusingly similar to the Complainant's trademark and in view of the prior redirection of the disputed domain names to websites featuring the Complainant's trademarks products, the Panel finds that the Respondent was indeed well aware of the Complainant and its trademark.

As to the use of the disputed domain names, the Panel finds that, by pointing the disputed domain names to websites displaying the Complainant's trademarks and offering purported BEBE CONFORT products for sale, without accurately and prominently disclosing the absence of relationship with the trademark owner (as shown by the screenshots submitted by the Complainant), the Respondent has intentionally attempted to attract Internet users to its websites for commercial gain, by causing a likelihood of confusion with the trademark BEBE CONFORT as to the source, sponsorship, affiliation or endorsement of its websites and products promoted therein according to paragraph 4(b)(iv) of the Policy.

The disputed domain names are currently not pointed to an active website. As established in a number of prior cases the concept of “bad faith” in paragraph 4(b) of the Policy includes not only positive action but also passive holding. See *i.a.*, the landmark case *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

Therefore, the Panel finds that the Complainant has also proven that the Respondent registered and is using the disputed domain names in bad faith according to 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 names <bebeconfort-poussette.com> and <bebe-confort.shop> be transferred to the Complainant.

/Luca Barbero/

Luca Barbero

Sole Panelist

Date: September 5, 2022