

ADMINISTRATIVE PANEL DECISION

Barts Beheer B.V. v. Jgceg Nghde
Case No. D2022-4411

1. The Parties

The Complainant is Barts Beheer B.V., Netherlands, represented by Rise NL, Netherlands.

The Respondent is Jgceg Nghde, Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <salebarts.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 November 18, 2022. On November 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 21, 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 (Domain Protection Services, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 22, 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 amendment to the Complaint on the same day.

The Center verified that the Complaint together with the amendment to 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 November 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 18, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 20, 2022.

The Center appointed Alistair Payne as the sole panelist in this matter on December 27, 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 has since 1986 operated in the fashion industry, manufacturing, marketing and selling scarfs, beanies, hats, bikinis, bags, sunglasses, clothing, footwear and other fashion accessories and selling worldwide under its BARTS trade mark, including through its website at the domain name <barts.eu>, which was registered on March, 27, 2006. The Complainant owns various trade mark registrations for its BARTS mark including European Union trade mark registration 017764473 which was registered on June 16, 2018.

The disputed domain name was registered on May 16, 2022 by the Respondent based in Hong Kong, China, using a privacy service to mask its identity. The disputed domain name resolves to a website that features the BARTS mark and which offers for sale various items, including clothing, similar to that offered by the Complainant from its website at the domain name <barts.eu>.

5. Parties' Contentions

A. Complainant

The Complainant submits that it owns registered trade mark rights in its BARTS mark as set out above. It says that the disputed domain name wholly incorporates its trade mark and is therefore confusingly similar to it. The Complainant asserts that the fact that the disputed domain name also includes the common English word "sale" does not affect the finding of confusing similarity between the disputed domain name and the Complainant's trademark.

The Complainant submits that the Respondent has no connection or affiliation with the Complainant, and has not received any licence or consent, express or implied, to use the BARTS trade mark in a domain name or in any other manner. The Complainant confirms that the Respondent is not an authorised dealer or reseller of BARTS products.

The Complainant asserts that it is unaware of any legitimate right that the Respondent could have to use the trade mark BARTS. The Complainant says that it conducted a search in the publicly available trade mark registers and did not find any trade mark registrations containing the word BARTS in the name of the Respondent. Finally, in the circumstances of use as further described under Part C below, the Complainant says that the Respondent is not making a legitimate fair or noncommercial use of the disputed domain name.

The Complainant alleges that the Respondent deliberately designed its website to confuse Internet users into thinking that the Complainant and the Respondent are the same and leading consumers to believe that the goods are offered directly by the Complainant or by an affiliated company. The Complainant says that the website, to which the disputed domain name leads, features the Complainant's mark, logo, branding, goods and pictures. It says that because of the prominent depiction of the name and mark BARTS, in the top of the homepage, in the font used by the Complainant, and without another company name, there is an increased risk of confusion by the public. Furthermore, by only offering products under the trade mark BARTS, the Respondent creates the impression that the disputed domain name is offered by the Complainant.

The Complainant says that copying its website content and its brand BARTS to this extent clearly indicates that the Respondent has sought to deliberately infringe the Complainant's trade mark rights and to profit from the Complainant's goodwill and reputation, which has been established during at least the last 35 years. It says that it is apparent that the Respondent is using the disputed domain name containing the BARTS mark to intentionally confuse Internet users into thinking that the website, to which it leads, or the products being sold from it, are offered by the Complainant, or that the website is somehow affiliated with the Complainant and that this amounts to registration and use of the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has demonstrated that it owns various trade mark registrations for its BARTS mark including European Trade Mark registration 017764473 which was registered on June 16, 2018. The disputed domain name wholly incorporates the Complainant's BARTS trade mark and is therefore confusingly similar to it. The addition in the disputed domain name of the common English word "sale" does not prevent a finding of confusing similarity.

Accordingly, the Panel finds that the Complaint succeeds under this element of the Policy.

B. Rights or Legitimate Interests

The Complainant has submitted that the Respondent has no connection or affiliation with the Complainant, and has not received any licence or consent, whether express or implied, to use the BARTS trade mark in a domain name, or in any other manner. The Complainant has also confirmed that the Respondent is not an authorised dealer or reseller of BARTS products and that it is unaware of any legitimate rights that the Respondent could have to use the trade mark BARTS. In this regard, the Complainant says that it conducted a search in the publicly available trade mark registers and did not find any trade mark registrations containing the word "barts" in the name of the Respondent.

The Respondent's website, to which the disputed domain name resolves, appears to be very similar to the Complainant's website at the <barts.eu> domain name. It prominently features the BARTS mark in the same font as on the Complainant's website and offers very similar goods and clothing for sale. When the websites are compared side by side, it is easy to see how Internet users could be confused into thinking that the Complainant and the Respondent are the same and that the goods offered by the Respondent from this website are offered directly by the Complainant or by an affiliated company. This is not consistent with a *bona fide* use of the disputed domain name and is neither a legitimate, fair, or noncommercial use of the disputed domain name.

In these circumstances the Panel finds that the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has failed to respond to or to rebut the Complainant's case and the Panel therefore finds that the Complaint also succeeds under this element of the Policy.

C. Registered and Used in Bad Faith

The disputed domain name was registered in May 2022, *i.e.* many years after the Complainant commenced using the BARTS mark on its website at the domain name <barts.eu> and some years after the date of the Complainant's first European Union Trade Mark registration for BARTS. Based on the degree of similarity between the Parties' respective websites, as noted both below and under Part B above, there is a very strong inference that the Respondent was well aware of the Complainant's BARTS mark and website when it registered the disputed domain name.

Under paragraph 4(b)(iv) of the Policy there is evidence of registration and use of the disputed domain name in bad faith where a respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's trade marks as to the source, sponsorship, affiliation or endorsement of the website.

The Respondent's blatant use of the disputed domain name incorporating the Complainant's BARTS mark to resolve to a website which emulates and appears to be extremely similar to the Complainant's website (as described under Part B above) and which could easily confuse Internet users into erroneously thinking that it is the Complainant's website, or is affiliated or endorsed by it and which is obviously for the commercial benefit of the Respondent, fulfills the requirements of paragraph 4(b)(iv) of the Policy and amounts to evidence of registration and use of the disputed domain name in bad faith. The Respondent's use of a privacy service in an attempt to mask its identity and its failure to explain its conduct only reinforces the Panel's view of the Respondent's bad faith.

The Panel therefore finds that the disputed domain name has both been registered and used in bad faith and that the Complaint also succeeds under this element 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 <salebarts.com> be transferred to the Complainant.

/Alistair Payne/

Alistair Payne

Sole Panelist

Date: January 6, 2023