

ADMINISTRATIVE PANEL DECISION

But International v. tianlihong (田利红)
Case No. D2023-0267

1. The Parties

The Complainant is But International, France, represented by Nameshield, France.

The Respondent is tianlihong (田利红), China.

2. The Domain Name and Registrar

The disputed domain name <wwwbut.com> is registered with 17 Domain 4, Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 20, 2023. On January 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 21, 2023, 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 January 25, 2023, 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 January 26, 2023.

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 January 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 17, 2023.

The Center appointed John Swinson as the sole panelist in this matter on February 22, 2023. 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 was established in 1972. The Complainant is a French brand of stores specializing in household furniture, electronics, and the like.

The Complainant has many domain names, including the domain name <but.fr> registered on November 11, 1996, and the domain name <but.com> registered on February 27, 1996.

The Complainant owns several trademark registrations for BUT, including French trademark number 98756795, registered on October 28, 1998; and International trademark number 974306, registered on December 28, 2007.

The Respondent did not file a Response, so little information is known about the Respondent. According to the Registrar's records, the Respondent is located in China.

The disputed domain name was registered on April 21, 2022.

The disputed domain name resolves to a website that is mostly in Chinese and that promotes pornographic websites and services.

5. Parties' Contentions

A. Complainant

In summary, the Complainant made the following submissions:

The disputed domain name is identical or confusingly similar to the Complainant's BUT trademark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant does not know the Respondent. The Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant does not carry out any activity for, nor has any business with the Respondent. The Complainant has not licensed the Respondent to use the Complainant's BUT trademark and has not authorized the Respondent to register the disputed domain name.

The disputed domain name resolves to a website with pornographic content and with hyperlinks to websites with pornographic content. This tarnishes the Complainant's trademark and is not a noncommercial or fair use of the disputed domain name by the Respondent.

The expression "wwwbut" has no dictionary meaning, and the disputed domain name is a direct reference to the Complainant's domain name <but.com>.

The Respondent registered and used the disputed domain name in bad faith to create confusion with the Complainant's BUT trademark for commercial gain by using the disputed domain name to resolve to a website containing adult oriented content. Use of a domain name to host adult-oriented content may be evidence of bad faith under paragraph 4(a)(iii) of the Policy.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (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.

The *onus* of proving these elements is on the Complainant.

Paragraph 15(a) of the Rules directs the Panel to decide the 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.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy provides that the Complainant must establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

As set out in Section 4 above, the Complainant has registered trademarks for BUT.

Previous UDRP panels have consistently held that domain names are identical or confusingly similar to a trademark for purposes of the Policy when the domain name includes the trademark, or a confusingly similar approximation, disregarding the Top-Level Domain part of the domain name (*e.g.*, disregarding the “.com” part of the domain name.)

Here, the disputed domain name includes the BUT registered trademark in its entirety. The addition of the letters “www” does not prevent a finding that the disputed domain name is confusingly similar to the Complainant’s BUT registered trademark.

The Complainant succeeds on the first element of the Policy.

B. Rights or Legitimate Interests

The Complainant’s allegations to support the Respondent’s lack of rights or legitimate interests in the disputed domain name are set out in Section 5A above.

There is no evidence that the Respondent is commonly known by the disputed domain name. The disputed domain name was registered many years after the Complainant established its trademark rights in BUT.

Having regard to all these matters, the Panel finds that the *prima facie* case established by the Complainant has not been rebutted by the Respondent and the Complainant succeeds on the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that the Complainant must establish that the Respondent registered and subsequently used the disputed domain name in bad faith.

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed

domain name to take advantage of its significance as a trademark owned by the complainant. *Fifth Street Capital LLC v. Fluder (aka Pierre Olivier Fluder)*, WIPO Case No. [D2014-1747](#).

The term “wwwbut” is a nonsensical term. It is clear that “www” is a reference to “world wide web”. In the context, “wwwbut” is most likely a reference to the Complainant’s domain name and website located at “www.but.com”. If a user is looking for the Complainant’s website, but does not type in the dot between the “www” and the Complainant’s <but.com> domain name, then the user will be tricked into visiting the Respondent’s pornographic website. The Respondent’s decision to register the disputed domain name is most likely motivated by an awareness of the Complainant and the Complainant’s trademark and domain names. Compare, *Rady Children’s Hospital and Health Center v. 蒋黎 (Jiang Li)*, WIPO Case No. [D2022-0390](#). Paragraph 4(b)(iv) of the Policy clearly applies in this case.

Additionally, the promotion of pornographic content on the Respondent’s website adds a further stain of bad faith on the Respondent. Past panels have elaborated at length about the high risk of tarnishment to a well-known mark arising from such behavior by a respondent irrespective of motivation. See, for example, *Sanofi v. xiao xing*, WIPO Case No. [D2022-4529](#).

The Panel finds that the Respondent registered and used the disputed domain name in bad faith.

The Complainant succeeds on the third 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 <wwwbut.com> be transferred to the Complainant.

/John Swinson/

John Swinson

Sole Panelist

Date: March 8, 2023