

ADMINISTRATIVE PANEL DECISION

BA&SH v. Theresa W Chavez

Case No. D2023-0373

1. The Parties

The Complainant is BA&SH, France, represented by Cabinet Bouchara, France.

The Respondent is Theresa W Chavez, Germany.

2. The Domain Name and Registrar

The disputed domain name <onlinebashsale.com> is registered with Gname.com Pte. Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 30, 2023. On January 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 1, 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 February 1, 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 February 1, 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 February 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 6, 2023.

The Center appointed Fabrizio Bedarida as the sole panelist in this matter on March 13, 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 in this proceeding is the French company BA&SH, French Société par actions simplifiée. The Complainant operates in the field of design, manufacture, and distribution of ready-to-wear goods for women as well as fashion accessories.

The Complainant has 211 stores and outlets throughout the world, as well as a strong presence online with its main website “www.ba-sh.com” where consumers can purchase original ready-to-wear products bearing the Complainant’s trademarks and have them delivered worldwide. This website also has a specific version for consumers located in the territory of Germany, “www.ba-sh.com/de”, where the Respondent is allegedly situated.

The Complainant is, *inter alia*, the owner of:

French trademark BA&SH (device) registration number 3444110, registered on January 8, 2006;
European Union trademark BA&SH (device) registration number 5679758, registered on February 10, 2012.

In addition, the Complainant is known on social networks, and notably on the following:

Instagram under the pseudonym @bashparis where it is followed by more than 978,000 people, and Facebook under the pseudonym @bashparis where it is liked by more than 213,000 people.

The disputed domain name was registered on December 16, 2022.

The disputed domain name does not resolve to an active website, but it appears from the document filed by the Complainant that, at the time the complaint was filed, it was used for a website where the content displayed showed the Complainant’s trademark and logo as well as purported BA&SH-branded goods.

5. Parties’ Contentions

A. Complainant

The Complainant claims that:

(a) the disputed domain name is confusingly similar to the Complainant’s trademark; (b) the Respondent lacks any rights or legitimate interests in the disputed domain name; and (c) the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

In order for the Complainant to obtain a transfer of the disputed domain name, paragraphs 4(a)(i) – (iii) of the Policy require that the Complainant must demonstrate to the Panel that:

(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 Complainant has established rights in the BA&SH trademark.

The disputed domain name contains the Complainant's BA&SH trademark, except for the ampersand sign "&", with the addition of the terms "online" and "sale" and the generic Top-Level Domain ("gTLD") ".com".

The addition in the disputed domain name of these elements does not prevent the BA&SH trademark from being recognizable in the disputed domain name.

Besides, as pointed out by the Complainant and previous panels, the ampersand sign "&" is not a valid character in a domain name and registrants, in registering a sign comprising an ampersand as a domain name, will typically either omit it or spell it out as "and". Consequently, the omission of an ampersand or its conversion to the word "and" in a domain name should not prevent confusing similarity. *Dolce & Gabbana s.r.l. v. Xiaohua Lin*, WIPO Case No. [D2013-0604](#); *BA&SH v. Domain Administrator*, See *PrivacyGuardian.org / Name Redacted*, WIPO Case No. [D2019-1616](#) and *BA&SH v. Domain Administrator*, See *PrivacyGuardian.org / Name Redacted*, WIPO Case No. [D2019-3201](#).

Pursuant to section 1.8 of the Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") which states: "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. The nature of such additional term(s) may however bear on assessment of the second and third elements."

Therefore, the Panel finds the disputed domain name to be confusingly similar to the BA&SH trademark in which the Complainant has rights.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

This Panel finds that the Complainant has made a *prima facie* case that the Respondent does not have rights or legitimate interests in the disputed domain name.

The Respondent has no connection or affiliation with the Complainant, and the Complainant has not licensed or otherwise authorized the Respondent to use or register any domain name incorporating the Complainant's trademark.

The Respondent does not appear to engage in any legitimate noncommercial or fair use of the disputed domain name, nor any use in connection with a *bona fide* offering of goods or services.

Indeed, it appears that the Respondent has attempted to usurp the Complainant's goodwill in the trademark, in an attempt to confuse and deceive Internet users into doing business with the Respondent. The nature of the goods offered at the website to which the disputed domain name resolves is unclear (*i.e.*, whether genuine BA&SH-branded products or not) and whether the goods are even available remains in question. However, distributors or resellers can be making a *bona fide* offering of goods and thus have a legitimate interest in a domain name only if the following cumulative requirements are met (*Ok! Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); [WIPO Overview 3.0](#), section 2.8.1: (i) respondent must actually be offering the goods at issue; (ii) respondent must use the site to sell only the trademarked goods; (iii) the site must accurately and prominently disclose the registrant's relationship with the trademark holder; and (iv) respondent must not try to "corner the market" in domain names that reflect the trademark.)

These requirements are not fulfilled in the present case, seeing as the disputed domain name falsely suggests that the website is an official site of the Complainant or of an entity affiliated to or endorsed by Complainant. The website extensively reproduces, without authorization by the Complainant, the

Complainant's trademarks and website content without any disclaimer of association (or lack thereof) with the Complainant.

In addition, the Respondent does not appear to be commonly known by the disputed domain name or by a similar name. Moreover, the Respondent has not replied to the Complainant's contentions, claiming any rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Based on the evidence put forward by the Complainant, the Panel is of the opinion that the Respondent was aware of the Complainant's trademark registrations and rights to the BA&SH mark when it registered the disputed domain name.

The Complainant's BA&SH trademark has been registered and used for many years.

The disputed domain name was used for a website where the content displayed showed the Complainant's trademark and logo as well as purported BA&SH-branded goods.

Consequently it is clear that the Respondent registered the disputed domain name while aware of the Complainant's trademark and activity, and did so with the intention to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of either the Respondent and/or its website, so as to trick those users into doing business with the Respondent. This constitutes bad faith registration and use as well as a disruption of the Complainant's business under the Policy.

Inference of bad faith can also be found in the failure to respond to the Complainant's contentions, and the Respondent's lack of any rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds, on the basis of the evidence presented, that the Respondent registered and is using the disputed domain name in bad faith.

Therefore, the Complainant has satisfied 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, <onlinebashsale.com>, be transferred to the Complainant.

/Fabrizio Bedarida/

Fabrizio Bedarida

Sole Panelist

Date: March 24, 2023