

ADMINISTRATIVE PANEL DECISION

MCH Swiss Exhibition (Basel) Ltd. v. Petro Bondarevsky Case No. D2023-1592

1. The Parties

The Complainant is MCH Swiss Exhibition (Basel) Ltd., Switzerland, represented by Fowler White Burnett, P.A. United States of America (“United States”).

The Respondent is Petro Bondarevsky, Marshall Islands.

2. The Domain Name and Registrar

The disputed domain name <artbasel.pro> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 12, 2023. On April 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On April 13, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 14, 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 May 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 May 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 22, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 23, 2023.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on May 31, 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 is a Swiss company engaged in the business of providing art fairs and related services since 1975. The Complainant began using the ART BASEL trademark in the United States and around the world in the year 2001 and presently the ART BASEL art fair has venues in Basel, Miami Beach and Hong Kong, China on a yearly basis.

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

- United States trademark registration No. 4,030,474 for the word and device mark ART BASEL, registered on September 27, 2011, in classes 35 and 41; and
- European Union trademark registration No. 010447506 for the word mark ART BASEL, filed on November 25, 2011 and registered on April 27, 2012, in classes 35 and 41.

The disputed domain name was registered on November 2, 2022, and presently does not resolve to an active webpage. A Facebook page stating “Art Basel goes digital. The Biggest Art Fair now has a digital twin – Digital Basel” and describing itself as “a new way to experience World’s largest art fair. Launching in June 2023 during Art Basel event” indicates an address in Basel as well as an email address formed with the disputed domain name.

5. Parties’ Contentions

A. Complainant

The Complainant asserts to provide organization and management services of trade fairs, trade shows and events for commercial and advertising purposes; organization of exhibitions for cultural and education purposes; as well as organization, arrangement and the conducting of exhibitions for entertainment purposes under the ART BASEL trademark which has become a famous trademark in view of the relevant public and sales achieved in its editions. For instance, the Art Basel fair in Miami Beach alone has an annual economic impact estimated in the range of USD 400 million to USD 500 million, what lead the Complainant to become one of the leading global providers of art fair services under the ART BASEL trademark, extensively used on a global level.

The Complainant thus contends that the disputed domain name is confusingly similar with its ART BASEL trademark, which is reproduced in its entirety.

As to the Respondent’s lack of rights or legitimate interests, the Complainant contends that:

- a) the Respondent has no rights or legitimate interests in the disputed domain name as the Respondent has no legal affiliation with the Complainant, not having the Complainant authorized or licensed the Respondent or anyone to register the disputed domain name or any domain name incorporating the ART BASEL trademark;
- b) the disputed domain name appears to not have been used at all, there only being a Facebook page attempting to pass it off as the Complainant and indicating an e-mail address formed by the disputed domain name; and
- c) the Respondent is not known by the disputed domain name and has not acquired any authorization or right of license from the Complainant to use the disputed domain name.

Lastly, the Complainant alleges that the disputed domain name was registered and is being used in bad faith given the well-known status of the Complainant’s ART BASEL trademark and the use of the disputed domain name in connection with an e-mail address on a Facebook page attempting to pass off as the Complainant.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

- (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.

The Complainant must prove in this administrative proceeding that each of the aforementioned three elements is present in order to obtain the transfer of the disputed domain name.

In accordance with paragraph 14(a) of the Rules, if the Respondent does not submit a Response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

A. Identical or Confusingly Similar

The Complainant has established rights in the ART BASEL trademark.

It is well accepted that the first element functions primarily as a standing requirement. 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. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

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 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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

The Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.
- the Respondent (as an individual, business, or other organization) has not been commonly known by the disputed domain name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.
- the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.
- the nature of the disputed domain name carries a high risk of implied association, [WIPO Overview 3.0](#), section 2.5.1.
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Panel considers that the record of this case reflects that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its online location (Facebook page), by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's online location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Presently the disputed domain name does not resolve to an active webpage, which does not prevent a finding of bad faith.

In the present case, the Panel further notes another factors that corroborate a finding of the Respondent's bad faith: the indication of what appears to be false contact details, not having the Center been capable of delivering the Written Notice to the Respondent.

Based on the available record, the Panel finds the third element of the Policy has been established.

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, <artbasel.pro>, be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: June 14, 2023