

## ADMINISTRATIVE PANEL DECISION

Build-A-Bear Workshop, Inc. v. 王化德 (Hua De Wang)  
Case No. D2023-3544

### 1. The Parties

The Complainant is Build-A-Bear Workshop, Inc., United States of America (“United States”), represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is 王化德 (Hua De Wang), China.

### 2. The Domain Name and Registrar

The disputed domain name <buildabearadventure.com> is registered with Chengdu West Dimension Digital Technology Co., Ltd. (the “Registrar”).

### 3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 22, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 23, 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 August 25, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On the same day, the Center sent an email in English and Chinese regarding language of proceeding. The Complainant filed an amended Complaint in English on August 28, 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 September 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 24, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 25, 2023.

The Center appointed Jonathan Agmon as the sole panelist in this matter on October 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, Build-A-Bear Workshop, Inc., is a global company that offers a teddy-bear themed retail-entertainment experience. The Complainant has revenue of USD 411.5 million in Fiscal Year 2021, 1,000 full time employees and 2,700 part-time employees, located among some 346 locations in the United States, Canada, the United Kingdom and Ireland, as well as franchise stores across Europe, Asia, Australia, Africa and the Middle East.

In addition, Build-A-Bear also maintains a strong Internet and retail presence through its primary domain name <buildabear.com> and the linked website. According to Similarweb.com, the Complainant's website received an average of 1.9 million visits during the period from February to April 2023, making it the 6th most popular in its category. Additionally, its various social media platforms include 2,783,622 followers on Facebook, 93.8 thousand followers on Twitter and 466,000 followers on Instagram.

The Complainant is the owner of various BUILD-A-BEAR and BUILDABEAR.COM trademarks worldwide. For example, it owns the following trademarks:

- United States trademark registration No. 2884223 for BUILDABEAR.COM, registered on September 14, 2004;
- United States trademark registration No. 3741249 for BUILD-A-BEAR, registered on January 19, 2010;
- United States trademark registration No. 4901084 for BUILD-A-BEAR, registered on February 16, 2016;
- Chinese trademark registration No. 18153356 for BUILD-A-BEAR, registered on December 7, 2016;
- Chinese trademark registration No. 18153358 for BUILD-A-BEAR, registered on December 7, 2016;
- European Union trademark registration No. 004872479 for BUILD-A-BEAR, registered on October 10, 2007; and
- European Union trademark registration No. 009660812 for BUILD-A-BEAR, registered on June 21, 2011.

The Complainant also states that it has owned the domain name <buildabear.com> since March 13, 1997.

The Complainant provided evidence that the Respondent registered the disputed domain name on September 7, 2022. The disputed domain name resolves to a parked website showing pay-per-click ("PPC") advertisement links that appear to be related to the Complainant's own offerings.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant argues that the disputed domain name is confusingly similar to the Complainant's registered BUILD-A-BEAR mark as the Respondent has intentionally registered a confusingly similar domain name that incorporates the Complainant's mark in its entirety with the addition of a generic descriptive term.

The Complainant also argues that the Respondent lacks any rights or legitimate interests in the marks or the disputed domain name as it has not authorised the Respondent to use any of its trademarks or register the disputed domain name, and that the Respondent registered and continues to use the disputed domain name in bad faith.

## B. Respondents

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

## 6. Discussion and Findings

### 6.1 Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Chinese. The Complainant requested that the language of the proceeding be English for the following main reasons:

- (i) The dominant term in the disputed domain name, "build-a-bear", is in the English language and does not carry any specific meaning in the Chinese language;
- (ii) The disputed domain name resolves to a website consists of Latin characters and various phrases in the English language;
- (iii) The Complainant is unfamiliar with the Chinese language and requiring the Complaint to be translated into Chinese would result in the proceedings being unduly delayed and the Complainant having to incur substantial expenses for translation.

The Respondent did not comment on the language of the proceeding.

Paragraph 11(a) of the Rules provides that:

"Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding."

Section 4.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)) states the following:

"Noting the aim of conducting the proceedings with due expedition, paragraph 10 of the UDRP Rules vests a panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case.

Against this background, panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios include (i) evidence showing that the respondent can understand the language of the complaint, (ii) the language/script of the domain name particularly where the same as that of the complainant's mark, (iii) any content on the webpage under the disputed domain name, (iv) prior cases involving the respondent in a particular language, (v) prior correspondence between the parties, (vi) potential unfairness or unwarranted delay in ordering the complainant to translate the complaint, (vii) evidence of other respondent-controlled domain names registered, used, or corresponding to a particular language, (viii) in cases involving multiple domain names, the use of a particular language agreement for some (but not all) of the disputed domain names, (ix) currencies accepted on the webpage under the disputed domain name, or (x) other indicia tending to show that it would not be unfair to proceed in a language other than that of the registration agreement."

Having considered the relevant factors and interests of the respective Parties, the Panel determines that it would be appropriate for English be the language of the proceeding. The Panel is persuaded that the Respondent would not be prejudiced as he appears to be familiar with and understands the English language. The disputed domain name and the contents of the resolved webpage reflect words in English only. The Respondent had, moreover, been notified by the Center, in both Chinese and English, of the commencement of the proceeding, the language of the proceeding, and deadline for filing a Response in

Chinese or English. The Respondent therefore had ample opportunity to object and/or propose to submit his Response in Chinese but did not do so. In the absence of any rebuttal argument or justification therefore by the Respondent, the Panel does not find it procedurally efficient to have the Complainants translate the Complaint into Chinese.

## 6.2 Substantive Issues

### A. Identical or Confusingly Similar

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

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns the BUILD-A-BEAR and BUILDABEAR.COM registered trademarks.

The disputed domain name comprises the Complainant's BUILD-A-BEAR mark with the omissions of the two hyphens, and the addition of the generic term "aventure", which appears to be a misspelling of the word adventure.

It is established that in cases 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. (See [WIPO Overview 3.0](#), section 1.8). It is also established that the absence of hyphens does not diminish the confusing similarity between the disputed domain name and a complainant's trademark and should be disregarded for purposes of making determinations. (See *Chernow Communications, Inc. v. Jonathan D. Kimball*, WIPO Case No. [D2000-0119](#))

Thus, the disputed domain name, which in this case incorporates the Complainant's mark, with the additional element "aventure", does not avoid a finding of confusingly similarity between the Complainant's mark and the disputed domain name.

Further, it is well established that the addition of a generic Top-Level Domain ("gTLD") ".com" is typically disregarded under the first element when considering the confusing similarity between the Complainant's trademark and the disputed domain name (see [WIPO Overview 3.0](#), section 1.11.1).

Consequently, the Panel finds that the Complainant has shown that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

### B. Rights or Legitimate Interests

Once the complainant establishes a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name, the burden of production of evidence shifts to the respondent to show that it has rights or legitimate interests in respect of the disputed domain name (see [WIPO Overview 3.0](#), section 2.1).

In the present case, the Complainant has furnished evidence that the Respondent is not commonly known by the name(s) "build-a-bear" and/or "buildabear.com".

The Complainant has demonstrated *prima facie* case that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant has provided evidence that it owns trademark registrations of the BUILD-A-BEAR and BUILDABEAR.COM marks long before the date that the disputed domain name was registered and that the Complainant is not affiliated with nor has it licensed or otherwise authorised the Respondent to use the Complainant's trademark (see *LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. [D2010-0138](#)).

The Respondent's website under the disputed domain name resolves to parked webpages which use the Complainant's BUILD-A-BEAR mark and display what appear to be comprising PPC links purporting to offer links with titles such as "Teddy Bears", "Custom Pet Face Pillow", and "Custom Pet Pillow" which offer goods and/or services which compete with those offered by the Complainant. It has been held by prior UDRP panels that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users. See [WIPO Overview 3.0](#), section 2.9.

Further, the Respondent did not submit a Response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain name which would be sufficient to rebut the Complainant's *prima facie* case.

The Panel is therefore of the view that the Respondent has no rights or legitimate interests in respect of the disputed domain name and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

### **C. Registered and Used in Bad Faith**

The complainant must also show that the respondent registered and is using the disputed domain name in bad faith (see Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence that the Respondent registered the disputed domain name long after the Complainant registered its BUILD-A-BEAR trademark. Given the accumulation of good will and distinctiveness of the Complainant's mark over the years, it is highly unlikely that the Respondent did not know of the Complainant and its BUILD-A-BEAR mark prior to the registration of the disputed domain name.

In addition, the disputed domain name incorporates the Complainant's BUILD-A-BEAR mark along with the additional descriptive term "aventure", which the Panel finds is an attempt by the Respondent to confuse and/or mislead Internet users seeking or expecting the Complainant and/or its relatively new concept, Build-A-Bear Adventure.

Moreover, the Respondent's website under the disputed domain name resolves to a parked webpage which uses the Complainant's BUILD-A-BEAR mark and displays what appears to be comprising PPC links specifically purporting to offer links with titles such as "Teddy Bears", "Custom Pet Face Pillow", and "Custom Pet Pillow" incorporating the Complainant's trademark. These links offer goods and/or services which appears to compete with those offered by the Complainant. Such use of the disputed domain names indicates that the Complainant has targeted the Complainant and its trademark and is capitalizing on the reputation and goodwill of the Complainant's mark or otherwise mislead Internet users, which are clear indications of bad faith registration and use.

The Complainant sent no less than three Cease & Desist letters dated November 10, 2022, November 22, 2022, and December 6, 2022, to the Respondent. However, the Complainant did not receive any reply from the Respondent. This is evidence that the Respondent does not have rights or legitimate interests in the disputed domain name and to rebut the *prima facie* case established by the Complainant.

In addition, the Respondent did not submit a Response in this proceeding. Under the circumstances of this case, this is an additional indication of the Respondent's bad faith, which was considered by the Panel.

Based on the evidence presented to the Panel, including the registration of the disputed domain names long after the registration of the Complainant's trademarks, the confusing similarities between the disputed domain name and the Complainant's marks, the Respondent's use of the disputed domain name, and the fact that no Response was submitted by the Respondent in response to the Complaint, the Panel draws the inference that the disputed domain name was registered and is being used in bad faith.

Accordingly, having regard to the circumstances of this particular case, the Panel finds that the Complainant has met its burden under 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 <buildabearaventure.com> be transferred to the Complainant.

*/Jonathan Agmon/*

**Jonathan Agmon**

Sole Panelist

Date: October 27, 2023