

ADMINISTRATIVE PANEL DECISION

Bazarchic v. Virginia Wun, Virginia Wun
Case No. D2023-4631

1. The Parties

The Complainant is Bazarchic, France, represented by Clairmont Novus Avocats, France.

The Respondent is Virginia Wun, Virginia Wun, Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <lechicbazar.com> is registered with Wix.com Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 8, 2023. On November 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 13, 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 November 17, 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 November 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 7, 2023. The Respondent sent an email communication to the Center on December 7, 2023. The Center notified the Parties of the commencement of panel appointment process on December 8, 2023.

The Center appointed Fabrizio Bedarida as the sole panelist in this matter on December 15, 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 administrative proceeding is Bazarchic, a company created in 2006 and registered under the laws of France. The Complainant specializes in flash sales of fashion items, womenswear, menswear, jewellery, decoration, accessories, gastronomy and wine, through the website "www.bazarchic.com". The Complainant has registered and used its domain name <bazarchic.com> since November 16, 2005.

The Complainant is the registered owner of several trademarks consisting of or including the word BAZARCHIC.

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

French trademark "BAZARCHIC" (word) registration number 3408882, filed on February 8, 2006 and registered on July 14, 2006 ;

International trademark "BAZARCHIC" (word) registration number 1332397, registered on September 27, 2016;

European Union trademark "BAZARCHIC" (word) registration number 015857113, registered on April 6, 2017;

International trademark "BAZARCHIC" (word) registration number 1042811, registered on April 2, 2010.

The Complainant is also the holder of the domain name <bazarchic.com> registered on November 16, 2005.

The disputed domain name was registered on August 31, 2023.

The Complainant's representatives sent a cease-and-desist letter to the Respondent, which remains unanswered.

The disputed domain name is currently inactive. From the submissions provided by the Complainant, it appears that previously (at least on November 6, 2023) the disputed domain name resolved to a website displaying products for sale similar to those of the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to the Complainant's BAZARCHIC prior trademarks, domain names and company name, as it incorporates the word BAZARCHIC in its entirety with only an inversion of "bazar" and "chic" and the letters "le" as a prefix, that the Respondent has no legitimate interests in the disputed domain name, and in particular that the Respondent's use of the disputed domain name to resolve to a website displaying products for sale similar to those of the Complainant is inference of bad faith use and registration of the disputed domain name.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions, but sent a short informal email on December 7, 2023, affirming that she had "cancelled and given up the use of the disputed domain".

6. Discussion and Findings

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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

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 mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the inversion of "bazar" and "chic and the addition of the term "le" may have a bearing on the assessment of the second and third elements, the Panel finds these elements do not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available 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 such as those enumerated in the Policy or otherwise. Indeed, the Respondent's informal response appears to confirm her lack of any rights or legitimate interests 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.

In the present case, the Panel notes that the Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's trademark.

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.

In the present case, the Panel notes that the Respondent's failure to respond to the Complainant's cease-and-desist letter is further inference of bad faith use and registration of the disputed domain name.

In addition, the Respondent's failure to contest the Complainant's assertions made in this proceeding regarding its bad faith in registering and using the disputed domain name, combined with the assertion that it has cancelled and given up the use of the disputed domain name can be seen as an admission of bad faith use and registration of the disputed domain name.

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the current non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Based on the available record, the Panel finds that the Complainant has established 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 <lechicbazar.com> be transferred to the Complainant.

/Fabrizio Bedarida/

Fabrizio Bedarida

Sole Panelist

Date: December 22, 2023