

## **ADMINISTRATIVE PANEL DECISION**

Petit Bateau v. Monica G Davis

Case No. D2023-4997

### **1. The Parties**

The Complainant is Petit Bateau, France, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Monica G Davis, Holy See.

### **2. The Domain Name and Registrar**

The disputed domain name <petit-bateau.life> is registered with NameSilo, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 30, 2023. On November 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 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 (Redacted for Privacy, PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 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 December 4, 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 December 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 26, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 27, 2023.

The Center appointed Anna Carabelli as the sole panelist in this matter on January 2, 2024. 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 children's and underwear brand based in France. Founded in 1920, the Complainant has nearly 4,300 partner stores worldwide, including Europe, Japan, China, Middle East, Russia, and the United States of America ("United States").

The Complainant owns several trademark registrations for PETIT BATEAU, in several jurisdictions, including the following:

- European Union Trademark Registration No. 001923820 for PETIT BATEAU, registered on January 18, 2002, in classes 3, 25 and 38;
- United States of America Trademark Registration No. 1,156,475 for PETIT BATEAU, registered on June 2, 1981, in Class 25;
- United Kingdom Trademark Registration No. UK00000997544 for PETIT BATEAU, registered on August 25, 1972, in Class 25;
- International Trademark Registration No. 693468 for PETIT BATEAU, registered on June 8, 1998, in Class 3.

The Complainant operates also on the Internet, through its website "www.petit-bateau.com" which was launched in 2021, and according to "www.Similarweb.com" received an average of 54,800 visits between August and October 2023. The Complainant is also present on various social media platforms including Facebook and Instagram.

The disputed domain name was registered on October 13, 2023. As per the evidence submitted in the Complaint, the disputed domain name resolved to a website that copied the Complainant's official website by displaying the Complainant's copyrighted logo and purportedly offering for sale PETIT BATEAU branded products. Currently, the disputed domain name resolves to an inactive webpage displaying the notice "this site can't be reached".

#### **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 trademark PETIT BATEAU, since it consists of the Complainant's exact mark with the addition of a hyphen in between the terms of the trademark, which does nothing to avoid confusing similarity.
- The Respondent has no rights or legitimate interests in the disputed domain name since: (i) the Complainant has not authorized or somehow given consent to the Respondent to register and use the disputed domain name, (ii) the Respondent is not commonly known by the disputed domain name, and (iii) the Respondent's use of the disputed domain name is neither a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use. The Complainant contends that the Respondent's demonstrated purpose and use of the disputed domain name was to impersonate or suggest sponsorship or endorsement by the Complainant, and to confuse the public into believing that the Respondent's website was associated

with the Complainant in order to benefit from this confusion. Indeed, the disputed domain name previously resolved to a website that copied and attempted to duplicate the Complainant's official website by displaying the Complainant's copyrighted logo and offering for sale PETIT BATEAU branded products. Current non-use of the disputed domain name does not preclude a finding that the Respondent lacks any rights or legitimate interests in the disputed domain name.

- The disputed domain name was registered in bad faith. The Complainant's trademark PETIT BATEAU is known internationally, with trademark registration across numerous countries, and the Complainant has marketed and sold its goods and services using the trademark since at least 1920. By registering a domain name that fully incorporates the Complainant's trademark, the Respondent has demonstrated a knowledge of the Complainant's brand and business.
- The disputed domain name is being used in bad faith by the Respondent to intentionally create a false affiliation, and likelihood of confusion, with the Complainant and its mark. The fact that the Respondent's website is no longer active is of no moment since passive holding can constitute a factor in finding bad faith registration and use under the Policy.
- Further evidence of bad faith can be seen in that the Respondent had registered the disputed domain name by employing a privacy service, which is known to block or intentionally delay disclosure of the identity of actual underlying registrant.

Based on the above the Complainant requests the disputed domain name be transferred to the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs the panel to decide the complaint based on the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Under paragraph 4(a) of the Policy, the complainant must prove each of the following:

- (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.

Paragraph 4(b) of the Policy sets out four illustrative circumstances, which for the purposes of paragraph 4(a)(iii) of the Policy, shall be evidence of registration and use of a domain name in bad faith.

Paragraph 4(c) of the Policy sets out three illustrative circumstances any one of which, if proved by the respondent, shall be evidence of the respondent's rights to or legitimate interests in a disputed domain name for the purpose of paragraph 4(a)(ii) of the Policy above.

## **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 entirety of the PETIT BATEAU mark is reproduced 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.

The addition of a hyphen between the two terms “petit” and “bateau” which constitute the Complainant's mark, does not prevent a finding of confusing similarity for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The addition of the generic Top-Level Domain (“gTLD”) such as “.life” is typically viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1.

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.

According to the uncontested evidence submitted by the Complainant, the disputed domain name resolved to a website that copied the Complainant's official website by displaying the Complainant's copyrighted logo and purportedly offering for sale the Complainant's branded products. Such use increased the risk of implied affiliation found in the composition of the disputed domain name which is identical to the Complainant's official website “www.petit-bateau.com” and cannot constitute neither a *bona fide* use nor a legitimate noncommercial or fair use of 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. Such list of circumstances includes: “(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or

service on your website or location”.

In the present case, the Panel notes that by the time the Respondent registered the disputed domain name, the Complainant already had a reputation in its trademark, which is fully adopted in the disputed domain name. In the Panel’s view it is not conceivable that the Respondent did not have in mind the Complainant’s trademark when registering the disputed domain name. The evidence submitted by the Complainant indicates that the disputed domain name previously resolved to the Respondent’s website that copied the Complainant’s official website by displaying the Complainant’s copyrighted logo and purportedly offering for sale PETIT BATEAU branded products. This fact suggests that the Respondent clearly targeted the PETIT BATEAU mark with a deliberate intent to create an impression of an association with the Complainant and to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant’s trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s websites or of the services offered on the Respondent’s websites.

The current inactive status of the disputed domain name does not prevent a finding of bad faith, as found by many previous UDRP decisions under the doctrine of passive holding.

Having reviewed the available record, the Panel finds the current nonuse 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: (i) the Complainant’s trademark is distinctive and well established, (ii) the Respondent has failed to submit a response to the Complaint or provide any evidence of good-faith use, (iii) there is no conceivable good faith use to which the disputed domain name could be put by the Respondent, and (iv) it appears the Respondent provided false contact information, in light of the courier’s inability to deliver the Center’s written communication (the courier reporting that the related contact details were a “faulty address”).

Based on the above, the panel finds 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 <petit-bateau.life> be transferred to the Complainant.

*/Anna Carabelli/*

**Anna Carabelli**

Sole Panelist

Date: January 16, 2023