

ADMINISTRATIVE PANEL DECISION

Groupe Go Sport v. Liao Xinhe
Case No. D2024-0423

1. The Parties

The Complainant is Groupe Go Sport, France, represented by Nameshield, France.

The Respondent is Liao Xinhe, China.

2. The Domain Names and Registrar

The disputed domain names <modawanabee.com> and <soldeswanabee.com> are registered with Gname.com Pte. Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on January 30, 2024. On January 30, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On January 31, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names 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 January 31, 2024, 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 in English on January 31, 2024.

On January 31, 2024, the Center informed the Parties in Chinese and English, that the language of the Registration Agreements for the disputed domain names is Chinese. On January 31, 2024, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.


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 in English and Chinese of the Complaint, and the proceedings commenced on February 6, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 26, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 27, 2024.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on March 4, 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 company headquartered in France, founded in 1979, and specialized in the distribution of sporting goods. Over the years, the Complainant has developed into a leading sporting goods company. It grew in France and steadily developed in other countries, first in Poland, where GO Sport was launched in 1999, and then on all continents, with the rapid success of the master franchise and a leading position in the Middle East.

The Complainant owns an international portfolio of registered trademarks for its WANABEE mark, including, but not limited to European Union figurative trademark registration number 015194293 for , registered since March 8, 2016, and International Trademark Registration number 847286 for WANABEE (word mark), registered on March 18, 2005. The Complainant also has a strong online presence, including via its presence on social media platforms.

The disputed domain names were registered on November 16, 2022, and directed to websites in English and French, prominently featuring the Complainant's trademarks and hosting online stores purportedly selling WANABEE goods at discounted prices. However, on the date of this Decision, the disputed domain names direct to inactive websites.

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 names.

Notably, the Complainant contends that it is the owner of a number of registered trademarks consisting of WANABEE (in various combinations) and that it has a strong reputation for the products under this trademark. The Complainant asserts that the disputed domain names are confusingly similar to the abovementioned trademarks since they each incorporate such trademarks with the mere addition of generic terms and that the Respondent used the disputed domain names by offering counterfeit products through an online shop at discounted prices for commercial gain. The Complainant alleges that the Respondent has no rights or legitimate interests in the disputed domain names, which, it argues, were registered and are used in bad faith.

The Complainant requests the transfer of the disputed domain names.

B. Respondent

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

6. Discussion and Findings

I. Preliminary Issue: Language of the Proceeding

The language of the Registration Agreements for the disputed domain names is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that the English language is the language most widely used in international relations and is one of the working languages of the Center; the fact that the disputed domain names are formed by words in Roman characters (ASCII) and not in Chinese script; and the fact that in order to proceed in Chinese, the Complainant would have had to retain specialized translation services at a cost very likely to be higher than the overall cost of these proceedings.

The Respondent did not make any specific submissions with respect to the language of the proceeding.

The Panel takes note that the websites to which the disputed domain names resolved had some contents in English.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

II. Findings on the Merits

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

Although the addition of other terms here, respectively "soldes" (meaning "promotion" in French) and "moda" (meaning "fashion" in Spanish), may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names 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 disputed domain names.

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 domain names 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 names. 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 names such as those enumerated in the Policy or otherwise.

Moreover, upon review of the facts and evidence, the Panel notes that the Respondent has not provided any evidence of the use of, or demonstrable preparations to use, the disputed domain names in connection with a bona fide offering of goods or services. Instead, upon review of the facts and the evidence submitted in this proceeding, the Panel notes that the disputed domain names directed to active websites prominently displaying the Complainant’s trademarks and offered for sale products which were purported to be the Complainant’s products, thereby misleading consumers into believing that the Respondent is at least licensed by, or affiliated with the Complainant and/or its trademarks. The websites also did not display any accurate and prominent disclaimers regarding the lack of relationship between the Complainant and the Respondent. It is clear to the Panel from the foregoing elements that the Respondent could not be considered a good faith provider of goods or services under the disputed domain names, see also *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). Given the abovementioned elements, the Panel concludes that the Respondent’s use does not constitute a bona fide offering of goods or services, nor a legitimate noncommercial or fair use of the disputed domain names.

However, the Panel notes that on the date of this Decision, the disputed domain names direct to inactive webpages. In this regard, the Panel finds that holding domain names passively, without making any use of them, also does not confer any rights or legitimate interests in the disputed domain names on the Respondent in the circumstances of this case (see in this regard earlier UDRP decisions such as *Bollore SE v. 赵竹飞 (Zhao Zhu Fei)*, WIPO Case No. [D2020-0691](#); and *Vente-Privee.Com and Vente-Privee.com IP S.à.r.l. v. 崔郡 (jun cui)*, WIPO Case No. [D2021-1685](#)).

Finally, the Panel also finds that the nature of the disputed domain names, being confusingly similar to the Complainant’s trademarks and consisting of additional dictionary terms which seem to refer to the Complainant’s products, such as “soldes” (meaning “promotion” in French) and “moda” (meaning “fashion” in Spanish), carries a risk of implied affiliation and cannot constitute fair use, as it effectively impersonates the Complainant and its products or suggests sponsorship or endorsement by the Complainant (see [WIPO Overview 3.0](#), section 2.5.1).

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.

Given the longstanding trademark registration of the Complainant's prior registered trademarks, the Panel finds that the subsequent registration of the disputed domain names, which are confusingly similar to such marks, clearly and consciously targeted the Complainant's prior registered trademarks. The Panel therefore deducts from the Respondent's efforts to consciously target the Complainant's prior trademarks that the Respondent knew of the existence of the Complainant's trademarks at the time of registering the disputed domain names. This finding is confirmed by the fact that the websites linked to the disputed domain names displayed the Complainant's trademarks and purportedly offered for sale the Complainant's products, since this proves that the Respondent was fully aware of the Complainant's business and its prior trademarks. In the Panel's view, the foregoing elements clearly indicate bad faith on the part of the Respondent, and the Panel therefore finds that it has been demonstrated that the Respondent registered the disputed domain names in bad faith.

As to use of the disputed domain names in bad faith, the Complainant provides evidence that the disputed domain names directed to active websites which showed a clear intent on the part of the Respondent to create a likelihood confusion with the Complainant for commercial gain, and purportedly offering the Complainant's products for sale. The Panel concludes from these facts that the Respondent is intentionally attracting Internet users for commercial gain to such websites, by creating consumer confusion between the websites associated with the disputed domain names and the Complainant's trademarks. This constitutes direct evidence of the Respondent's bad faith under paragraph 4(b)(iv) of the Policy. The Panel therefore finds that it has been demonstrated that the Respondent has used, and is using the disputed domain names in bad faith.

However, the Panel notes that on the date of this Decision, the disputed domain names direct to inactive webpages. 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 non-use of the disputed domain names 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 the distinctiveness or reputation of the Complainant's trademarks, the composition and use made of the disputed domain names by the Respondent, and the unlikelihood of any future good faith use of the disputed domain names by the Respondent, and finds that in the circumstances of this case the passive holding of the disputed domain names does not prevent a finding of bad faith under the Policy.

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 names <modawanabee.com> and <soldeswanabee.com> be transferred to the Complainant.

/Deanna Wong Wai Man/

Deanna Wong Wai Man

Sole Panelist

Date: March 15, 2024