

ADMINISTRATIVE PANEL DECISION

Petit Bateau v. 于青青 (yu qing qing)

Case No. D2024-0458

1. The Parties

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

Respondent is 于青青 (yu qing qing), China.

2. The Domain Name and Registrar

The disputed domain name <petitbateau.online> (the “Domain Name”) is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on January 31, 2024. On January 31, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 1, 2024, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

On February 1, 2024, the Center informed the parties in Chinese and English, that the language of the registration agreement for the Domain Name is Chinese. February 1, 2024, Respondent requested that Chinese be the language of proceeding. On February 1, 2024, Complainant submitted an amended Complaint in English requesting English to be the language of the proceeding.

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 Respondent in English and Chinese of the Complaint, and the proceedings commenced on February 7, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 27, 2024. Respondent did not submit any formal response. Accordingly, the Center notified the commencement of panel appointment process on February 28, 2024.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on March 5, 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

Complainant is a children's clothing and underwear brand based in France. Officially founded in 1920, Complainant has traded under the Petit Bateau brand since 1893 when its first workshop was opened. In the 2000s, Complainant launched its adult collection. Today, Petit Bateau offers clothing and underwear internationally, with a presence in Europe, Japan, China, the Middle East, Russian Federation, and the United States of America ("United States"), where its products are sold in nearly 400 Petit Bateau shops, 4,300 partner stores and also on its e-commerce website launched in 2006. Complainant's sales in the European Union turned more than EUR 330 million in 2021.

Complainant owns registered trademarks for the PETIT BATEAU mark across various jurisdictions, including:

- United Kingdom registered trademark number UK00000997544 for the PETIT BATEAU word mark registered on August 25, 1972;
- International registered trademark number 693468 for the PETIT BATEAU word mark registered on June 8, 1998;
- European Union registered trademark number 001923820 for the PETIT BATEAU word mark registered on January 18, 2002;
- Chinese registered trademark number 1281083 for the PETIT BATEAU word mark registered on June 7, 1999, where Respondent is located; and
- United States registered trademark number 1156475 for the PETIT BATEAU word mark registered on June 2, 1981.

The Domain Name was registered on November 14, 2023 and at the time of the filing of the Complaint, the Domain Name redirected to a website where it is offered for sale. At the time of the Decision, the Domain Name resolves to an inactive or error page.

On January 16, 2024, Complainant sent a cease-and-desist letter by email to Respondent via the Registrar, to attempt to resolve the current matter. According to Complainant, no response was received. Complainant then proceeded to file the Complaint.

5. Parties' Contentions

A. Complainant

Complainant contends that (i) the Domain Name is identical or confusingly similar to Complainant's trademarks; (ii) Respondent has no rights or legitimate interests in the Domain Name; and (iii) Respondent registered and is using the Domain Name in bad faith.

In particular, Complainant contends that it has trademark registrations for PETIT BATEAU, and that Respondent registered and is using the Domain Name with the intention to confuse Internet users looking for bona fide and well-known PETIT BATEAU products and services.

Complainant notes that it has no affiliation with Respondent. Complainant further contends that Respondent is using the Domain Name as a tool to exploit Complainant's reputation for its own commercial gain, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Name other than trademark infringement. Further, Complainant contends that Respondent has acted in bad faith in acquiring and setting up the Domain Name, when Respondent clearly knew of Complainant's rights. In addition, Complainant notes that the Respondent has engaged in a bad faith pattern of "cybersquatting".

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

6.1. Preliminary Issue: Language of the Proceeding

The Rules, in paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement between the respondent and the registrar in relation to the disputed domain name, the language of the 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.

Complainant submitted its original Complaint in English. In its email dated February 1, 2024, and amended Complaint, Complainant submitted its request that the language of the proceeding should be English. According to the information received from the Registrar, the language of the Registration Agreement for the Domain Name is Chinese.

Complainant submits that it is unable to communicate in Chinese and the retention of a translator would add considerable costs to Complainant cause undue burden on Complainant and result in delay to the proceedings; that the Domain Name is comprised of Latin characters and redirected to an auction website in English; and that it had previously attempted to contact Respondent via the Registrar but Respondent chose to remain anonymous and did not respond.

Respondent requested for the proceedings to be conducted in Chinese, indicating that the applicable language for administering the proceedings is the official language used in China, where the Domain Name was registered.

In exercising its discretion to use a language other than that of the Registration Agreement for the Domain Name, 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.

The Panel accepts Complainant's submissions regarding the language of the proceeding. The Panel also notes that the Domain Name does not have any specific meaning in the Chinese language, was listed for sale on an English language webpage, and that the Domain Name contains Complainant's PETIT BATEAU trademark in its entirety and the generic Top-Level Domain ("gTLD") ".online" which is an English word, all of which indicate that Respondent has knowledge of English. The Panel further notes that the Center notified the Parties by email in Chinese and English of the language of the proceeding as well as notified Respondent by email in Chinese and English of the Complaint. Respondent chose not to file a Response in Chinese or English.

The Panel is also mindful of the need to ensure that the proceeding is conducted in a timely and cost-effective manner. Complainant may be unduly disadvantaged by having to translate the Complaint into Chinese and to conduct the proceeding in Chinese.

Having considered all the circumstances of this case, the Panel determines that English be the language of the proceeding.

6.2. Substantive Issues

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name was registered and is being used in bad faith.

Section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") states that failure to respond to the complainant's contentions would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true.

Thus, although in this case, Respondent has failed to respond to the Complaint, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence.

A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Complainant has provided evidence of its rights in the PETIT BATEAU trademarks, as noted above under section 4. Complainant has also submitted evidence which supports that the PETIT BATEAU trademarks are widely known and a distinctive identifier of Complainant's products and services. Complainant has therefore proven that it has the requisite rights in the PETIT BATEAU trademarks.

With Complainant's rights in the PETIT BATEAU trademarks established, the remaining question under the first element of the Policy is whether the Domain Name, typically disregarding the gTLD in which it is registered (in this case is, ".online"), is identical or confusingly similar to Complainant's trademark. See, e.g., *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#).

Here, the Domain Name is identical to Complainant's PETIT BATEAU trademarks. The use of Complainant's trademark in its entirety, with the absence of a space between "Petit" and "Bateau" in the Domain Name, for all practical purposes, renders the Domain Name identical to Complainant's PETIT BATEAU mark.

Thus, the Panel finds that Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make a prima facie showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes out such a prima facie showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with relevant evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

From the record in this case, it is evident that Respondent was, and is, aware of Complainant and its PETIT BATEAU trademarks, and does not have any rights or legitimate interests in the Domain Name. In addition, Complainant asserts that Respondent is not an authorized reseller and is not related to Complainant. Respondent is also not known to be associated with the PETIT BATEAU trademarks and there is no evidence showing that Respondent has been commonly known by the Domain Name.

In addition, Respondent has not used the Domain Name in connection with a bona fide offering of goods or services or a legitimate noncommercial or fair use. Rather, at the time of the filing of the Complaint, the Domain Name reverted to an English language webpage that offered the Domain Name for sale at “the full USD \$1,450” or “lease to own USD \$100/month”. At the time of the Decision, the Domain Name reverted to an error page. Such use does not constitute a bona fide offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Name. See, e.g., *Intesa Sanpaolo S.p.A. v. Charles Duke / Oneandone Private Registration*, WIPO Case No. [D2013-0875](#).

Furthermore, the Panel notes the composition of the Domain Name carries a high risk of implied affiliation with Complainant. [WIPO Overview 3.0](#), section 2.5.1.

Accordingly, Complainant has provided evidence supporting its prima facie claim that Respondent lacks any rights or legitimate interests in the Domain Name. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Name, reinforcing the notion that Respondent was not using the Domain Name in connection with a bona fide offering.

Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Name, and Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Respondent’s actions indicate that Respondent registered and is using the Domain Name in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, namely:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online 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.”

The Panel finds that Complainant has provided ample evidence to show that registration and use of the PETIT BATEAU trademarks long predate the registration of the Domain Name. Complainant is also well established and known. Indeed, the record shows that Complainant’s PETIT BATEAU trademarks and related products and services are widely known and recognized. In addition, the use of Complainant’s

trademark in its entirety in the Domain Name directly illustrates reliance by the Domain Name to Complainant's trademark, industry and business activities. Therefore, Respondent was aware of the PETIT BATEAU trademarks when it registered the Domain Name, knew, or should have known that the Domain Name was confusingly similar to Complainant's trademarks. See [WIPO Overview 3.0](#), section 3.2.2; see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

The Panel therefore finds that Respondent's awareness of Complainant's trademark rights at the time of registration suggests bad faith. See *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#); and *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#).

Further, the registration of the Domain Name incorporating Complainant's PETIT BATEAU trademark in its entirety, with the absence of a space between "Petit" and "Bateau", suggests Respondent's actual knowledge of Complainant's rights in the PETIT BATEAU trademarks at the time of registration of the Domain Name and its effort to opportunistically capitalize on the registration and use of the Domain Name.

Moreover, at the time of the filing of the Complaint, the Domain Name reverted to a webpage that offered the inherently misleading Domain Name for sale. Such use constitutes bad faith under paragraph 4(b)(i) of the Policy.

At the time of the Decision, the Domain Name resolves to an inactive or error page. Such use does not prevent a finding of bad faith. See [WIPO Overview 3.0](#), section 3.3. In addition, all these actions may result in tarnishing Complainant's reputation and good will in the industry.

Further, the Panel also notes the failure of Respondent to respond to the cease and desist letter, submit a Response or to provide any evidence of actual or contemplated good-faith use, Respondent's previous history of a pattern of cybersquatting, and the implausibility of any good-faith use to which the Domain Name may be put.

Accordingly, the Panel finds that Respondent registered and used the Domain Name in bad faith and Complainant succeeds under the third element of paragraph 4(a) 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 Domain Name <petitbateau.online> be transferred to Complainant.

/Kimberley Chen Nobles/

Kimberley Chen Nobles

Sole Panelist

Date: March 19, 2024