

ADMINISTRATIVE PANEL DECISION

BA&SH v. Stefan Beyer
Case No. D2024-2131

1. The Parties

The Complainant is BA&SH, France, represented by Cabinet Bouchara, France.

The Respondent is Stefan Beyer, Germany.

2. The Domain Name and Registrar

The disputed domain name <cheapbashonline.com> is registered with Web Commerce Communications Limited dba WebNic.cc (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 24, 2024. On May 24, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 24, 2024, 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 (Whoisprotection.cc) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 27, 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 on May 27, 2024.

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 May 30, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 19, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 21, 2024.

The Center appointed Geert Glas as the sole panelist in this matter on June 28, 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 has been active since 2003 in the field of design, manufacture, and distribution of ready-to-wear goods for women as well as fashion accessories. It appears that the sign BA&SH, which serves both as the Complainant's company name and its trademark (see below), consists of the first two letters of the names of its founders, Ms. Barbara Boccara and Ms. Sharon Krief.

Through its shops and its "www.ba-sh.com" website, the Complainant offers goods and services for sale to consumers.

The Complainant owns trademark registrations throughout the world which consist of the sign BA&SH and primarily covering goods from classes 3, 14, 18 and 25 and services from classes 35. These trademark registrations include:

- French trademark registration No. 3444110, filed and registered on August 1, 2006;
- European Union trademark registration No. 005679758, filed on January 30, 2007, and registered on February 10, 2012; and
- International trademark registration No. 1440828, filed and registered on May 7, 2018, designating amongst others China, the United States of America and Switzerland.

The Complainant also owns the domain name <ba-sh.com> which was registered in 2004. The Complainant's website to which this domain name redirects serves as its main e-commerce channel.

Previous UDRP panels have noted that the Complainant's BA&SH trademark is widely known as identifying the Complainant's activities (see *BA&SH v. Steven Braddy*, WIPO Case No. [D2019-1617](#)).

The disputed domain name was registered on March 1, 2023, and the Complainant has provided evidence showing that the disputed domain name resolves to a website purportedly offering for sale women clothing which features the Complainant's BA&SH logo in the left corner of each single page, including on the home page.

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 it enjoys absolute and exclusive rights to its BA&SH trademark registered in a large number of countries for clothing, fashion accessories and any other goods and services related to clothing.

According to the Complainant the disputed domain name reproduces in the same order and rank, all the letters of its BA&SH trademark surrounded by the descriptive terms "cheap" and "online". As to the ampersand sign "&", it is traditionally acknowledged that it is not a valid character in domain name registrations and as a result will be omitted, as is the case here, or spelled as out as "and". As its BA&SH trademark is readily recognizable and distinctive as incorporated in its entirety into the disputed domain name, it is confusingly similar to this BA&SH trademark.

The Complainant also contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name as the Respondent is not related in any way to the Complainant's business and did not request nor obtain any authorization to reproduce and imitate the Complainant's trademark within the disputed domain name.

The Complainant points out that the Respondent is using the disputed domain name to resolve to a website purportedly offering for sale clothing products. Such use, especially on a website displaying the Complainant's logo, can never confer rights or legitimate interests to the Respondent who could not have ignored the Complainant's BA&SH trademark when registering the disputed domain name in order to offer ready-to-wear products for sale, which is exactly the activity of the Complainant.

The Complainant contends that the disputed domain name was registered in bad faith as it was registered long after the Complainant obtained registered trademark rights in its BA&SH mark. As this mark is internationally well known amongst the relevant public, the Respondent could not have been unaware of the Complainant's activities and trademark. The fact that the disputed domain name combines the Complainant's trademark with the descriptive terms "cheap" and "online" clearly shows that the Respondent was well aware of the Complainant's activities and trademark when registering the disputed domain name in bad faith.

The Complainant finally contends that the Respondent also used the disputed domain name in bad faith as this domain name directs users to a commercial website which attempts to mislead Internet users into believing that it is associated with the Complainant, when it is not. The prominent display of the Complainant's BA&SH logo on each page of the Respondent's website further proves the fact that the Respondent has been using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

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 that 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 BA&SH trademark of the Complainant consists of five elements in the following order: the letter "B", the letter "A", an ampersand, the letter "S" and the letter "H". These four letters can be found in the same order in the disputed domain name. As to the ampersand in the BA&SH trademark of the Complainant, it should be noted that an ampersand is not a valid character in domain name registrations. When converting a trademark which contains an ampersand in a domain name, the ampersand is either deleted or replaced by the letters "and" or by a hyphen.

As a result, the Panel is of the opinion that the Complainant's 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 addition of other terms, here “cheap” and “online”, 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 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.

There is indeed no evidence whatsoever of the Respondent using the disputed domain name with a bona fide offering of goods or services, the Respondent being commonly known by the disputed domain name, the Respondent being related to the Complainant’s business or somehow authorised by the Complainant to use the disputed domain name or the Respondent making a legitimate noncommercial or fair use of the disputed domain name.

To the contrary, as the Complainant has provided evidence showing that the disputed domain name resolves to a website purportedly offering for sale women clothing which features the Complainant’s BA&SH logo in the left corner of each single page, including on the home page. Such use does not constitute a bona fide offering of services, nor can it confer rights or legitimate interests on the Respondent.

Moreover, the mere presence in the disputed domain name of the terms “cheap” and “online, carries a risk of implied affiliation with the Complainant as the terms give the idea that the disputed domain name refers to a website where Complainant’s products can be purchased online at a discounted price, and as a result it is difficult to see how the Respondent could put the disputed domain name to a fair or legitimate noncommercial use, even in the absence of the use of the Complainant’s BA&SH logo on the website. [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.

As to the registration of the disputed domain name, it should be noted that panels have consistently found

that the mere registration of a domain name which is confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4.

This is clearly the case here, as BA&SH had become a widely-known trademark by the time the disputed domain name was registered by the Respondent. As a result, the Respondent must have had knowledge of the BA&SH trademark when registering the disputed domain name.

Moreover, it cannot be envisaged how the disputed domain name in which the trademark of the Complainant is surrounded by the terms “cheap” and “online” could be put to any bona fide use by an entity which is unrelated to the Complainant. To the contrary, the nature and meaning of these added terms “cheap” and “online” illustrate the intention of the Respondent, already when registering the disputed domain name, to create an impression of affiliation or at least a likelihood of confusion with the Complainant which is well-known for selling ready-to-wear clothes for women. The fact that “BA&SH” is a coined term which consists of the first two letters of the names of its founders, Ms. **Barbara** Boccara and Ms. **Sharon** Krief corroborates this point that the disputed domain name was registered with the Complainant in mind.

Based on the available record, the Panel finds that the disputed domain name has been registered in bad faith.

According to paragraph 4(b)(iv) of the Policy, the following circumstance, if found to be present, shall constitute evidence of the use of a domain name in bad faith: “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”.

In the present case, the disputed domain name which is confusingly similar to the Complainant’s BA&SH mark, resolves to a website purportedly offering for sale women clothing and featuring the Complainant’s BA&SH logo in the left corner of each single page, including on the home page. As a result, the disputed domain name seeks to attract Internet users to a commercial website which offers goods and services in direct competition with the Complainant.

This use clearly constitutes an intentional attempt to attract, for commercial gain, Internet users to the Respondent’s website by creating a likelihood of confusion with the Complainant’s BA&SH mark as to the source, affiliation, or endorsement of the Respondent’s website to which the disputed domain name resolves.

Moreover, the Respondent did not file a response to the Complaint by which these proceedings were initiated. By doing so, the Respondent failed to seize an opportunity it could have used to provide any justification for its use of the disputed domain name.

As a result, and based on the available record, the Panel finds that the Respondent’s registration and use of the disputed domain name constitute bad faith under the Policy and that the third element of the Policy has been established.

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 <cheapbashonline.com> be transferred to the Complainant.

/Geert Glas/

Geert Glas

Sole Panelist

Date: July 12, 2024