

ADMINISTRATIVE PANEL DECISION

Aubert International v. Zhang Ruijie
Case No. D2024-3367

1. The Parties

The Complainant is Aubert International, France, represented by CASALONGA, France.

The Respondent is Zhang Ruijie, China.

2. The Domain Name and Registrar

The disputed domain name <formulababysoldes.com> is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 16, 2024. On August 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 16, 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 (Domain Protection Services, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 22, 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 August 22, 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 August 28, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 17, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 24, 2024.

The Center appointed Gill Mansfield as the sole panelist in this matter on September 30, 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 simplified joint-stock company under French law with a registered office in Cernay, France. It has 160 stores across France, Belgium, and Switzerland, and promotes its products and activities through its main website “www.aubert.com” offering products for children including strollers, car seats, cots, nursing equipment, changing bags, car and travel accessories and maternity wear. It markets and sells products under several trademarks including AUBERT, FORMULA BABY, P’TIT BISOU, and MAÏKA. The Complainant offers a range of childcare products under the trademark FORMULA BABY at more affordable prices.

The Complainant’s trademarks for FORMULA BABY include the following:

- European Union trademark registration number 004021002 for FORMULA BABY (word mark) registered on February 6, 2009, in classes 3, 5, 10, 12, 20, 21, 24, 25 and 28;
- European Union trademark registration number 010657476 for FORMULA BABY (figurative mark) registered on November 17, 2012, in classes 3, 5, 10, 12, 18, 20, 21, 24, 25 and 28;

The Complainant operates a retail website for its FORMULA BABY range at “www.formulababy.com” and has registered numerous domain names composed of the FORMULA BABY trademark, including (inter alia): <formulababy.com> registered December 20, 2005, <formula-baby.com> registered December 20, 2005, <formulababy.fr> registered December 21, 2005, and <formulababy.eu> registered August 25, 2006.

The disputed domain name was registered on November 4, 2022, and resolves to a website that is a close reproduction of the Complainant’s own FORMULA BABY website, using the stylised version of the Complainant’s figurative EU mark (above) on the home page and offering for sale childcare related products bearing the FORMULA BABY trademark.

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 asserts that the disputed domain name is identical or confusingly similar to the Complainant’s trademarks. Firstly, the entirety of the Complainant’s FORMULA BABY trademark is reproduced in the disputed domain name. Further, the addition of the word “soldes” (which the Complainant states designates a discount period) is not sufficient to prevent any likelihood of confusion, indeed it is likely to increase the likelihood of confusion. It contends that the addition of the word “soldes” would lead Internet users to believe that the disputed domain name is an official website owned by the Complainant, or by a person or company linked to the Complainant and dedicated to selling its products at reduced prices.

The Complainant states that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has no relationship with the Complainant and that no licence, permission or authorization to use the words “formula baby” has ever been granted to the Respondent by the Complainant. The Complainant states that it has never consented to the Respondent’s use of its trademarks in any manner including in connection with the disputed domain name. The Complainant further contends that the fact that the disputed domain name redirects to a reproduction of its own website and is selling counterfeit or unauthorised products is an illegal activity which can never confer rights or legitimate interests on the Respondent. It re-iterates that such use is likely to increase the likelihood of confusion amongst Internet users. The Complainant contends that the disputed domain name misleadingly diverts customers searching for the Complainant’s products under the FORMULA BABY brand to a counterfeit website. The Complainant asserts that such a use by the Respondent cannot constitute a bona fide offering of goods and services, or legitimate noncommercial or fair use. It also states that the Respondent is not commonly known by the disputed domain name.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. The Complainant refers to the fact that its trademarks were used extensively for childcare products long before the disputed domain name was registered by the Respondent. The Complainant's trademarks are registered in many countries and the Complainant contends that there is no doubt that the Respondent knew of the Complainant and its trademarks given that the disputed domain name redirects to a reproduction of the Complainant's website. It further contends that Internet users are directed to a "fake" website which uses images of the Complainant's products, its layout, photography and trademarks to redirect traffic from the Complainant's website and that Internet users may believe that the website at the disputed domain name is the Complainant's official website. The Complainant also refers to the fact that the website at the disputed domain name uses false information to seek to obtain personal and financial information from Internet users.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy the Complainant carries the burden of proving:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights, and
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and
- (iii) that 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.

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 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 (in this case the addition of the term "soldes") may bear on assessment of the second and third elements, the Panel finds the addition of such term 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.

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.

In particular, the Respondent has no relationship to the Complainant, and the Respondent has not been granted any licence, permission, authorization or consent by the Complainant to use its trademarks in any manner including in connection with the registration and use of the disputed domain name. There is also no evidence that the Respondent used, or planned to use, the disputed domain name in connection with a bona fide offering of goods and services, or that there was any legitimate noncommercial or fair use of the disputed domain name. In fact, and as noted below, the record shows that the contrary to be true. It is also clear from the record that the Respondent is not commonly known by the disputed domain name.

The Panel notes that the Respondent has added the word "soldes" (which translates from French into English as "sale" or a period where products are sold at reduced or discounted prices) after the registered trademark of the Complainant. This gives the impression that the disputed domain name is an official website of the Complainant, or linked to, or affiliated with, the Complainant and dedicated to selling the Complainant's products at reduced prices.

The construction of the disputed domain name is such that it carries a risk of implied affiliation that cannot constitute fair use.

Further, the record shows that at the time of the Complaint the disputed domain name resolved to a website that prominently displays the Complainant's trademarked FORMULA BABY logo, mimics the design of the Complainant's website, uses much of the same photographic content and imagery as the Complainant's website, and offers for sale childcare related products that feature the trademarks of the Complainant. It is a copycat website which seeks to impersonate the Complainant's legitimate website. At the time that this administrative decision was finalised the disputed domain name still resolved to the same copycat website.

Panels have held that the use of a domain name for illegal activity, such as the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Having reviewed the available record, the Panel finds that the Respondent's use of the disputed domain name to impersonate the website of the Complainant and to offer for sale to consumers unauthorised or possibly counterfeit goods which carry the Complainant's trademarks, whilst also seeking to obtain sensitive personal and financial information, cannot be characterized as a bona fide offering of goods and services. It constitutes illegal activity and cannot confer rights or legitimate interests on the Respondent.

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 Complainant's FORMULA BABY trademark had been used in relation to childcare related products for many years before the Respondent registered the disputed domain name.

Having reviewed the available record, the Panel finds that the Respondent's conduct demonstrates the Respondent's knowledge of the Complainant and the Complainant's brand and trademark. Firstly, in registering a domain name which includes the Complainant's FORMULA BABY trademark in its entirety with the addition of the descriptive term "soldes" (meaning "sale") a term which denotes a commercial activity which is within the Complainant's field of activity. Secondly, by then using the disputed domain name to mimic the Complainant's website and purporting to offer for sale childcare related products bearing the Complainant's trademark (including the Complainant's exact figurative trademark) and using images and descriptions of those products which appear to be taken from the Complainant's own website, and thereby impersonating the Complainant. This demonstrates that the Respondent knew of and specifically targeted the Complainant and its FORMULA BABY trademark.

As noted above, the disputed domain name resolves to a copycat site that uses the logos, layout, colours, photography and registered trademarks of the Complainant. The Panel finds that this website was intended to impersonate the Complainant. It offers for sale childcare related products bearing the Complainant's trademarks which are unauthorized or possibly counterfeit and seeks to obtain sensitive personal and financial information from Internet users. Given that the details of the head office and location provided on the website at the disputed domain name are (based on the undisputed evidence provided by the Complainant) false, the Panel is also prepared to infer the likelihood of fraudulent activity on the part of the Respondent.

Consequently, the Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's website and products on the Respondent's website under Paragraph 4(b) of the Policy.

Further, Panels have held that the use of a domain name for illegal activity (e.g., and as here, sale of counterfeit goods, impersonation/passing off, and other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes 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 name <formulababysoldes.com> be transferred to the Complainant.

/Gill Mansfield/

Gill Mansfield

Sole Panelist

Date: October 14, 2024