

ADMINISTRATIVE PANEL DECISION

The Procter & Gamble Company, Braun GmbH v. 杨冰蓝(ZHENPING ZHU)
Case No. D2024-3475

1. The Parties

The Complainants are The Procter & Gamble Company, United States of America, and Braun GmbH, Germany, represented by Studio Barbero S.p.A., Italy.

The Respondent is 杨冰蓝 (ZHENPING ZHU), China.

2. The Domain Name and Registrar

The disputed domain name <brauneu.com> is registered with West263 International Limited (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on August 26, 2024. On August 27, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 29, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainants on September 10, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amendment to the Complaint in English on September 11, 2024.

On September 10, 2024, the Center informed the parties in Chinese and English, that the language of the registration agreement for the disputed domain name is Chinese. On September 11, 2024, the Complainants confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainants' submission.

The Center verified that the Complaint together with the amendment to the 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 in English and Chinese, and the proceedings commenced on September 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 6, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 7, 2024.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on October 8, 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 Proctor and Gamble company (the "First Complainant") is a well-known manufacturer of a wide range of consumer goods. Braun GmbH (the "Second Complainant") has since 2005 been a subsidiary and member of the Proctor & Gamble group of companies. The Second Complainant, which has been operating since the 1920's, produces a range of small household appliances with a particular current focus on business segments concerned with electronic appliances for personal grooming. The Second Complainant's business operates worldwide and is very substantial. The Complainants operate within an extensive sales network consisting of about 100,000 employees in over 180 countries and through their distribution channels, BRAUN-branded products are distributed worldwide, including in China.

The Second Complainant owns numerous trademark registrations worldwide for the BRAUN trademark, including, but not limited to the following registered trademarks: BRAUN (word mark) International Trademark Registration No. 652027 of November 14, 1995; BRAUN (word mark) European Union Trade Mark No. 000394122 of August 17, 1999; and BRAUN (Stylized word mark) Chinese Trademark Registration No. G563469 of June 9, 1990. The primary domain name for BRAUN products is at <braun.com>.

The disputed domain name was registered by the Respondent on January 9, 2024. According to the Complainants' evidence, the disputed domain name first directed to a website reproducing the look and feel of the Complainants' BRAUN official web portal, displaying BRAUN trademarks and products visuals and purportedly offering for sale BRAUN products at discounted prices. Subsequently, after the Complainants obtained the suspension of the disputed domain name, the disputed domain name has directed to an inactive website.

The Complainants also provide evidence that it sent cease-and-desist letters concerning the disputed domain name but did not receive any answer to those letters.

5. Parties' Contentions

A. Complainant

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainants contend that the Second Complainant is the owner of a number of registered trademarks consisting of BRAUN (word marks and logo marks) and that it has a strong reputation for the products under this trademark. The Complainants assert that the disputed domain name is confusingly similar to the abovementioned trademarks since it incorporates such marks in their entirety, adding only the geographical term "eu". The Complainants essentially contend that the Respondent has linked the disputed domain name to an imposter website using its trademarks and products visuals and offering for sale BRAUN products at discounted prices, and that the Respondent is impersonating the Complainants for undue commercial gain. As regards the offer for sale of BRAUN products on Respondent's website, the

Complainants highlight that, irrespective of the nature of said items, no fair use could be possibly invoked in the present case by the Respondent, since it has undoubtedly failed to accurately and prominently disclose its lack of relationship with the Complainants, thus generating a clear likelihood of confusion amongst Internet users. The Complainants essentially allege that the Respondent has no rights or legitimate interests in the disputed domain name, and that such use made of the disputed domain name does not confer any rights or legitimate interests and that it proves that the Respondent is using it in bad faith.

Accordingly, the Complainants requests the transfer of the disputed domain name to the First Complainant.

B. Respondent

The Respondent did not reply to the Complainants' contentions.

6. Discussion and Findings

6.1 First Preliminary Issue: Consolidation of Complainants

The First and Second Complainants submit that they are part of the same corporate group and are therefore affiliates for the purposes of bringing a consolidated administrative proceeding. Panels have generally found under the Policy (see section 1.4 of the [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition](#) ("[WIPO Overview 3.0](#)") that a trademark owner's affiliate company is considered also to have rights for the purposes of standing to file a complaint.

In this case, the Panel notes that the First and Second Complainants are members of the same corporate group, with the First Complainant owning domain name rights and the Second Complainant owning registered trademark rights as set out above. The Panel finds that it is appropriate for the Complaint filed by the First and Second Complainants to be consolidated in these proceedings, in circumstances that they are members of the same corporate group, that they clearly have a common grievance against the Respondent, and that it is procedurally efficient to consolidate their Complaint into a single proceeding. The Panel therefore grants the request for consolidation of the Complainants and shall hereafter refer to the Complainants jointly as "the Complainant".

6.2 Second Preliminary Issue: Language of the Proceeding

The language of the Registration Agreement for the disputed domain name 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 disputed domain name, before it was suspended, directed to a webpage which contained text in English, French, and Italian, but no Chinese; the fact that the disputed domain name is formed by words in Latin characters (ASCII) and not in Chinese script; and the fact that the Respondent secured the disputed domain name in the TLD ".com", which allegedly reveals the Respondent's intention to target an audience of English-speaking users.

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

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 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.

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 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 that the Complainant's mark BRAUN is clearly recognizable within the disputed domain name, since the disputed domain name fully incorporates this mark. Accordingly, the disputed domain name is confusingly similar to these marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of another term, here "eu", 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.

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 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 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.

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 name 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 name directed to an active website which shows a clear intent on the part of the Respondent to misleadingly pass it off as the Complainant's website for commercial gain. In fact, said website prominently displayed the Complainant's trademarks and products visuals and purportedly offered for sale BRAUN products at discounted prices, thereby misleading consumers into believing that the Respondent is at least licensed by, or affiliated with the Complainant and/or its trademarks. The Panel also notes that there was no accurate disclaimer present on such website, instead a misleading copyright notice "© 2023 Procter & Gamble" was even placed on the website. Moreover, even if the products were legitimate products, it is clear to the Panel from the foregoing elements that the Respondent was not acting as a good faith provider of goods or services under the disputed domain

name, 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 name.

Finally, the Panel finds that the nature of the disputed domain name, being confusingly similar to the Complainant's trademarks and containing the common geographical term "eu", 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.

In the present case, the Panel notes that the Respondent has registered a domain name which is confusingly similar to the Complainant's well known, intensely used, and distinctive trademarks (see in this regard also previous decisions under the Policy such as *The Procter & Gamble Company and Braun GmbH v. YongHoon Lee, SoftTech*, WIPO Case No. [D2020-2890](#)). The Panel deduces from this fact that by registering the disputed domain name, the Respondent deliberately and consciously targeted the Complainant's prior trademarks for BRAUN. The Panel finds that this creates a presumption of bad faith. In this regard, the Panel refers to the [WIPO Overview 3.0](#), section 3.1.4, which states "[p]anels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith." The Panel also notes that the Complainant's trademarks in this case predate the registration date of the disputed domain name by several years, and that the Respondent could not have been reasonably unaware of them. Furthermore, the Panel notes that even a cursory Internet search at the time of registration of the disputed domain name would have made it clear to the Respondent that the Complainant owned prior rights in its trademarks for BRAUN. In the Panel's view, the above 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 name in bad faith.

As to use of the disputed domain name in bad faith, the Complainant provides evidence that the disputed domain name directed to an active website which showed a clear intent on the part of the Respondent to misleadingly pass it off as the Complainant's website, displaying the Complainant's trademarks and products visuals and purportedly offering for sale BRAUN products at discounted prices. The Panel concludes from these facts that the Respondent was intentionally attracting Internet users for commercial gain to such website, by creating consumer confusion between the website associated with the disputed domain name and the Complainant's trademarks. This constitutes direct evidence of the Respondent's bad faith under paragraph 4(b)(iv) of the Policy.

Moreover, noting that the disputed domain name currently directs to an inactive website, the Panel notes that 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, [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the well-known nature, distinctiveness, and intensive use of the Complainant's trademark; the previous bad faith use of the disputed domain name; the failure of the Respondent to submit a response and the Respondent's lack of response to the Complainant's cease-and-desist letters; and the unlikelihood of any good faith use of the disputed domain name by the Respondent, considering the composition of the disputed domain name. Based on the above elements, 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.

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 <brauneu.com> be transferred to the First Complainant, The Proctor and Gamble Company.

/Deanna Wong Wai Man/

Deanna Wong Wai Man

Sole Panelist

Date: October 16, 2024