

## ADMINISTRATIVE PANEL DECISION

Bobo Choses, S.L. v. 蔡金煌 (jinhuang cai)  
Case No. D2024-3966

### 1. The Parties

The Complainant is Bobo Choses, S.L., Spain, represented by March Trade Mark, S.L., Spain.

The Respondent is 蔡金煌 (Jinhuang Cai), China.

### 2. The Domain Name and Registrar

The disputed domain name <bobochooses-eu.com> is registered with Cloud Yuqu LLC (the “Registrar”).

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on September 27, 2024. On September 27, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 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 (UNKNOWN REGSITRANT) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 7, 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 the same day.

On October 7, 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 the same day, 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 Chinese and English of the Complaint, and the proceedings commenced on October 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 5, 2024.

The Center appointed Tao Sun as the sole panelist in this matter on November 7, 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 Spanish clothing company founded in 2008. It commercialize the cloths for kids and recently also for adults.

The Complainant owns, among others, the following registered trademarks:

- (i) The European Union registration No. 005871348 BOBO CHOSSES in classes 14, 16, 25, 26, 27, and 28, registered on February 29, 2008;
- (ii) The International registration No. 1003043 BOBO CHOSSES in class 25, registered on March 6, 2009, designating Japan, Singapore, Australia, United States of America and Republic of Korea; and
- (iii) The Chinese registration No. 13072200 BOBO CHOSSES and device in class 25, registered on February 28, 2016.

The Complainant registered the domain name <bobochoses.com> and uses it to offer its products. On the website, the BOBO CHOSSES trademarks and the goods offered under these trademarks are displayed.

The disputed domain name was registered on September 22, 2024. According to the evidence submitted by the Complainant, the BOBO CHOSSES trademark is prominently displayed in the header of webpages of the disputed domain name on which the products of clothes are offered for sale. There is also a copyright statement "Copyright © 2024 Bobo Choses Descuentos," in which "Descuentos" is a Spanish word meaning "discounts".

The Respondent is reportedly a Chinese individual.

#### **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 Complainants contend that:

- (i) Both the Complainant's trademarks and the disputed domain name contain the essential and distinctive element Bobo Choses. The difference added by the disputed domain name "eu" does not add any distinctiveness because it refers to the initials of the European Union. Therefore, the disputed domain name is identical or at least highly similar to the trademarks owned by the Complainant.
- (ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has conducted correspondent searches in several major databases without obtaining any result linking the Respondent with the trademark BOBO CHOSSES. The disputed domain name is directed to a site

that is nearly identical to the Complainant's official website, using copyrighted images owned by the Complainant. It is evident that the object of the Respondent is to take unfair advantage of the reputation acquired by the Complainant in the market, which does not fall into bona fide use of the disputed domain name.

(iii) The disputed domain name was registered and is being used in bad faith. The disputed domain name is identical to the earlier trademark BOBO CHOSSES of the Complainant. The images and pieces of BOBO CHOSSES branded clothes are used on the website. More seriously, although the website provides the route to purchase the goods and to make the payment, the products purchased are never delivered. In any case, it is more than proved that the disputed domain name was registered and is in being used in bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1 Preliminary Issues: 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:

- (i) the Complainant's working languages are Spain and English. The processing in Chinese will "cause defenselessness".
- (ii) the Respondent is offering their products via the disputed domain name in the European Union therefore, the language of the proceeding must be that of the disputed region where the products are marketed.
- (iii) the bad faith of the Respondent in the application can be presumed from current evidence and therefore it would be totally unfair for the proceeding to be conducted in the language of the bad faith Respondent, which is not understandable to the Complainant.

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, and although the Center sent the emails in Chinese and English regarding the language of the proceeding and notification of the Complaint, the Respondent did not make any comments on the language of the proceeding, and did not file any response, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

## 6.2 Substantive Issues

### 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.

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 disputed domain name incorporates the Complainant's BOBO CHOSSES trademarks in their entirety and therefore should be considered confusingly similar with the Complainant's trademarks for purpose of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other term "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.

Therefore, 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.

The Complainant has conducted search through certain databases without any result linking the Respondent with the BOBO CHOSSES trademark or the disputed domain name. The disputed domain name is resolved to a website purportedly offering for sale similar products with BOBO CHOSSES trademarks prominently displayed in the headers of the webpages. The copyright statement of the website also suggest it is a discount online store of BOBO CHOSSES products. The Complainant alleges that the products sold on the website are not manufactured by the Complainant, and although the website allows purchase of the products, the products have never been delivered. The Complainant does not provide any evidence to support its assertions. However, even if the products sold on the Respondent's website are genuine, it still fails to pass the Oki Data Test as the site does not accurately and prominently disclose the Respondent's relationship with the Complainant. [WIPO Overview 3.0](#), section 2.8. Moreover, the composition of the disputed domain name carries a risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

The Panel therefore 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 Complainant's BOBO CHOSSES trademark is inherently distinctive and has been registered and used by the Complainant since 2008. The disputed domain name contains BOBO CHOSSES trademark in its entirety with the addition of "eu", which can easily be understood to represent European Union. Therefore, the composition of the disputed domain name may mislead general consumers into thinking it relates to the Complainant. In addition, considering the use of the Complainant's BOBO CHOSSES trademark in the headers of the webpages at the disputed domain name, the Panel finds that the Respondent knew of the Complainant and registered the disputed domain name in bad faith.

Furthermore, the disputed domain name is resolved to a website in Spanish where the products of clothes are offered for sale, and there is a copyright statement "Copyright © 2024 Bobo Choses Descuentos", in which "Descuentos" is a Spanish word meaning "discounts", implying that the website is an online discount store of the Complainant's BOBO CHOSSES branded products. Considering all these facts, the Panel is convinced that the Respondent was aware of the Complainant and intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and therefore is using the disputed domain name in bad faith.

The Respondent's failure to file any formal response also supports a finding of bad faith.

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 <bobochooses-eu.com> be transferred to the Complainant.

*/Tao Sun/*

**Tao Sun**

Sole Panelist

Date: November 21, 2024