

## **ADMINISTRATIVE PANEL DECISION**

Petit Bateau v. Host Master, Transure Enterprise Ltd  
Case No. DCO2024-0009

### **1. The Parties**

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

The Respondent is Host Master, Transure Enterprise Ltd, United States of America (“United States”).

### **2. The Domain Name and Registrar**

The disputed domain name <petitbateauonline.co> is registered with Above.com, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed 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 disputed domain name. On February 8, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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, and the proceedings commenced on February 9, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 29, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 1, 2024.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on March 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 French company officially founded in 1920. It has traded under the PETIT BATEAU trademark since at least 1893 when its first workshop was opened. A pioneer of modern-day clothing and underwear, the Complainant introduced underpants without legs and buttons replacing the rough wool by white unbleached cotton, having received, in 1937, the “Grand Prix of Innovation” at the Universal Exhibition of Paris.

Initially known for its children's brand, the Complainant became trans-generational in the 2000s with the launch of its adult collection. Today, the Complainant is present in Europe, Japan, China, the Middle East, Russia Federation and the United States, being its products sold in nearly 400 Petit Bateau shops, 4,300 partner stores as well as on its e-commerce website available at “www.petit-bateau.com” and launched in 2006. The Complainant’s sales in the European Union turned more than EUR 330 million in 2021.

The Complainant is the owner of the following, amongst other, trademark registrations:

- United States trademark registration No. 1156475 for the word mark PETIT BATEAU, registered on June 2, 1981, in class 25;
- International trademark registration No. 693468 for the word mark PETIT BATEAU, registered on June 8, 1998, in class 3; and
- European Union trademark registration No. 001923820 for the word mark PETIT BATEAU, registered on January 18, 2002, in classes 3, 25, and 38.

The disputed domain name was registered on October 17, 2023, and presently resolves to a parked webpage displaying pay-per-click (“PPC”) links related to the Complainant’s activities.

#### **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 its PETIT BATEAU trademark is well recognized and respected worldwide, and a leader in its industry.

Under the Complainant’s view, the disputed domain name entirely reproduces the Complainant’s well-known PETIT BATEAU trademark with the addition of the term “online” which does not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s trademark under the first element of the Policy.

Regarding the absence of the Respondent’s rights or legitimate interests, the Complainant argues that:

- i) the Respondent is not sponsored by or affiliated with the Complainant in any way; nor has the Complainant given the Respondent permission to use the Complainant’s trademarks in any manner, including in domain names, also not having the Complainant licensed, authorized, or permitted the Respondent to register domain names incorporating the Complainant’s trademark;
- ii) the Respondent is not commonly known by the disputed domain name and has not acquired any trademark rights in the disputed domain name;
- iii) the Respondent is using the disputed domain name to direct Internet users to a website featuring links to third-party websites, some of which directly compete with the Complainant’s business; and

iv) the disputed domain name carries a high risk of implied affiliation with the Complainant which cannot be considered a fair use of the disputed domain name.

As to the registration and use of the disputed domain name in bad faith, the Complainant asserts that its PETIT BATEAU trademark is well-known internationally, being the sponsored links to third party competing businesses available at the disputed domain name a clear indicative that the Respondent's purpose in registering and using the disputed domain name was to intentionally attempt to attract Internet users seeking the Complainant's branded products to its own website for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of their websites and the goods offered and promoted on said website, according to paragraph 4(b)(iv) of the Policy.

Furthermore, two other factors indicate the Respondent's bad faith: the Respondent has previously been involved in a number of cases (Annex 8 to the Complaint) which provides evidence of a pattern of bad faith conduct and the Respondent has ignored the Complainant's attempts to resolve this disputed outside of this administrative proceeding (Annex 9 to the Complaint).

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

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

The Complainant must prove in this administrative proceeding that each of the aforementioned three elements is present in order to obtain the transfer of the disputed domain name.

In accordance with paragraph 14(a) of the Rules, if the Respondent does not submit a Response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

### **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 "online") 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.

In that sense, and according to the evidence submitted, the Complainant has made a prime facie case against the Respondent who has not been commonly known by the disputed domain name and is neither licensed or authorized by the Complainant to use the Complainant’s trademark.

In addition, the composition of the disputed domain name, reproducing the Complainant’s mark added by the term “online” carries a risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#)3.0, section 2.5.1.

Also, the lack of evidence as to any trademarks registered by the Respondent corresponding to the disputed domain name, corroborates the indication of an absence of rights or legitimate interests in the disputed domain name.

Moreover, according to the evidence submitted by the Complainant, the use made of the disputed domain name in connection with a parked webpage displaying sponsored links to competing third-party websites, clearly does not constitute a bona fide offering of goods or services, nor a legitimate noncommercial or fair use of the disputed domain name in these circumstances. [WIPO Overview 3.0](#), section 2.9.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name.

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.

The Policy indicates in paragraph 4(b)(iv) that bad faith registration and use can be found in respect of a disputed domain name, where a respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent’s website or other online location, by creating a likelihood of confusion with a complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

In this case, both the registration and use of the disputed domain name in bad faith can be found pursuant to Policy, paragraph 4(b)(iv), in view of the PPC links to competing websites available at the webpage that resolves from the disputed domain name to take unfair advantage of the Complainant’s trademark for commercial gain.

Moreover, in these circumstances, bad faith of the Respondent is also supported here by (i) the lack of reply by the Respondent invoking any rights or legitimate interests; (ii) the Respondent's lack of reply to the cease-and-desist letter sent prior to this proceeding and (iii) to the Respondent's pattern of bad faith conduct as seen by the numerous UDRP decisions that found the Respondent guilty of cybersquatting.

For the reasons above, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith pursuant to paragraph 4(b)(iv) of the Policy. The third element of the Policy has therefore been met.

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 <petitbateauonline.co> be transferred to the Complainant.

*/Wilson Pinheiro Jabur/*

**Wilson Pinheiro Jabur**

Sole Panelist

Date: March 21, 2024