Decision for dispute CAC-UDRP-103005

Case number	CAC-UDRP-103005
Time of filing	2020-04-07 11:32:58
Domain names	bonduellle.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	Bonduelle

Complainant representative

Organization	IPTWINS

Respondent

Name	Pan Huang

OTHER LEGAL PROCEEDINGS

The Panel is not aware of other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant owns more than 350 trademark rights for the term “BONDUELLE” which include the following:

- International trademark BONDUELLE No. 988467, registered on November 27, 2008, duly renewed and designating goods in international classes 29, 30 and 31;

- International trademark BONDUELLE No. 636442, registered on May 23, 1995, duly renewed and designating goods in international classes 29, 30 and 31; and

- International trademark BONDUELLE No. 654609, registered on March 29, 1996, duly renewed and designating goods in international classes 29, 30 and 31.

The three trademark registrations above designate China.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant, Bonduelle is a group established in 1853. The Complainant is the global market leader in ready-to-use vegetables. The Complainant is employing 11,000 employees in more than 100 countries. The Complainant owns 56 industrial sites and 128,000 hectares cultivated by 3,440 farmers under contract. The Complainant's turnover in 2018 was 2,777 million Euros. The Complainant is listed on the Frankfurt Stock Exchange, London Stock Exchange, and Zurich Stock Exchange.

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- International trademark BONDUELLE No. 636442, registered on May 23, 1995, duly renewed and designating goods in international classes 29, 30 and 31; and

- International trademark BONDUELLE No. 654609, registered on March 29, 1996, duly renewed and designating goods in international classes 29, 30 and 31.

The three trademark registrations above designate China.

The Complainant holds domain names incorporating the BONDUELLE trademark, both within generic TLDs and ccTLDs: <bonduelle.com>, <bonduelle-foodservice.com>, <bonduellefoundation.com>, <mybonduelle.com>, <bonduelle.eu>, <bonduelle.fr> and others.

The disputed domain name <bonduellle.com> was registered on July 22, 2019. The disputed domain name resolves to a website featuring adult-oriented content.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

i) The Complainant has rights in the mark BONDUELLE (with a device) as international trademark Reg. No. 988467, registered on November 27, 2008; international trademark Reg. No. 636442, registered on May 23, 1995; and international trademark Reg. No. 654609, registered on March 29, 1996. The disputed domain name is confusingly similar to the Complainant’s trademark BONDUELLE because it incorporates the Complainant's mark in its entirety with the addition of the letter 'l.'

ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not identified in the WHOIS database. The trademark searches for the term “BONDUELLLE” on the WIPO database and the Chinese trademark database have not revealed any results. The Respondent has never been granted authorization, license or any right whatsoever to use the Complainant’s BONDUELLE trademark. The disputed domain name is used to show adult content, and it is not a bona fide offering of goods or services.

iii) The Respondent has registered and is using the disputed domain name in bad faith. The Respondent had actual knowledge of the Complainant's rights in BONDUELLE trademark before its registration of the disputed domain name. The disputed domain name amounts to a purposeful misspelling and appropriation of its mark which is typosquatting. The Respondent’s diversion of the disputed domain name to adult-oriented site is registration and use of the disputed domain name in bad faith.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

PRELIMINARY ISSUE: LANGUAGE OF THE PROCEEDINGS

The Panel notes that Complainant requests that the language of this administrative proceeding proceed in the English language pursuant to UDRP Rule 11(a). Complainant makes this request in light of the Chinese language Registration Agreement. It is established practice to take UDRP Rules 10(b) and (c) into consideration for the purpose of determining the language of the proceeding to ensure fairness and justice to both parties.

Complainant requests that the language of this administrative proceeding proceed in the English language because i) being a French entity, the Complainant is not able to communicate in Chinese; ii) the Complainant is not in a position to conduct this proceeding in Chinese without a great deal of additional expense and delay due to the need for translation of the Complaint; iii) the most common language is English; and iv) it would not be unfair to the Respondent that the proceedings be conducted in English.

Pursuant to UDRP Rule 11(a), the Panel finds that persuasive evidence has been adduced by the Complainant to conduct the proceeding in English. After considering the circumstance of the present case in the absence of the Response, the Panel decides that the proceeding should be in English.

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 15(a) of the Rules for the UDRP ('the Policy') instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that a complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

(1) the domain name registered by respondent is identical or confusingly similar to a trademark or service mark in which complainant has rights; and

(2) respondent has no rights or legitimate interests in respect of the domain name; and

(3) the domain name has been registered and is being used in bad faith.

Rights

The Complainant contends that it has rights in the mark BONDUELLE (with a device) as international trademark Reg. No. 988467, registered on November 27, 2008; international trademark Reg. No. 636442, registered on May 23, 1995; and international trademark Reg. No. 654609, registered on March 29, 1996.

The Complainant has provided the Panel with each copy of the trademark registrations at issue. Registration of a mark with international trademark authorities (WIPO) sufficiently establishes the required rights in the mark for purposes of the Policy. As such, the Panel finds that the Complainant has established its rights in the mark BONDUELLE.

The Complainant further contends that the disputed domain name is confusingly similar to the Complainant's trademark BONDUELLE because it incorporates the Complainant's mark in its entirety with the addition of the letter 'l.'

The Panel agrees with the Complainant and notes that '.com' gTLD is generally disregarded in the assessment under paragraph 4(a)(i) of the Policy when comparing disputed domain name and trademark. Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark BONDUELLE (with a device).

No rights or legitimate interests

Complainant must first make a prima facie case that Respondent lacks rights and legitimate interests in the disputed domain name under paragraph 4(a)(ii) of the Policy, then the burden shifts to Respondent to show it does have rights or legitimate interests. See Croatia Airlines d. d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455 (the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy). See also Advanced International Marketing Corporation v. AA-1 Corp, FA 780200 (Forum November 2, 2011) (finding that a complainant must offer some evidence to make its prima facie case and satisfy Policy paragraph 4(a)(ii)).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not identified in the WHOIS database as the disputed domain name. The trademark searches for the term “BONDUELLLE” on the WIPO database and the Chinese trademark database have not revealed any results. The Respondent has never been granted authorization, license or any right whatsoever to use the Complainant’s BONDUELLE trademark.

The WHOIS information of record notes 'redacted' as the registrant and no information suggests that the Complainant has authorized the Respondent to use the Complainant's trademark BONDUELLE in any way. Therefore, the Panel finds that the Respondent is not commonly known by the disputed domain name under paragraph 4(c)(ii) of the Policy.

The Complainant further contends that the disputed domain name is used to show adult content, and it is not a bona fide offering of goods or services. The Panel notes that use of a domain name to feature adult-oriented content is not a use indicative of rights or legitimate interests per Policy paragraph 4(c)(i) or (iii). See Altria Group, Inc. and Altria Group Distribution Company v. xiazihong, FA1732665 (FORUM July 7, 2017) (holding that “[u]se of a domain name to display adult-oriented images is not considered a bona fide offering of goods or services or a legitimate noncommercial or fair use under the Policy.”). The Panel therefore determines that the Respondent does not have rights or legitimate interests in the disputed domain name.

The Panel finds that the Complainant has made out a prima facie case that arises from the considerations above. All of these matters go to make out the prima facie case against the Respondent. As the Respondent has not filed a Response or attempted by any other means to rebut the prima facie case against it, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Bad faith

Paragraph 4(b) of the Policy provides a non-exclusive list of circumstances that evidence registration and use of a domain name in bad faith. Any one of the following is sufficient to support a finding of bad faith:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that the complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 the respondent's website or location or of a product or service on the respondent's website or location.

The Complainant contends that the Respondent has registered and is using the disputed domain name in bad faith. The Complainant states that the Complainant's BONDUELLE trademark is so widely well-known, and thus the Respondent had actual knowledge of the Complainant's rights in BONDUELLE trademark before its registration of the disputed domain name. The Panel observes that while constructive knowledge is insufficient to support a finding of bad faith, actual knowledge can be used to demonstrate a respondent's bad faith registration and use. See Orbitz Worldwide, LLC v. Domain Librarian, FA 1535826 (FORUM February 6, 2014) ("The Panel notes that although the UDRP does not recognize 'constructive notice' as sufficient grounds for finding bad faith per paragraph 4(a)(iii) of the Policy, the Panel here finds actual knowledge through the name used for the domain and the use made of it."). The Panel infers, due to the notoriety of the Complainant's mark and the manner of use of the disputed domain name by the Respondent that the Respondent had actual knowledge of the Complainant's rights in BONDUELLE trademark before the registration of the disputed domain name, which constitutes bad faith registration and use per paragraph 4(a)(iii) of the Policy.

The Complainant also contends that the disputed domain name amounts to a purposeful misspelling and appropriation of its mark, and typosquatting is a commonly and widely recognized form of Internet cybersquatting and is itself evidence of bad faith. The Panel notes that typosquatting itself is evidence of relevant bad faith registration and use. See Diners Club int'l Ltd. v Domain Admin ****** It's all in the name ******, FA 156839 (FORUM June 23, 2003) (registering a domain name in the hope that Internet users will mistype the Complainant's mark and be taken to the Respondent's site is registration and use in bad faith). The Panel agrees and finds that the Respondent's adoption of the disputed domain name incorporating the Complainant's mark in its entirety by simply adding one letter 'l' constitutes bad faith registration of the disputed domain name.

The Complainant further contends that that the website corresponding to the disputed domain name presents an erotic and pornographic content which is introduced in Chinese language; this act of "pornsquatting", namely taking advantage of a well-known trademark to attract Internet users to a pornographic website, has often been recognized as evidence of bad faith registration and use; and such an erotic and pornographic content has a negative and highly damaging effect on the image and reputation of the Complainant. The Panel observes that use of a domain name to feature adult-oriented content and/or third-party links can demonstrate a respondent's bad faith per Policy paragraph 4(b)(iii) and/or (iv). See Molson Canada 2005 v. JEAN LUCAS / DOMCHARME GROUP, FA1412001596702 (FORUM Feb. 10, 2015) ("Further, Respondent's diversion of the domain names to adult-oriented sites is registration and use of the disputed domain names in bad faith under Policy paragraph 4(a)(iii)."). The Panel therefore finds that the Respondent has registered and used the disputed domain name in bad faith per Policy paragraph 4(b)(iii) and/or (iv).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **BONDUELLLE.COM**: Transferred

PANELLISTS

Name	**Mr. Ho-Hyun Nahm, Esq.**

DATE OF PANEL DECISION 2020-06-27

Publish the Decision