



Asian Domain Name Dispute Resolution Centre

hongkong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2301732
Complainant:	Shenzhen Baseus Technology Co. Ltd.
Respondent:	Jabez Gan
Disputed Domain Name(s):	<baseusonlinestore.com>

1. The Parties and Contested Domain Name

The Complainant is Shenzhen Baseus Technology Co. Ltd., of 2/F, Building B, Beisi Intelligence Park, NO. 2008, Xuegang Road, Gangtou Community, Bantian Street, Longgang District, Shenzhen.

The Respondent is Jabez Gan, of 55, Jalan Bunga Anggerek 2 Ampang, Selangor 68000, MY.

The domain name at issue is <baseusonlinestore.com>, registered by Respondent with Porkbun LLC, of 21370 SW Langer Farms Parkway, Suite 142-429 Sherwood, OR 97140, US.

2. Procedural History

On 27 March 2023, the Complainant filed a Complaint involving the disputed domain name <baseusonlinestore.com> with the Hong Kong Office of Asian Domain Name Dispute Resolution Centre (“Centre”), pursuant to the Uniform Domain Name Dispute Resolution Policy (“UDRP”) approved by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on 24 October 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (“Rules”), approved by ICANN Board of Directors on 28 September 2013 and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (“Supplemental Rules”) effective from 31 July 2015.

On 27 March 2023, the Centre transmitted by email to the Registrar a request for confirmation of the WHOIS records of the disputed domain name and other related information.

On 28 March 2023, the Registrar confirmed by email that it is the registrar of the disputed domain name that was registered by the Respondent; and that the UDRP is applicable to the dispute relating to the disputed domain name and the language of the Registration

Agreement of the disputed domain name is English and provided to the Centre the Respondent' email address and other WHOIS information of the disputed domain name.

On 11 April 2023, in accordance with Articles 2(a) and 4(a) of the Rules, the Centre issued a Written Notice of the Complaint and formally notified the Respondent of the commencement of the proceedings in this dispute. On 22 April 2023, the Respondent submitted a Response.

On 24 April 2023, the Centre sent a Panelist Appointment Invitation to Prof. Chan-Mo Chung as Panel candidate for the current case. On the same day, Prof. Chung submitted to the Centre his Statement of Acceptance and Declaration of Impartiality and Independence in compliance with Article 7 of the Rules.

On 24 April 2023, the Complainant provided supplemental evidence.

On 25 April 2023, the Centre appointed Prof. Chan-Mo Chung as the sole panelist of the Panel in this matter.

On 26 April 2023, the Panel issued Administrative Procedural Order No. 1 accepting Complainant's additional evidence and allowing Respondent opportunity to respond by 2 May 2023.

On 1 May 2023, the Respondent provided supplemental evidence.

3. Factual background

The Complainant in this case, Shenzhen Baseus Technology Co. Ltd., was established in 2019 and is responsible for the production, sales and operations of the 'Baseus' brand. The Complainant is an affiliated company of Shenzhen Times Innovation Technology Co., Ltd., founded in 2011, through equity investment or agreement. The authorized representative of the Complainant is Beijing Chofn Intellectual Property Agency Co., Ltd.

On the bases of formal submissions and evidence provided by both Parties, the followings are accepted as undisputed facts. Shenzhen Times Innovation Technology Co., Ltd. has registered the 'Baseus' trademarks in several countries and territories around the world, which date back to 8 November 2011(Annex 5 of the Complainant's Submission). 'Baseus' is a digital accessory brand whose products have been purchased by more than 300 million users in over 100 countries and territories. 'Baseus' released the world's first multi-interface gallium nitride fast charger in 2019.

The Respondent appears to be an individual entrepreneur who registered the disputed domain name on 19 August 2020 for the purpose of reselling products manufactured by the Complainant.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The disputed domain name contains the Complainant's registered mark, "Baseus", as a whole. Thus, they are confusingly similar.
- ii. The fact that the Respondent has no trademark or name rights in "Baseus" suggests the Respondent has no rights in respect of the disputed domain name.
- iii. The fact that the Respondent used the disputed domain name to host a website similar to the Complainant's suggests bad faith of the Respondent in the registration and use of the disputed domain name.
- iv. Thus, the Complainant requests that the disputed domain name be transferred to the Complainant.

B. Respondent

The Respondent's contentions may be summarized as follows:

- i. The Respondent denies the Complaint.
- ii. The Respondent contends that the disputed domain name <baseusonlinestore.com> is not confusingly similar to the Complainant's "Baseus" mark.
- iii. The Respondent claims legitimate interest based on the fact that original Baseus products are sold at the hosted website.
- iv. The Respondent contends that the disputed domain name is not used in bad faith as long as original Baseus products are sold.

5. Findings

The ICANN UDRP provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

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

A) Identical / Confusingly Similar

It is accepted that the Complainant has rights in the Baseus trade mark and bringing this case as the Complainant is authorized by the Shenzhen Times Innovation Technology Co., Ltd. as to the registration and protection of the Baseus brand and domain (Annex 4 of the Complainant's Submission).

In the disputed domain name <baseusonlinestore.com>, ".com" is disregarded in our analysis as it is a non-distinctive generic top level domain name. The remaining "baseusonlinestore" is composed of "baseus" and "onlinestore". The former is exactly identical to the Complainant's trademark "Baseus", while the latter is a combination of generic words "online" and "store", which are frequently used together. Thus, the Panel accepts that the disputed domain name <baseusonlinestore.com> is confusingly similar to the Complainant's "Baseus" mark. Although it is true, as the Respondent suggests, that <baseusonlinestore.com> causes less confusion than a hypothetical domain name <baseusofficialstore.com> does, the disputed domain name still does cause confusion.

Accordingly, the Panel finds that the Complainant has succeeded in proving the elements in Paragraph 4(a)(i) of the Policy.

B) Rights and Legitimate Interests

The Complainant searched trademark databases by the name of the Respondent, which rendered no result. The Complainant has never made agreement with the Respondent offering distributorship, partnership, or license to use the “Baseus” trademark or a corresponding domain name in any form.

Paragraph 4(c)(i) of the UDRP illustrates as a circumstance demonstrating rights or legitimate interests to a domain name: “before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services”. In *Oki Data Americas, Inc. v. ASD, Inc.* (WIPO Case No. D2001-0903, 6 November 2001), the panel of the case articulated a standard for determining the bona fide offering of goods and services:

- (1) Respondent must actually be offering the goods or services at issue.
- (2) Respondent must use the site to sell only the trademarked goods; otherwise, it could be using the trademark to bait Internet users and then switch them to other goods.
- (3) The site must accurately disclose the registrant’s relationship with the trademark owner; it may not, for example, falsely suggest that it is the trademark owner, or that the website is the official site, if, in fact, it is only one of many sales agents.
- (4) The Respondent must not try to corner the market in all domain names, thus depriving the trademark owner of reflecting its own mark in a domain name.

The Complainant in this case contends that the Respondent failed to meet the test because the Respondent did not accurately disclose its relationship with the Complainant (the third element) and the Respondent’s occupation of the disputed domain name left the Complainant unable to reflect its trademark in a domain name (the fourth element). The Panel accepts the Complainant’s contention relating to the third element, while rejecting the contention relating to the fourth element.

The Respondent stated as a defense that the content of the website hosted at the disputed domain name has been updated clarifying its relationship with the trademark owner as a reseller. The Panel notes the wording “before any notice to you of the dispute” in paragraph 4(c)(i) of the UDRP, which signifies that any post-notification correction of the website content may not create rights or legitimate interests for the Respondent. In addition, the Panel regards the degree of Respondent’s update itself is not enough to dispel the confusion in its relationship with the Complainant.

Accordingly, the Panel finds that the Complainant has succeeded in proving the elements in Paragraph 4(a)(ii) of the Policy.

C) Bad Faith

According to the various evidence submitted by the Complainant, the “Baseus” brand achieved global recognition before the disputed domain name was registered in 2020. The Respondent knew or should have known the Complainant’s brand when registering the domain name. The contents of the website hosted at the disputed domain name overlap with the Complainant’s website. This suggest that the Respondent deliberately registered and used the disputed domain name in order to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement. According to Paragraph 4(b)(iv), this shall be evidence of the registration and use of a domain name in bad faith.

The Respondent's contention that as long as original Baseus products are sold the registration and use of the disputed domain name is in good faith is founded on misunderstanding of the UDRP principle. As mentioned above in relation to the Oki Data test, the scope of exemption is more limited.

Accordingly, the Panel finds that the Complainant has succeeded in proving the elements in Paragraph 4(a)(iii) of the Policy.

Thus, The Panel finds that the Complainant has proved all three elements required under Paragraph 4(a) of the UDRP.

6. Decision

For the foregoing reasons, in accordance with Paragraph 4(i) of the UDRP and Paragraph 15 of the Rules, the Panel orders that the disputed domain name, <baseusonlinestore.com>, be transferred to the Complainant.



Chan-Mo Chung
Panelist

Dated: 12 May 2023