

DISPUTE RESOLUTION SERVICE

D00012473

Decision of Independent Expert

The Baupost Group, L.L.C.

and

HongJuan Yang

1. The Parties:

Lead Complainant: The Baupost Group, L.L.C.
10 St. James Ave., Suite 1700
Boston
MA
02116
United States

Respondent: HongJuan Yang
No.4 ZhuLin Road,Futian District
Shenzhen
Guangdong
518000
China

2. The Domain Name:

baupost.co.uk

3. Procedural History:

12 February 2013 17:17 Dispute received
13 February 2013 11:46 Complaint validated
13 February 2013 11:52 Notification of complaint sent to parties
04 March 2013 01:30 Response reminder sent

07 March 2013 09:12 No Response Received
07 March 2013 09:12 Notification of no response sent to parties
14 March 2013 09:46 Expert decision payment received

4. Factual Background (uncontested facts)

On July 7, 2012 “The Economist” described the Complainant as the ninth largest hedge fund in the world, with \$25 billion under management.

Investment advisory services have been provided under the name Baupost to private investment funds since 1982, initially by the Complainant’s predecessor, The Baupost Group Inc., and since 1997 by the Complainant, both based in the United States. The Complainant operates a website at <baupost.com>.

On May 6, 2011, Bloomberg News published an unauthorized article that “Baupost” was expecting to open its first overseas office, in London. On May 7, 2011, the Respondent registered the domain name <baupost.co.uk> (“the Domain Name”). The website to which the Domain Name resolves contains links to, and advertisements for, companies operating in the financial sector.

The Complainant opened its London office in September, 2011, under the name Baupost Group International LLP, a limited liability partnership incorporated in the United Kingdom on July 20, 2011.

The Complainant registered the trademark BAUPOST with the USPTO on June 26, 2012 claiming first use in 1982 (No. 4,164,527) and with the OHIM on August 27, 2012 (No. 010810241).

5. Parties’ Contentions

The Complainant says:

- (i) the Domain Name was registered in order to block the Complainant from registering it, as evidenced by the timing of the Respondent’s filing on the day immediately following the date of the Bloomberg article;
- (ii) the Respondent registered the website [sic] in order unfairly to disrupt the Complainant’s business, as the Domain Name is identical to the Complainant’s domain name <baupost.com>. The Complainant is well-known throughout the financial services industry and to the public as “Baupost”. Other than the specific name of the company “The Baupost Group, L.L.C.” and its affiliated entities, the term “Baupost” does not exist as a generic term. Rather, “Baupost” was a word created by the original founders of The Baupost Group for purposes of naming their company. By selecting a domain name that is identical to the Complainant’s company name and official website,

<www.baupost.com>, the Respondent is seeking to capitalize on the reputation that the Complainant has built over the past 30 years in the financial industry and unfairly to disrupt the Complainant's business by diverting to the Respondent's site web users seeking to locate the Complainant's official website;

- (iii) the Respondent's website causes confusion as to who controls the website. Because many of the sponsored links are for other financial firms, the website causes further confusion and disruption to the Complainant's business because the advertisements may be viewed as an endorsement by the Complainant of the financial firms listed on the website;
- (iv) the Domain Name was not created for a legitimate business purpose, but to benefit the Respondent financially by misappropriating the Complainant's name in order to divert users to an advertising page, from which the user can link to a variety of advertisers. The website is a parking page facilitated by Bodis, a domain parking system that enables the Respondent to profit using the Complainant's proprietary name. Through use of Bodis, a registrant such as the Respondent receives money for each click on an advertisement. In addition, although the Complainant has not attempted to contact the Respondent directly, it appears from the link "inquire about this domain name" at the top of the first page of the website that the Respondent may be seeking offers of purchase for the Domain Name; and
- (v) the address provided by the Respondent does not appear to be valid based upon a search of the Respondent's address on reputable address-locating websites.

The Respondent did not file a Response.

6. Discussions and Findings

In the absence of a Response, I am satisfied that Nominet sent the Complaint to the Respondent in accordance with paragraphs 2 and 4 of the Dispute Resolution Service Procedure.

Under paragraph 2 of the Dispute Resolution Service Policy ("the Policy") a complainant is required to show, on the balance of probabilities, that;

- (1) it has rights in respect of a name or mark which is identical or similar to the Domain Name; and
- (2) the Domain Name in the hands of the Respondent is an Abusive Registration.

“Rights” are defined in the Policy as “rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning”.

Rights

Apart from its corporate name and the domain name <baupost.com>, the Complainant has demonstrated that it has registered trademark rights in the word BAUPOST, both in the United States and in Europe. The fact that these registrations post-dated the registration of the Domain Name is irrelevant when considering Rights but may be of relevance when considering whether or not the Domain Name is an Abusive Registration. In any event, the Complainant will undoubtedly also have generated unregistered trade mark rights in the name BAUPOST as a result of its long period of trading.

Abusive Registration

Abusive Registration is defined in the Policy as:

“...a domain name which either;

- (i) was registered or otherwise acquired in the manner which, at the time when the registration or acquisition took place, took unfair advantage of, or was unfairly detrimental to the Complainant’s rights; or
- (ii) has been used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant’s rights.”

Paragraph 3(a) of the Policy provides a non-exhaustive list of factors that may be evidence that a domain name is an Abusive Registration. These include circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily as a blocking registration against a name or mark in which the Complainant has Rights or for the purpose of unfairly disrupting the business of the Complainant; and circumstances indicating that the Respondent is using the Domain Name in a way which is likely to confuse people into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant.

Here, in the absence of a Response and given the non-generic, non-descriptive character of the name Baupost, the inference is inescapable that the Respondent registered the Domain Name after having become aware of the Bloomberg story of the previous day announcing that the Complainant was expecting to open a London office. It matters not therefore that the Complainant’s trademark registrations post-date the Domain Name registration, since the Respondent must have had the Complainant’s Baupost name in mind when registering the Domain Name and must have intended it as a blocking registration or unfairly to disrupt the Complainant’s business or both.

The content of the website at the Domain Name is likely to confuse people into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant.

Accordingly, I find that, in the hands of the Respondent, the Domain Name is an Abusive Registration.

7. Decision

I find that the Complainant has proved, on the balance of probabilities, that it has rights in the trademark BAUPOST, which is identical or similar to the Domain Name and that the Domain Name is an Abusive Registration in the hands of the Respondent. I therefore direct that the Domain Name be transferred to the Complainant.

Signed: Alan Limbury

Dated: April 15, 2013.