



Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

## ADMINISTRATIVE PANEL DECISION

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<b>Case No.</b>	<b>HK-1400628</b>
<b>Complainant:</b>	<b>NBA Properties, Inc.</b>
<b>Respondents:</b>	<b>Todd White and Cajun Supermarket Inc</b>
<b>Disputed Domain Name(s):</b>	<b>&lt;nbastyle.com&gt;</b>

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### 1. The Parties and Contested Domain Name

The Complainant is NBA Properties, Inc., having its principal place of business in New York, United States of America (hereinafter referred to as "Complainant").

The Respondents are Todd White and Cajun Supermarket Inc, 8728 Scenic Highway, Baton Rouge, Louisiana (hereinafter referred to, jointly and severally, as "Respondent").

The domain name at issue is <nbastyle.com>, registered by Respondent with GoDaddy.com, LLC, 14455 North Hayden Road, Suite 219, Scottsdale, Arizona, United States of America (the "Registrar").

### 2. Procedural History

On 30 June 2014 Complainant filed the Complaint in this matter concerning the domain name at issue. On 1 July 2014 the Registrar notified Complainant and Respondent that the domain name at issue had been put on "locked" status. On 2 July 2014, the Asian Domain Name Dispute Resolution Centre (hereinafter referred to as the "Centre") transmitted to the Complainant a receipt of the Complaint. On that same date and again on 7 July 2014, the Centre notified the Registrar of the filing of the Complaint and asked the registrar to confirm that Todd White, the designated Respondent, was the registrant of the domain name at issue. On 8 July 2014, the Registrar replied to the Centre, stating: "The respondent, Todd White, is the individual registrant of the domain name. However, GoDaddy considers any organization or company listed to be the legal registrant of the domain name. As such, GoDaddy considers CAJUN SUPERMARKET INC the registrant of this domain name."

On 9 July 2014 the Centre sent a formal notification of the Complaint to Complainant and Respondent, listing Todd White as Respondent and stating that a response was due on or before 29 July 2014.

On 28 July 2014 Respondent submitted by email to the Centre a Response and annexes thereto, showing Respondent as Cajun Supermarket Inc. On 29 July 2014, the Centre appointed M. Scott

Donahey as Panelist. On that same date the Centre transferred the file to the panel. As the registration agreement was in the English language, the Panel finds that the language of the proceedings is English. Uniform Rules, Rule 7(a).

Because of the ambiguous nature of the Registrar's response to the Centre's request to confirm that Todd White is the registrant of the domain name at issue, the Panel treats both Todd White and Cajun Supermarket Inc as the proper parties Respondent, jointly and severally, and they will hereafter be referred to jointly and severally as "Respondent."

### **3. Factual background**

#### **a. Complainant's Factual Allegations**

Complainant is the holder of a number of trademark registrations issued by the United States Patent and Trademark Office ("USPTO") for the mark NBA, the earliest of which dates to January 21, 1969, and of a Chinese trademark for the mark NBA which issued on April 28, 1998. Complaint, Annexes 3-8. NBA represents the initials of the name National Basketball Association and is the trademark owned by Complainant and used in conjunction with this professional basketball league founded in the United States in 1946, now famous worldwide, and used to promote not only the basketball league, but in conjunction with basketball related goods and services sold around the globe. Complaint, Annex 9.

Complainant has its own television network. Complainant's web site at <nba.com> receives tens of millions of page views per day, almost 22 million fans on the Facebook web site, Complainant markets apparel, shoes, jewelry, and numerous other goods that could be reasonably included with in the "fashion" genre.

Respondent registered the domain name at issue on October 23, 2000. The domain name at issue consists of Complainant's famous NBA mark and the generic word "style" in the generic Top Level Domain .com. Complainant has not licensed or otherwise authorized Respondent to use Complainant's NBA mark.

Respondent is the registrant of 117 domain names, including names such as <nflbackstage.com>, a name which clearly suggests the National Football League, another famous American sports league, and utilizes the famous NFL trademark owned by the National Football League's property company. Since Respondent registered the domain name at issue in 2000, the domain name has never been used to resolve to a web site.

#### **b. Respondent's Factual Allegations**

Respondent Cajun Supermarket, Inc. is the registrant of a trademark issued under the auspices of the State of Louisiana for the mark NBASTYLE. The registration was issued on 18 July 2014. Response, Annex 11. Respondent has registered and held the domain name at issue since October 2000. "The domain name is active, but not active to the public." The domain name has never been offered for sale, but Complainant has in the past made an offer to buy it, which offer was declined by Respondent.

Respondent allegedly attaches two invoices for the purchase of NBA SEASONING STYLES BRANDS, but neither of the two purchase orders covers the alleged product. One purchase order, dated 1/30/13 is an order by Cajun Supermarket, Inc. to purchase a case of King Cake Mini and a case of Mam Papaul's King Cake with Pralines from a distributor in Harvey,

Louisiana. The other, dated 9/14/2007, is an order by Cajun Supermarket LLC to purchase 100 gauge 24" x 30" shrink dome bag from a dealer in South El Monte, California. Response, Annexes 61 and 62.

Respondent Todd White produced evidence that he was an accomplished player of American football at both the high school and college level, that he pursued a career in professional football, and that he is friendly with well-known professional football players.

On 14 August 2013 Complainant's counsel sent Respondent a cease and desist letter. Response, Annex 45. Respondent believes that Complainant is acting out of racial prejudice. Respondent points out that other organizations and businesses use the NBA letters to refer to their operations. Response, Annexes 42 and 43, 50, 51, and 52.

#### **4. Parties' Contentions**

##### **A. Complainant**

The domain name at issue consists of Complainant's NBA mark, the generic term "style," and the .com prefix, and is therefore confusingly similar to Complainant's mark.

Complainant asserts that the domain name at issue was registered without Complainant's authorization, at a time well after Complainant's trademarks had issued and become famous, that Respondent was not authorized to use the domain name at issue, and that Respondent therefore had no rights or legitimate interests in respect of the domain name at issue.

Respondent has held the domain name at issue for almost fourteen years without using it to resolve to a web site, nor is there any conceivable good faith use to which the domain name at issue could be put.

##### **B. Respondent**

Respondent argues that the domain name at issue consists of one word "nbastyle" which corresponds to Respondent's line of spices, and that it is therefore neither identical nor confusingly similar to Complainant's NBA mark

Respondent has a Louisiana state trademark registration, which issued on 14 July 2014, and thus Respondent has rights and legitimate interests in respect of the domain name at issue..

Since Respondent has never offered the domain name at issue for sale, and Respondent has maintained the domain name as active, but not active to the public, Respondent cannot be said to have registered and have used the domain name in bad faith.

Accordingly, Respondent asserts that Complainant has failed to prove its case.

#### **5. Findings**

The Panel is bound to apply the ICANN Uniform Domain Name Dispute Resolution Policy the "UDRP") in order to determine whether Complainant has established the elements necessary to prevail in this matter. The UDRP provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail, and Complainant carries the burden of proof as to each and every element:

- i. Respondent's domain name must be 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**

Complainant is the owner of the world famous NBA mark which had been in use for more than fifty years prior to the registration of the domain name at issue by Respondent. Complainant is perhaps the most recognized professional basketball organizations in the world and its games are televised on a worldwide basis.

The domain name at issue consists of the famous NBA mark together with the descriptive generic term "style." Therefore, it is clear to the Panel that the domain name at issue is confusingly similar to the NBA mark in which Complainant has rights.

**B) Rights and Legitimate Interests**

In the present case Complainant alleges that Respondent has no rights or legitimate interests in respect of the domain name. Respondent asserts that it uses the domain name at issue in conjunction with a spice product, but it has produced no credible evidence of such use. Respondent has produced evidence that it has a trademark from the State of Louisiana for the mark NBASTYLE, but the trademark did not issue until 14 July 2014. This is eleven months after Respondent received a cease and desist letter from Complainant's counsel, more than two weeks after the Complaint in this matter had been filed, and some two weeks after Respondent had received notice of the filing of the Complaint from the Registrar.

Accordingly, the Panel finds that Respondent had no rights and legitimate interests in respect of the domain name at issue.

**C) Bad Faith**

Complainant had been using its famous NBA trademark for over 50 years, had registered it in the United States more than thirty years prior to the registration of the domain name at issue, and was broadcasting its games not only to the United States market, but to markets around the world. Respondent cannot reasonably deny that it did not know of Complainant and Complainant's famous mark at the time it registered the domain name at issue. Under all of the facts and circumstance of this case, the Panel can only conclude that the domain name was registered and used in bad faith.

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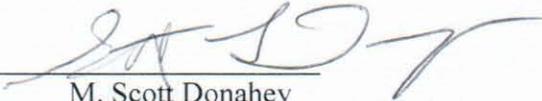
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**6. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name at issue, <nbastyle.com>, be transferred to the Complainant.

Dated: 30 July 2014



M. Scott Donahey  
Panelist