Decision for dispute CAC-UDRP-101284

Case number	CAC-UDRP-101284
Time of filing	2016-10-12 09:07:15
Domain names	salomontw.com

Case administrator

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

Complainant

Organization	SALOMON SAS

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Name	hui min

OTHER LEGAL PROCEEDINGS

None

IDENTIFICATION OF RIGHTS

The Complainant holds International trademark registrations Nos. 375807 for the word mark SALOMON, registered on November 24th, 1970 and 1092092 for the figurative mark comprising the capital letter S in white on a black square, registered on August 8th, 2011.

FACTUAL BACKGROUND

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

Founded in France in 1947, the Complainant produces sports equipment for various markets, including trail running, hiking, climbing, adventure racing, skiing and snowboarding in over 40 countries. In addition to its trademarks, it owns many domain names including <salomon.tw> registered on November 21st, 2007.

The disputed domain name <salomontw.com> was registered on May 20, 2016. It resolves to an active website in English and Chinese, prominently featuring the Complainant's word and figurative marks and offering the Complainant's sports shoes for sale. The footer reads "(c) 2016 www.salomontw.com. Powered by Salomon".

The Respondent did not respond to a cease and desist letter from the Complainant's representative dated September 26th, 2016.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the 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 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 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

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

In accordance with paragraph 4(a) of the Policy, to obtain transfer of the disputed domain name, the Complainant must prove the following three elements: (i) the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (ii) the Respondent has no rights or legitimate interests in respect of the domain name; and (iii) the Respondent has registered the domain name and is using it in bad faith.

Under paragraph 15(a) of the Rules, “A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, asserted facts may be taken as true and reasonable inferences may be drawn from the information provided by the complainant. See Reuters Limited v. Global Net 2000, Inc, WIPO Case No. D2000-0441.

The Panel accepts the Complainant's submission that the disputed domain name is confusingly similar to its SALOMON trademark. The top level of the Domain Name “.com” is generally regarded as irrelevant for the purpose of determining whether the Domain Name is identical or confusingly similar. See Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr., WIPO Case No. D2000-1525; Rollerblade, Inc. v. Chris McCrady, WIPO Case No. D2000-0429.

In determining confusing similarity, evidence of actual confusion is not required. The test is an objective one, confined to a comparison of the Domain Name and the trademark alone, independent of the products or services for which the Domain Name may be used, or other marketing and use factors usually considered in trademark infringement. See Arthur Guinness Son & Co. (Dublin) Limited v. Dejan Macesic, WIPO Case No. D2000 1698; AT&T Corp. v. Amjad Kausar, WIPO Case No. D2003-0327.

Confusion in this context, in the sense of bewilderment or failing to distinguish between things, may be regarded as a state of wondering whether there is an association, rather than a state of erroneously believing that there is one. An appropriate formulation might be: “Is it likely that, because of the similarity between the domain name on the one hand and the

Complainant’s trademark on the other hand, people will wonder whether the domain name is associated in some way with the Complainant?”. See SANOFI-AVENTIS v. Jason Trevenio, WIPO Case No. D2007 0648.

In the present case the addition of the geographic term “tw" (which is the abbreviation of Taiwan) to the Complainant's mark is not sufficient to escape a finding of confusing similarity since it increases the likelihood that people will wonder whether there is an association with a potential sales office of the Complainant in Taiwan.

As to legitimacy, the Complainant says the Respondent is not known by or affiliated with the Complainant nor authorised by the Complainant to use the trademark SALOMON in a domain name or on a website. The Complainant does not carry out any activity for and has no business with the Respondent. Such use of the domain name is not a bona fide offering of goods or services or a legitimate noncommercial or fair use under the Policy. The website displays the Complainant’s figurative trademarks, the shoes’ products of the Complainant for sale and, by the footer “powered by SALOMON”, pretends to be an official online partner affiliated with the Complainant. There is no disclaimer or any information explaining that the Respondent is not affiliated with the Complainant. The Respondent’s sole intention in registering the disputed domain name must have been to benefit financially from the Complainant’s SALOMON trademark by pretending to be an official reseller of the Complainant’s products.

The Panel finds that the SALOMON mark is distinctive and widely known. The Complainant’s assertions are sufficient to constitute a prima facie showing of absence of rights or legitimate interests in respect of the dispute domain name on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show that he does have rights or legitimate interests in the domain name. See Cassava Enterprises Limited, Cassava Enterprises (Gibraltar) Limited v. Victor Chandler International Limited, WIPO Case No. D2004-0753. The Respondent has made no attempt to do so. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

As to bad faith, the Complainant says the domain name registration was intentionally designed to be confusingly similar to the Complainant’s trademark; was done with full knowledge of that mark and is being used for the purpose of misleading and diverting Internet traffic. The Respondent is attempting to pass himself off as the Complainant in an effort to take advantage of the goodwill the Complainant has built up in its SALOMON trademark and to benefit unduly from creating a diversion of internet users from the Complainant by pretending to be an official online partner of the Complainant.

In the absence of any Response, the Panel finds that the Respondent must have been aware of the Complainant's SALOMON trademark when he registered the disputed domain name. The content of the website to which the domain name resolves, in the absence of any disclaimer, clearly creates a false impression of association with the Complainant. This is especially so because of the prominent display of both the Complainant's word and figurative trademarks. The conclusion is inescapable that the Respondent has intentionally attempted to attract Internet users to his website for commercial gain by creating a likelihood of confusion with the Complainant's SALOMON trademark as to the source, sponsorship, affiliation, or endorsement of his website. These activities are evidence of bad faith registration and use of the disputed domain name pursuant to paragraph 4(b)(iv) of the Policy.

Therefore, the Panel finds that the disputed domain name <salomontw.com> was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **SALOMONTW.COM**: Transferred

PANELLISTS

Name	**Alan Limbury**

DATE OF PANEL DECISION 2016-11-12

Publish the Decision