Decision for dispute CAC-UDRP-101635

Case number	**CAC-UDRP-101635**
Time of filing	**2017-08-09 11:42:06**
Domain names	**sophiawebster-shoes.com**

Case administrator

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

Complainant

Organization	**Sophia Webster Limited**

Respondent

Name	**abdulaziz rajkhan**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending proceedings which relate to the Domain Name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several trademark registrations for “SOPHIA WEBSTER” including:

European Union registration number E62861143 for “SOPHIA WEBSTER”, registered on July 4, 2013 and international registration number 1267537 for "SOPHIA WEBSTER", registered on May 14, 2015.

The Domain Name <sophiawebster-shoes.com> was registered on February 16, 2017 by the Respondent, Abdulaziz Rajkhan.

FACTUAL BACKGROUND

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

(1) that the Domain Name registered by the Respondent is identical or confusingly similar to the trademarks or service marks in which the Complainant has rights; and,
(2) that the Respondent has no legitimate interests in respect of the Domain Name; and,
(3) that the Domain Name has been registered and used in bad faith.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

The Complainant claims that the Domain Name is confusingly similar to the Complainant’s “SOPHIA WEBSTER” registered trademark; that the Respondent has no rights or legitimate interests whatsoever with respect to the Domain Name; and that the Respondent registered and is using the Domain Name in bad faith.

Specifically the Complainant claims that:

1. Identity or Confusing Similarity

The Domain Name consists of the words "SOPHIA WEBSTER" followed by the word "shoes", and SOPHIA WEBSTER is a registered trademark of the Complainant.

The Complainant has for over five years successfully used its trademarks in the area of fashion, primarily for shoes and handbags. The Domain Name is almost identical to the Complainant's registered trademark SOPHIA WEBSTER and the addition of the word 'shoes', which is the Complainant's primary product for which its trademarks are registered, adds confusion rather than avoid it.

Rights or Legitimate Interests

The Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or to apply for any domain name incorporating any of those marks. The Respondent has not replied to the cease and desist letter sent by the Complainant (on 7 March 2017), to cite any circumstance that could demonstrate its rights on or legitimate interests in the Domain Name. The Respondent has no rights on or legitimate interests in the Domain Name.

Registration and Use in Bad Faith

The Respondent has used the Domain Name to steal images of the Complainant's products and purport to offer them for sale when the Respondent has no right to do so.

As the Respondent is using content apparently taken from the Complainant's genuine website, then the Respondent clearly had prior knowledge of the Complainant's prior rights.

By refusing to remove the website and transfer the Domain Name, the Respondent knowingly prolongs a situation which is at odds with the legal rights of the parties involved, and knowingly obstructs the registration of the Domain Name in the name of the Complainant and its subsequent use by the Complainant.

In the case at hand, such obstruction is tantamount to the examples of evidence of use in bad faith mentioned under Paragraph 4b of the Policy.

The Respondent is making commercial gain by pretending to sell the Complainant's products, and it is most likely phishing for credit card details and customers' personal data.

RESPONDENT:

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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

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

A) Confusing similarity

The Complainant contends that the Domain Name <sophiawebster-shoes.com> is confusingly similar to the Complainant's trademark "SOPHIA WEBSTER".

The Panel agrees with the Complainant's assertion that the addition at the end of the Domain Name of the generic word "shoes", i.e. Complainant's primary products, is not sufficient to escape the finding that the Domain Name is confusingly similar to the Complainant's trademark. On the contrary, the generic term "shoes" reinforces the confusion between the Domain Name and the Complainant's trademark.

B) Lack of rights or legitimate interests

The Domain Name at issue is a distinctive, non-descriptive name. It is unlikely that the Respondent registered the Domain Name without having the Complainant firmly in mind. The Complainant's assertions that the Respondent is not commonly known by the Domain Name and is not affiliated with nor authorized by the Complainant are sufficient to constitute a prima facie demonstration of absence of rights on or legitimate interest in the Domain Name on the part of the Respondent.

The burden of evidence therefore shifts to the Respondent to show using concrete evidence that it does have rights on or legitimate interests in that name. The Respondent has made no attempt to do so. Furthermore, the Domain Name has been associated with a website displaying images of Complainant's products.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the Domain Name.

C) Registration and Use in Bad Faith

The Complainant gives some sound bases for its contention that the Domain Name was registered in bad faith and that it has been used in bad faith.

Firstly, given the contents displayed on Respondent's website, i.e. images of Complainant's products and trademarks, Complainant's trademark, and the fact that the registration of the Complainant's trademark predates the registration of the Domain Name, the Panel finds on the balance of probabilities that the Respondent was aware of the Complainant's trademark when registering the Domain Name.

Secondly, the Panel accepts the Complainant's unchallenged assertion that the Respondent has registered the Domain Name with the aim of creating a likelihood of confusion with the Complainant's trademark.

Thirdly, it appears from the document provided by the Complainant that the Respondent is using the Domain Name and the corresponding website for commercial gain by pretending to sell Complainant's products.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **SOPHIAWEBSTER-SHOES.COM**: Transferred

PANELLISTS

Name	**Dr. Fabrizio Bedarida**

DATE OF PANEL DECISION 2017-09-08

Publish the Decision