Decision for dispute CAC-UDRP-101649

Case number	CAC-UDRP-101649
Time of filing	2017-10-11 16:15:13
Domain names	roger-vivier.com, rogervivieronsale.com, rogerviviershoe.top, rogerviviershoesonlines.com, rogervivieruk.top

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	ROGER VIVIER S.p.A.

Complainant representative

Organization	Convey srl

Respondent

Name	AI LONG XIONG

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that are pending or decided and that relate to the Disputed domain names.

IDENTIFICATION OF RIGHTS

The Complainant in this administrative Proceeding, Roger Vivier S.p.A. is a company with headquarters in Sant'Elpidio al Mare, Italy. Roger Vivier S.p.A. is known around the world as one of most prominent high-end fashion and luxury industry.

The Complainant has submitted evidence, which the Panel accepts, showing that it is the registered owner of the following "R.V.", "Roger Vivier Boutique", "ROGER VIVIER", "Roger Vivier", "RV Roger Vivier", "Miss viv' Roger Vivier" and "VIVIER" trademarks in several classes and domain names bearing "ROGER VIVIER" phrase.

Currently, Roger Vivier S.p.A. is the owner of various trademark registrations such as:

The International trademark n° 348577 for the figurative mark "Roger Vivier Boutique" (registered on 1968-08-29) designating goods in classes 3,18, 21, 25;

The International trademark extended in China n° 590402 for the figurative mark "ROGER VIVIER" (registered on 1992-08-05)

designating goods in classes 3, 9, 14, 15, 18, 20, 21, 24, 25, 26, 34, 42;

The International trademark extended in China n° 854491 for the figurative mark “R.V.” (registered on 2005-01-27) designating goods in classes 9, 14;

The Community trademark n° 006349138 for the word mark “Roger Vivier” (registered on 2008-10-17) designating goods in classes 3, 9, 14, 16, 18, 20, 21, 24, 25, 26, 34, 35, 42;

The International trademark n° 1022702 for the figurative mark “RV Roger Vivier” (registered on 2009-08-20) designating goods in classes 3, 9, 14, 16, 18,24, 25, 35;

The International trademark n° 1070727 for the word mark “Miss viv’ Roger Vivier” (registered on 2011-01-25) designating goods in classes 3,18, 25;

The International trademark extended in China n° 1120203 for the word mark “VIVIER” (registered on 2012-05-14) designating goods in classes 9, 14;

The Complainant has been extensively using the “ROGER VIVIER” denomination on all internet environments including and not limited to the company’s official websites – among which are <www.rogervivier.com>, <rogervivier.net>, <rogervivier.org>, <rogervivier.info>, <rogervivier.biz> - and its official accounts on the major social networks such as Facebook and Instagram.

FACTUAL BACKGROUND

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

PROCEDURAL ISSUES

Request of consolidation of the dispute
(Rules, Paragraph 10(e); Policy, Paragraph 4(f))
the Respondent in this administrative proceeding is:

AI LONG XIONG,
E-mail: loveok2015@163.com; fashionshoesoutlet@gmail.com
Telephone number.: +86.15987689456
Address: chang an street No.1 Guangzhou, Guangdong (China)

Pursuant to the rules, the Complainant brings to the Panel’s attention the evidence that the Disputed domain names are subject to an evident common control, thus making the consolidation of the dispute equitable and procedurally efficient.

In the case of the Disputed domain names, the elements establishing the existence of a common control are clear-cut. First and foremost, the Disputed domain names are/were replicas of a same website. In particular, the layouts and the graphical templates are almost identical.

The analysis of the data shown in the historic WHOIS records confirms that the registrant of the Disputed domain names is AI LONG XIONG.

Accordingly, Complainant finds that such evidences are concrete and sufficient to prove that the Disputed domain names are subject to a common control, and asks the Panel the consolidation of the five domain names in a single dispute, thus referring hereinafter to a unique “Respondent”.

Language of the Proceedings

Paragraph 11(a) of the Rules provides that:

"Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding."

The language of the Registration Agreement for all of the Disputed domain names at issue is English.

Furthermore, all of the reported domain names at issue resolved/resolves to online e-shops which were/are entirely operated in English; in addition, all of the domain names at issue include the English words "sale", "shoe","shoesonline", "uk" and consist of English/Latin characters.

Having regard to the circumstances of the administrative proceeding, the Complainant kindly requests that the language of proceedings be English.

FACTUAL GROUNDS

The Complainant, Roger Vivier S.p.A. is a company with headquarters in Sant'Elpidio al Mare, Italy. Roger Vivier S.p.A. is known around the world as one of most prominent high-end fashion and luxury industry.

The first boutique of the brand was established in Paris, France, in 1937 by a young French fashion designer Monsieur Roger Henri Vivier (13 November 1903 - 3 October 1998) who specialized in shoes. His best-known creation was the "stiletto heel".

On August 29, 1968 the figurative mark "Roger Vivier Boutique" was given worldwide trademark protection through numerous national and international trademark registrations.

Currently the company actively designs a wide range of luxury products such as shoes, bags and women accessories distributed all around the world through more than 44 prestigious Boutiques. As of 2016 the company released a worldwide turnover of 166,3 million €.

The trademark "Roger Vivier" is distinctive and well known all around the world, it has been registered for the first time in 1968, although it had already been previously advertised since the early Fifties in numerous media, such as newspapers and specialized magazines.

Throughout the last decades ROGER VIVIER S.p.A. has designed and created the shoes of many celebrities, such as Cate Blanchett, Penelope Cruz, Scarlett Johansson, Charlize Theron, Sharon Stone, Marion Cotillard, Kate Winslet and Katie Holmes.

In the last years, the Maison has been expanding its target to new eastern markets both by hiring renowned testimonials and by opening new sale points in Beijing, Shenyang, Taipei and Hong Kong in Fall 2012.

LEGAL GROUNDS

PART I

The domain names is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (Policy, Paragraph 4 [a] (i); Rules, Paragraphs 3 [b] (viii), [b] (ix)(1))

Pursuant to the Rules, Paragraph 3 [b] (ix), to the Policy, Paragraph 4 [a] (i), and the aforementioned evidence, the Complainant maintains that the Respondent's domain names <roger-vivier.com>, <rogervivieronsale.com>,

<rogerviviershoe.top>, <rogerviviershoesonlines.com> and <rogervivieruk.top> are identical or confusingly similar to the abovementioned Complainant's registered trademarks, websites and company names in which the Complainant has rights.

The sole addition of common words to the second level domain does not lessen the extent to which the domain name is confusingly similar to Complainant's trademark, because it incorporates the entire well-known trademark.

In the case at issue, the Disputed domain names entirely incorporate Complainant's trademark as initial and prominent element, the combinations of this trademark with generic words (such as "sale", "shoe", "shoesonlines", "uk") are not sufficient to exclude a finding of confusing similarity.

It has been ruled many times before that, when a registered name is fully incorporated in a domain name, it may be sufficient for demonstrating similarity.

The Disputed domain names incorporate the entirety of the registered mark, with the addition of a generic term. Moreover, the sole alteration of the generic top-level domain (gTLD) name ".com" is without legal significance since the use of a gTLD is required of domain name registrants and does not serve to identify a specific service provider as a source of goods or services. Therefore, Complainant finds the domain names at issue identical or confusingly similar to Complainant's trademarks.

LEGAL GROUNDS
PART II
The Respondent has no rights or legitimate interests in respect of the domain name(s);
(Policy, Paragraph 4 [a] (ii); Rules, Paragraph 3 [b] (ix)(2))

The Respondent has never been authorized by the Complainant to use the Disputed domain names and Respondent is neither the Complainant's representative nor an authorized licensee, neither a dealer nor a reseller. The Complainant has never had any business relationship with the Respondent, which has never been allowed to use ROGER VIVIER S.p.A.'s intellectual property rights.

Pursuant to the Rules, Paragraph 3(b)(ix)(2), the Complainant finds that the Respondent has neither rights nor legitimate interests in respect of the Disputed domain names.

In particular, a) Respondent does not have rights or legitimate interests arising from a bona fide offering of goods or services or from legitimate noncommercial or fair use of the domain name. b) Respondent has not been commonly known by the domain name and holds no trademark or service mark rights in the mark "ROGER VIVIER".

a) Pursuant to the Policy, Paragraph 4(c)(i) - (c)(iii), the Respondent does not have rights or legitimate interests arising from a bona fide offering of goods or services or from legitimate noncommercial or fair use of the domain name.

The Disputed domain names currently resolve to websites that were/are offering for sale counterfeit products and were/are exploiting the notoriety and the fame of the Complainant's registered trademarks with the sole aim of selling counterfeit products.

In the case at hand, "ROGER VIVIER" is neither a generic term, nor descriptive, and it is not a dictionary word, rather it is an inherently distinctive trademark which solely refers to - and should belong to - ROGER VIVIER S.p.A.

Considered that no relationship or contact has ever been established between the parties and no lawful connection to the denomination "ROGER VIVIER" appears from the records either, the Complainant could not find any evidence on which to ground the assumption that the Respondent is making a bona fide offering of goods or services related to the denomination "ROGER VIVIER". Rather, the Complainant contends that the Respondent has entirely incorporated and was/is using the Complainant's trademark as domain name to attract internet users to websites that offer counterfeit goods, by creating a

likelihood of confusion with the “ROGER VIVIER” mark as to the source, sponsorship, affiliation, or endorsement of its website, thus capitalizing on the value of the Complainant’s trademark, and this use constitutes neither a bona fide offering of goods or services nor a legitimate noncommercial or fair use of the domain.

In light of the evidences provided and to the best of the Complainant’s knowledge, the Complainant could neither find any evidence of the Respondent’s use of, or demonstrable preparations to use, the domain names in connection with a bona fide offering of goods or services, nor observe any legitimate non-commercial or fair use of the domain name. Rather (as proved by the screenshots provided as annexes to the Complaint) the Disputed domain names have all been used to sell counterfeit products, even after Complainant’s cease and desist letters notifying the Respondent of such criminal conduct.

Two of the Disputed domain names - <roger-vivier.com> and <rogervivieruk.top> - were suspended upon the Complainant’s request by the relevant internet service providers in May 2017, but they have been brought back online and the Respondent is currently operating them to sell counterfeit products bearing Complainant’s trademarks.

b) Pursuant to the Policy, Paragraph 4(c)(ii), Respondent has not been commonly known by the domain name, and holds no trademark or service mark rights in the mark “ROGER VIVIER”.

According to the gathered WHOIS information the registrant is not commonly known as “ROGER VIVIER”. Consequently, the Complainant alleges that the Respondent is not known by the domain name and there is no evidence of active use of the domain name to indicate that the Respondent might reasonably be considered to have rights or legitimate interests in respect of it.

LEGAL GROUNDS
PART III

The domain name(s) was/were registered and is/are being used in bad faith.
(Policy, paragraphs 4(a)(iii), 4(b); Rules, paragraph 3(b)(ix)(3))

The Complainant contends that the Respondent (a) has registered and (b) has been using the Disputed domain names in bad faith.

a) Respondent has registered the domains in bad faith

As mentioned above [Factual Grounds], the Complainant has been using the “ROGER VIVIER” trademark since the early Fifties in connection with its products and has acquired fame to a great extent all over the world, among others, through advertisement on the media (e.g. newspapers, specialized magazines, television and the internet).

It is indisputable that the Respondent was aware of the fame and notoriety of the trademark “ROGER VIVIER” as it has consciously incorporated it in its domain names in order to attract internet users and to sell counterfeit products.
Such behavior is disrupting Roger Vivier S.p.A.’s business; unwary customers could reasonably suppose to be buying “ROGER VIVIER” authentic products – on a related official website of Roger Vivier S.p.A. – since the look & feel of the website resembles that of the Complainant’s official website and the products offered for sale are exact forged copies of the well-known ROGER VIVIER ones.

In any event, the sale of counterfeit products bearing the Complainant’s trademark is jeopardizing Complainant’s brand image and reputation before actual and potential consumers.

In May 2017 the Complainant demanded and obtained the immediate removal of all the infringing contents hosted on the domain names at issue – upon the intervention of the relevant internet service providers – grounded on solid evidences of sales of “ROGER VIVIER” counterfeit products, which were brought to their attention.

On July 3, 2017, again, the Complainant requested the Respondent to immediately cease and desist from all use and/or illegitimate sales of products bearing the “ROGER VIVIER” trademark and any similar trademarks on all the disputed websites, by removing all the contents from the Disputed domain names at issue and by deleting all offerings of “ROGER VIVIER” counterfeit products from all illegitimate domain names that it has registered. Moreover, Complainant requested the transfer of the ownership of the Disputed domain names to the legitimate owner i.e. the Complainant.

Nevertheless, regardless of the intervention of the relevant internet service providers and the Complainant’s clear and detailed notice, the Respondent did not disable all the Disputed domains and continued its illegitimate business in association with the “ROGER VIVIER” mark.

Also, the Respondent has not proceeded to the transfer of the domain at issue to the legitimate owner – as expressly requested in the Complainant’s cease and desist letter – and has therefore clearly demonstrated its bad faith by keeping the Disputed domain names in its own name for no actual purpose rather than having them at its disposal for new sales of counterfeit items or other illegitimate use.

The lack of any lawful connection between Respondent and Complainant and of any other possible legitimate ground, along with the Respondent’s criminal conduct, clearly shows that the Respondent proceeded to the registration of the Disputed domain names solely to exploit “ROGER VIVIER” fame and notoriety and thus to obtain unlawful advantages through the sale of counterfeit items bearing the Complainant’s trademarks.

It is clear that the Respondent registered the Disputed domain names with the Complainant’s trademarks in mind and this supports a finding of bad faith registration on its side.

b) Respondent has been using the Disputed domain names in bad faith

Bad faith is manifest when the Respondent makes use of the domain names to intentionally attempt to attract, for commercial gain in connection with unlawful sales, internet users to its website by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation or endorsement of Respondent’s website (Policy Paragraph 4(b)(iv)).

As indicated above, the Disputed domain names are confusingly similar or identical to the Complainant’s trademark: furthermore, the Disputed domain names have or have had a clear commercial purpose. All the domain names exploit the “ROGER VIVIER” trademark in such a manner as to appear to a visitor to be in connection with the Complainant’s business. Thus, the Respondent uses the domain names at issue to intentionally attempt 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 of the site.

The Respondent’s websites advertise for sale numerous counterfeit “ROGER VIVIER” shoes, bags and pochettes. The sale of such counterfeit products – on top of representing a violation of relevant trademark and consumer protection regulations – further constitutes a source of confusion for the visitor that might be deceived by the offerings of “ROGER VIVIER” products on a domain name fully incorporating Complainant’s trademark.

In the light of abovementioned behavior, any possible objection by Respondent that the following domain names: <rogervivieronsale.com>, <rogerviviershoe.top>, <rogerviviershoesonlines.com> at present are not employed for the sale of counterfeit items, should be disregarded since the Respondent has used – until Complainant’s intervention – the websites at issue to sell counterfeit products and it could easily modify them to start its illegitimate business anew.

In light of the above, the Complainant contends that, through the registration and use of the domain names for the purpose of selling counterfeit products bearing Complainant’s trademarks, the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainants’ marks as to source, sponsorship, affiliation, or endorsement of Respondent’s site with the sole aim of defrauding unwary final consumers.

The Policy specifically qualifies such conduct as evidence of bad faith under Paragraph 4(b)(iv).

In addition to the reasons provided in Policy, Paragraph 4(b), the Complainant argues that other circumstances could support the finding of bad faith on the Respondent's side. On this point, previous Panels have found that "[T]he Policy expressly recognizes that other circumstances can be evidence that a domain name was registered and is being used in bad faith" [E.g., CBS Broadcasting, Inc. v. LA-Twilight-Zone, WIPO Case No. D2000-0397 - in this sense also: Do The Hustle, LLC v. Tropic Web, WIPO Case No. D2000-0624 - holding "[T]he examples [of bad faith] in Paragraph 4(b) are intended to be illustrative, rather than exclusive".

In particular, the Complainant has documented that the Respondent has registered more than seven hundreds other domain names - using, among others, typo squatting techniques - of which several were found to be identical or confusingly similar to established trade mark rights of third parties e.g.: <barbureforsale.top> (Barbour), <rolexmens.top> (Rolex), <timberland2016.top> (Timberland), <pradaoutlet.top> (Prada). Pursuant to the decision [Bellsouth Intellectual Property Corporation v. Simo Elbaz, WIPO Case No. D2003-0530 - bad faith has been found when the Respondent exhibited a "pattern of registering domain names that correspond closely to marks that are owned by others", thus bad faith can be found in the present case.

What is more, here the Respondent not only makes unauthorized use of third parties' registered trademarks as domain names, yet it exploits their fame and notoriety to sell hundreds of counterfeit items.

In light of the aforementioned reasoning and decisions, the Complainant contends that the Respondent's serious and repeated infringement upon others' trademark rights constitutes here an additional element of bad faith on its side.

Finally, the Complainant would like to bring to the Panel's attention that in a similar case, in which the Respondent's registration and use of the domain name was part of a pattern of registering domain names that incorporate others' trademarks and famous names, the Panel stated that "bad faith can be found where there is no plausible explanation for the registration of a domain name other than to trade on the goodwill of the Complainant". [See Yahoo! Inc. and Geo Cities v. Cupcakes, Cupcake City, Cupcake Confidential, Cupcake-Party, Cupcake Parade, and John Zuccarini, WIPO Case No. D2000-0777 (WIPO Oct. 2, 2000)].

This same reasoning may be shifted in the case at issue, in which the Respondent has registered more than seven hundreds other domain names incorporating other trademarks and famous names with no plausible explanation other than the clear purpose of exploiting the fame and notoriety of the complainant for commercial purposes.

The Respondent was well aware of the fame and notoriety of the trademark "ROGER VIVIER" and has incorporated it in its domain names in order to sell counterfeit products: the historic screenshots of the Disputed domain names display numerous counterfeit products bearing and exploiting Complainant's trademarks. Furthermore, the main page of the Disputed domain names is/was displaying the same logo that can be found on the official website of ROGER VIVIER S.p.A. Such conduct cannot reasonably be intended as accidental, rather it removes any conceivable doubt on Respondent's bad faith.

On a last note, the behavior of the Respondent – that is still using two of its active websites to sell counterfeit products – is in patent contradiction with the finding of any possible kind of good faith use, actual or future.

In sum, knowing of the existence of the Complainant's prior rights, the Respondent purposefully used the Complainant's exact same mark – incorporating it in the Disputed domain names and in the contents of their resolving pages – and illegitimately exploited the Disputed domain names to trade upon and profit from the goodwill that Complainant has built in its ROGER VIVIER marks, by obtaining profit via suitably designed websites dedicated to the sale of counterfeit products.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Disputed domain names are 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 names (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 names have been registered and are 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

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In that regard, the Panel also notes that the burden of proof is on the Complainant to make out its case and past UDRP panels have consistently said that a Complainant must show that all three elements of the Policy have been made out before any order can be made to transfer a domain name.

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

A. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

B. The Respondent has no rights or legitimate interests in respect of the domain name; and

C. The domain name has been registered and is being used in bad faith.

The Panel will therefore deal with each of these requirements in turn.

A. Identical or Confusingly Similar

The Policy simply requires the Complainant to demonstrate that the Disputed domain names <ROGER-VIVIER.COM>, <ROGERVIVIERONSALE.COM>, <ROGERVIVIERSHOE.TOP>, <ROGERVIVIERSHOESONLINES.COM>, <ROGERVIVIERUK.TOP> are identical or confusingly similar to a trademark in which the Complainant has rights. The Panel is satisfied that the Complainant is the owner of registrations of the trademarks "ROGER VIVIER" in several countries including China.

The Panel further finds that the Disputed domain names are confusingly similar to the Complainant's "ROGER VIVIER" trademarks. The Disputed domain names incorporate the Complainant's "ROGER VIVIER" trademark in its entirety.

In similar UDRP cases (see, e.g., Sanofi-Aventis v. Gideon Kimbrell, WIPO Case No. D2010-1559; Turkcell Iletisim Hizmetleri A.S. v. Vural Kavak, WIPO Case No. D2010-0010; Greenbrier IA, Inc. v. Moniker Privacy Services/Jim Lyons, WIPO Case No. D2010-0017 and Zodiac Marine & Pool, Avon Inflatables Ltd and Zodiac of North America Inc. v. Mr. Tim Green, WIPO Case No. D2010-0024), the respective UDRP panels found that adding descriptive words does not remove the likelihood of confusion between a trademark and a domain name incorporating said trademark. Therefore adding the “ONSALE”, “SHOE”,

“SHOESONLINES” phrases would not remove the identity or confusing similarity.

Moreover, the Panel finds that the addition of the "com" and “top” suffixes are irrelevant when determining whether the Disputed domain names are confusingly similar to the Complainant's trademark.

The Panel is of the opinion that the internet users will fall into false impression that the Disputed domain names are official domain names of the Complainant. The Panel recognizes the Complainant's rights and concludes that the Disputed domain names are confusingly similar with the Complainant's trademarks. Therefore, the Panel concludes that the requirements of paragraph 4(a)(i) of the Policy is provided.

B. No Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the Disputed domain names.

It is open to a Respondent to establish its rights or legitimate interests in a domain name, among other circumstances, by showing any of the following elements:

(i) before any notice to you [the Respondent] 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; or
(ii) you [the Respondent] (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
(iii) you [the Respondent] are making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Thus, if the Respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate interest in the Disputed domain names, the Complainant will have failed to discharge its burden of proof and the Complaint will fail. The burden is on the Complainant to demonstrate a prima facie case that the Respondent does not have rights or legitimate interests in the Disputed domain names. Once the Complainant has made out a prima facie case, then the Respondent may, inter alia, by showing one of the above circumstances, demonstrate rights or legitimate interests in the Disputed domain names.

In the absence of a response, considering that not any evidence proving that the Respondent is using the “ROGER VIVIER” trademark under reasonable grounds exists, the Panel accepts the Complainant's allegations as true that the Respondent has no authorization to use the "ROGER VIVIER" trademark in the Disputed domain names.

The Panel also accepts that the Respondent is not commonly known by the Disputed domain names, the Respondent has acquired no trademark or service mark rights, and the Respondent is not an authorized dealer or representative of the Complainant.

In light of the evidence provided by the Complainant, notably that the Complainant has not granted the Respondent any right or license to use the “ROGER VIVIER” trademarks, the Panel finds that the Complainant has established a prima facie case that the Respondent does not have rights or legitimate interests in the Disputed domain names for the purposes of the Policy.

Hence, as the Complainant has made out its prima facie case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the Disputed domain names, the Panel concludes that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel notes that the Complainant must prove both that the Disputed domain names were registered in bad faith and that it are being used in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances that, if found by a panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

By consideration of the foregoing, the Panel is of the opinion that due to the earlier rights of the Complainant on the trademark “ROGER VIVIER” trademark registered worldwide including China, the Respondent, located in China, was aware of the Complainant and its globally well-known “ROGER VIVIER” trademark at the time of the registration of the Disputed domain names. See, e.g., Ebay Inc. v. Wangming, WIPO Case No. D2006-1107; General Electric Company v. CPIC NET and Hussain Syed, WIPO Case No. D2001-0087; Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net, WIPO Case No. D2000-0226. The Panel believes that the awareness of the Complainant's trademark at the time of the registration of the Disputed domain names is to be considered an inference of registration in bad faith.

Further, the fact that the Respondent uses the Complainant's trademark ROGER VIVIER in connection with an offering of goods such as shoes, bags, women clothing etc. related to the Complainant's goods through its websites suggests that by using the Disputed domain names the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

Considering that the Respondent is conducting business on textile sector same as the Complainant's business, the addition of the terms “SHOE”, “ONSALE", “SHOESONLINES” to the Disputed domain names are descriptive of the Complainant's activity field under the trademarks rather than being distinctive. See Swarovski Aktiengesellschaft v. Frank Jackie, WIPO Case No. D2013-0742.

Therefore, the nature of the generic terms used would tend to reinforce consumers' conclusion that the websites to which the Disputed domain names resolve are somehow linked with the Complainant under its ROGER VIVIER trademarks, or otherwise strengthens the risk of association with the Complainant's mark.

Moreover, the Complainant points to a pattern of conduct by Respondent wherein Respondent registered hundreds of domain names including well-known brands such as ROLEX, PRADA, TIMBERLAND and HERMES, also in the same sector. A pattern of conduct expressly forbidden by paragraph 4(b)(ii) of the Policy. It is found that the Respondent has pattern of conduct that includes regularly registering as domain names trademark holders' trademarks. This pattern of conduct clearly demonstrates bad faith on the part of the Respondent.

Furthermore, by not submitting any response, the Respondent has failed to invoke any circumstances that could

demonstrate that it did not register and use the Disputed domain names in bad faith.

Therefore, in light of the above-mentioned circumstances in the present case, the Panel finds that the Disputed domain names have been registered and are being used in bad faith and that the Complainant has established the third element under paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ROGER-VIVIER.COM**: Transferred
2. **ROGERVIVIERONSALE.COM**: Transferred
3. **ROGERVIVIERSHOE.TOP**: Transferred
4. **ROGERVIVIERSHOESONLINES.COM**: Transferred
5. **ROGERVIVIERUK.TOP**: Transferred

PANELLISTS

Name	**Mrs Selma Ünlü**

DATE OF PANEL DECISION 2017-12-08

Publish the Decision