# Decision for dispute CAC-UDRP-101920

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| Case number | CAC-UDRP-101920 |
| Time of filing | 2018-03-21 09:29:04 |
| Domain names | Selected-Homme.com |

## Case administrator

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

## Complainant

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| Organization | Aktieselskabet af 21. november 2001 |

## Respondent

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| Name | Zhang Lixiang |

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant owns a number of trademarks for SELECTED HOMME, including European Union trademark with registration number 006574123, registered on 24 November 2008, United States of America trademark with registration number 3,662,486, registered on 4 August 2009, Canadian trademark with registration number TMA870,519, registered on 3 February 2014 and International registration with registration number 956810, registered on 25 February 2008(the "Trademark"). The Trademark is registered for clothing.

FACTUAL BACKGROUND

The Complainant owns all trademarks related to the SELECTED brand for the family owned company BESTSELLER A/S, and both companies are part of the BESTSELLER Group of companies, which sell clothing.

The disputed domain name was registered on 27 August 2017.

PARTIES CONTENTIONS

1. As the language of the registration agreement is Chinese, the Complainant filed a request that the language of the proceeding should be English based on the fact that (a) the Respondent has not replied to the Complainant's cease and desist letter , (b) the disputed domain name resolves to a website in English and (c) the disputed domain name was registered in the top level domain ".com" which is top level domain applicable to a broader audience than merely China.

2. The disputed domain name resolves to a website that sells unauthorized clothing under the Trademark and the website is being passed off as an official online store of the SELECTED Group of companies through the use of the original campaign image. The Complainant sent a cease and desist letter to the Respondent on 23 February 2018, notifying the Respondent of the Complainant’s prior trademark rights to the Trademark and the copyright to the SELECTED campaign image. The

Respondent did not respond to the Complainant's cease and desist letter.

3. The Complainant alleged that the disputed domain name is confusingly similar to the Trademark, the only difference being the hyphen between SELECTED and HOMME and the top level domain ".com".

4. The Complainant alleged that the Respondent has no rights or legitimate interests in respect of the disputed domain name, inter alia, because the Respondent has no trademark registrations on any part of the disputed domain name and the Respondent is not commonly known by the disputed domain name.

5. The Complainant further claims that the Respondent registered the disputed domain name in bad faith, and uses the disputed domain name in bad faith because the Respondent must have been aware of the Trademark when he filed the disputed domain name and the Respondent is intentionally attempting to attract internet users to the disputed domain name for commercial gain, by creating a likelihood of confusion with the Trademark and attempting to create an affiliation between the disputed domain name, including the website to which it leads, as well as the Complainant,

6. 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

1. Language of the proceedings

Article 11(a) of the Rules provides that "[u]nless 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 is Chinese.

The Panel shall use its discretionary authority to decide that the language of the proceedings shall be English for the following reasons:

(a) the Respondent received the Complainant's communications and failed to reply and therefore did not express in any way that he cannot answer the allegations since he does not understand English;

(b) the Complainant submitted credible evidence that disputed domain name resolves to a website which is in English, making it reasonably likely that the Respondent has sufficient knowledge of the English language to understand the Complaint and file a response; and

(c) the Complainant has submitted its Complaint and supporting evidence in English and, therefore, if the Complainant were required to submit all documents in Vietnamese, the administrative proceeding would be unduly delayed and the Complainant would have to incur substantial expenses for translation.

(cf. Aktiebolaget Electrolux v. Domain Admin, whoisprotection.biz / Emrecan ARSLAN, WIPO Case No. D2015-0298).

2. Substantive issues

a. The disputed domain name includes the entire Trademark with the addition of an hyphen, which does not take away the similarity between the disputed domain name and the Trademark, especially not as the spacing between SELECTED and HOMMES can either be left out or replaced by a hyphen for technical reasons. The Panel therefore finds that the disputed domain name is confusingly similar to the Trademark.

b. The Panel finds the Complainant has established that the Complainant successfully submitted prima facie evidence that the Respondent has made no use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services, nor is making a legitimate non-commercial or fair use of the Disputed domain name, nor is commonly known under the Disputed domain name. The Panel therefore finds the Respondent has no rights or legitimate interests in respect of the Disputed domain name.

c. The Panel is satisfied that the Respondent registered the disputed domain name in bad faith as the disputed domain name incorporates the entire Trademark, while the Trademark is so distinctive that it is likely that the Respondent was familiar with the Trademark when heregistered the disputed domain name. Further, the Panel is satisfied that the Respondent also used the disputed domain name in bad faith as it resolves to a website which seems to be a mock up of an original website of the SELECTED Group of companies and is using the Trademark prominently. Accordingly the website under the disputed domain name is misleading in the sense that Internet users could believe that the website is an original website of the SELECTED Group of companies, offering original products under the Trademark.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **SELECTED-HOMME.COM**: Transferred

## PANELLISTS

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| Name | **Alfred Meijboom** |

DATE OF PANEL DECISION 2018-04-26

Publish the Decision