Decision for dispute CAC-UDRP-101945

Case number	CAC-UDRP-101945
Time of filing	2018-04-03 09:16:10
Domain names	salomontaiwan.info

Case administrator

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

Complainant

Organization	SALOMON SAS

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	tony aokl

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 is inter alia the owner of the International trademark registration no. 375807 "SALOMON", registered on November 24, 1970 for various goods and services in classes 9, 12, 22, 25, 28, and 70 (hereinafter referred to as the "Trademark").

FACTUAL BACKGROUND

The Complainant is a French outdoor sports equipment manufacturing company created in 1947. The Complainant today produces products for various sports markets, including trail running, hiking, climbing, adventure racing, skiing, and snowboarding in over 40 countries on five continents.

The disputed domain name was registered on April 5, 2017 and has been used in connection with a website showing the Complainant's figurative trademark and sports products and pretending to be an official online partner affiliated to the Complainant.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to the Trademark as the disputed domain name includes in its entirety the Trademark and as the addition of the geographic term “Taiwan" at the end of the disputed domain name and the gTLD ".info" are not sufficient to avoid such confusing similarity.

The Complainant also states that the Respondent does not have any rights or legitimate interest with regard to the disputed domain name. The Complainant argues that the Respondent is not known as the disputed domain name and has not acquired trademarks mark rights in the term "SALOMON", that the Respondent is not affiliated with the Complainant nor authorized by it in any way to use the Trademark in the disputed domain name, and that the Complainant does not carry out any activity for, nor has any business with the Respondent. Finally, the Complainant contends that the Respondent also can not rely on a bona fide offering of goods and services as there is no disclaimer or any information explaining that the Respondent is not affiliated with the Complainant.

With regard to bad faith, the Complainant states that the Respondent has intentionally attempted to attract Internet users to the Respondent's website for commercial gain by creating a likelihood of confusion with the Trademark as to the source, sponsorship, affiliation, or endorsement of such websites, which amounts to bad faith use of the disputed domain name pursuant to paragraph 4(b)(iv) of the Policy. In addition, the Complainant contends that the Respondent has already been found to have used a domain name in bad faith in a prior proceeding under the UDRP.

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

Under paragraph 4(a) of the Policy, the Complainant must prove that each of the following three elements is present:

(i) the domain name is identical or confusingly similar to the Complainant's trade mark; and

(ii) the Respondent has no rights or legitimate interests in respect of the domain name; and

(iii) the domain name has been registered and is being used in bad faith.

1. The Panel accepts that the disputed domain name is confusingly similar to the Trademark. It is well established that a domain name that wholly incorporates a trademark may be confusingly similar to such trademark for purposes of the Policy despite the addition of geographic terms, such as "Taiwan".

2. The Complainant has substantiated that the Respondent has no rights or legitimate interests in the disputed domain name. The Panel finds that the Complainant has fulfilled its obligations under paragraph 4(a)(ii) of the Policy. The Respondent did not deny these assertions in any way and therefore failed to prove any rights or legitimate interests in the disputed domain name.

Based on the evidence before the Panel, the Panel cannot find any rights or legitimate interests of the Respondent either.

The Respondent is using the disputed domain name for a website offering products similar to the Complainant's products and using the Complainant's branding. There is no persuasive evidence on the record supporting that the goods offered at the disputed domain name are counterfeit. But even if such goods were genuine, the use of the disputed domain name would not be bona fide under the Policy. The Panel acknowledges that a reseller can make a bona fide offering of goods and services and thus have rights or legitimate interests in a domain name if the use fits certain requirements, with regard to the actual offering of goods, the use of the site to sell only the trademarked goods and the site is accurately and prominently disclosing the registrant's relationship with the trademark holder (see Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No. D2001-0903). According to the evidence on the record, however, the website at the disputed domain name does not visibly disclose the Respondent's relationship with the trademark holder, therefore does not meet the Oki Data criteria, and cannot convey any rights or legitimate interests on the Respondent's use of the disputed domain name.

Accordingly, the Panel finds that the Complainant has proven that the Respondent has no rights or legitimate interests in respect of the disputed domain name under paragraphs 4(a)(ii) and 4(c) of the Policy.

3.1 Given that the Respondent offers products similar to the Complainant's ones and uses the Complainant's figurative trademark on its website, the Panel is satisfied that the Respondent registered the disputed domain name with full knowledge of the Complainant and its rights in the Trademark.

3.2 The Panel is also satisfied that the disputed domain name is being used in bad faith under paragraph 4(b)(iv) of the Policy on the basis that the website operating under the disputed domain name is intentionally trying to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Trademark as to the source, sponsorship, affiliation, or endorsement of it.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **SALOMONTAIWAN.INFO**: Transferred

PANELLISTS

Name	**Peter Müller**

DATE OF PANEL DECISION 2018-05-22

Publish the Decision