Decision for dispute CAC-UDRP-102223

Case number	CAC-UDRP-102223
Time of filing	2018-11-09 11:38:48
Domain names	majeboutique.online

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	MAJE

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	Charles Lamontagne

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings pending or decided related to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several trademarks “MAJE”:
- the trademark MAJE® n° 801247, registered since November 28th, 2002, and duly renewed for the classes 9, 14, 18 and 25;
- the trademark MAJE® n° 998746, registered since February 6th, 2009 for the class 3;
- the figurative trademark MAJE® n° 1370546, registered since July 20th, 2017 for the classes: 3, 9, 14, 18 and 25.
However the Complainant has chosen, as a Mutual Jurisdiction, that one of the Registrar which is the US Jurisdiction being the registrar a Los Angeles Compmany. The first two International Registrations do not cover USA on the contrary Reg.1370546 for the stylised trademark MAJE in classes 3; 9; 14; 18 and 25 covers USAand it appears valid at this moment in time.

The Complainant also owns an important domain names portfolio containing the trademark MAJE®, such as the domain name <maje.com> registered and used since December 12th, 1996

FACTUAL BACKGROUND

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

Maje was Created in 1998 and it is specialized in ready-to-wear collections and accessories for women. As a part of the SMCP group, the Complainant has a worldwide presence, with 484 points of sale as of December 2017.

The Respondent is the owner of the disputed domain name which was registered on October 20th, 2018 . The website in relation with the disputed domain name displays the Complainant's trademark MAJE® and entitle its homepage "MAJE | Vêtements et accessoires" (which means "MAJE | Clothing and accessories").

The Complainant states that the disputed domain name is confusingly similar to its prior trademark MAJE® and its domain names associated. Indeed, the disputed domain name contains the Complainant's registered international trademark MAJE® in its entirety.

The Complainant contends that the addition of the term "BOUTIQUE" without space or hyphen at the beginning of the disputed domain name is not sufficient to escape the finding that it is confusingly similar to the Complainant's trademark and does not change the overall impression of the designation as being connected to the trademark MAJE®.
In further, the addition of the English words "BOUTIQUE" increases the likelihood of confusion with the Complainant's trademarks and activity, because "BOUTIQUE" refers to the Complainant activity, as this term refers to the boutiques the Complainant owns all around the world.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

RESPONDENT:

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

The Panel agrees with the Complainant that the disputed domain name is confusingly similar to its prior rights and that adding the generic word BOUTIQUE is not sufficient to avoid confusing similarity and does not render the disputed domain name sufficiently different from the Complainant's trademark and tradename. On the contrary, as the Complainant rightly

underlined, that generic term increases the risk of confusion with MAJE becasue it refers exactly to the comercial sector on which the Complainant is active: i.e. fashion design items. MAJE has more than 400 outlets worldwide. The disputed domain name looks extremely similar to the Complainant's mark and internet users can certainly be misled by the disputed domain name. The addition of the gTLD .online is a functional element of a domain name and does not distinguish the disputed domain name from the Complainant's mark under the Policy. Such use is required of domain name registrants and do not serve to identify a specific enterprise as a source of goods or services" WIPO Case No. D2001-0602, SBC Communications v. Fred BellakaBellInternet.

Thus, the addition of the English words "BOUTIQUE" increases the likelihood of confusion with the Complainant's trademarks and activity .

As stated in the CAC Case No. 102122, SANDRO ANDY v. SAEED HASSAN "The suffix ".online" shall be disregarded under the identity or the confusing similarity test as it does not add anything to the distinctiveness of the disputed domain name.". In this case it increases the risk of confusion for the on line consumers that will be led to think that they are in the authorised web site of MAJE to buy original fashion design goods in those on line legally approved shops.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's mark. Therefore the first element has been proven, therefore, the Panel finds that the disputed domain name is confusingly similar to the trademarks and domain names of the Complainant.

As far as the second element is concerned, the Respondent does not appear to be commonly known by the disputed domain name. The Compalinant has clearly stated that there are no relations and connections between the parties. The Respondent does not appear to have been authorised by the Complainant to use the Complainant's mark. The Respondent has built, on the base of the disputed domain name, a very similar web site in which all the MAJE distinctive signs are shown in order to mislead the consumers and sell identical products on line.

The Respondent wanted to create a likelihood a confusion in the Internet users' mind, and imitate the Complainant's image and this intention is clearly proved by the following elements:

- The logo MAJE has been used in the website and in the title of the main page.

- The Respondent identifies itself solely as "MAJE" on the website and there is no other mention of the identity of the owner of the website to avoid the likelihood of confusion with the Complainant, especially in the section "A PROPOS DE NOUS" (meaning "ABOUT US" in French).

Therefore the Respondent has no rights or legitimate interests in this name under paragraph 4(c)(ii) of the Policy.

Finally the third element: bad faith.
III. The domain name(s) has been registered and is being used in bad faith
for the following reasons as effectively indicated by the Complainant:
a. Constructive knowledge/prior knowledge of potential rights
b. Phishing
c. Substantial similarity between website associated with disputed domain name and website associated with right holder's domain name(s) in order to divert consumers especially on line consumers towards the registrant's web site.

The Complainant asserts that Respondent was using its website to obtain personal information from Internet users. Using a domain name to attempt to pass off as the Complainant is not a bona fide offering of good and services or a legitimate noncommercial or fair use. A fishing activities is also a probable consequence to have such a similar web site.
The presence of fishing activities is a proof of a bad faith as establsihe in two CAC Cases 101856 and 101857 ENIBANQUE.COm and BANQUE-ENI.com in which it was stated that:" The presence of a fishing activity in a connected domain name is a clear evidence that the Respondent is involved in a scientific bad faith project aiming at duplicating BANQUE ENI web site and communications to the world".

Clearly, such maneuver by the Respondent would not have been generated if the Respondent did not know the Complainant's activities (WIPO Case D2010-1290, Meilleurtaux v. Domain Manager of Bondi Junction) and the well known trademark MAJE.

In the case at hand Respondent has intentionally sought to use Complainant's marks in the disputed domain names to attract Internet users to websites and other on-line locations for commercial gain by confusing consumers as to sponsorship of the website. This constitutes bad faith within the meaning of paragraph 4(b)(iv) of the Policy. (WIPO Case No. D2000-1495, America Online, Inc. v. John Zuccarini, also known as Cupcake Message, Cupcake Messenger, The Cupcake Secret, Cupcake Patrol, Cupcake City, and The Cupcake Incident.
Teh particularly attractiveness of MAJE is also proved by previous arbitration Decisions that have assessed imitation against the Compalinant's trademark:

Finally, past Panels have established the Complaint's rights over the term "MAJE". Please see:
- WIPO Case No. D2018-1732, Maje v. Xudong Zhang <maje.shop>;
- WIPO Case No. DSE2017-0003, MAJE S.A.S. v. S.M.M.J. <maje.se>;
- WIPO Case No. D2015-1032, MAJE S.A.S. v. Zhangwei <wwwmaje.com>.

Furthermore, the disputed domain name points to website where clothing and accessories are offered for sale. The Complainant figurative trademark MAJE is used on the Registrant's website and in its title "MAJE | Vêtements et accessoires" uses also the French languages to increase the imitation. It is self evident that the Respondent wants to use the disputed domain name to divert intentionally the Complainant's customers to its web site. Clear proofs of this bad faith behaviour are the following:

- The logo MAJE® is used in the website and in the title of the main page;

- The Respondent uses the disputed domain name, as cliamed by the Complainant, in order to obtain personal information from the Internet users;

- The Respondent identifies itself solely as "MAJE" on the website. No other indication of the identity of the Registrant is mentioned on the website or to avoid the likelihood of confusion with the Complainant, especially in the section "A PROPOS DE NOUS". No effort to differentiate but rather a clear intention to be confused or associated with the real MAJE.
A Google search of the terms "MAJE BOUTIQUE" displays several results, all of them being related to the Complainant and its activity and this proves that the Respondent had known the importance of the trademark MAJE and could not have been unknown to the latter.

Finally the Complainat held that the Respondent used on its website pictures directly taken from the Complainant's official website and this increases the likelihood that Internet users would be confused into believing Respondent's website emanated from or was sponsored or authorized.
The Registrar decided not to join the proceedign and therefore not to challenge the above mentione dallegations that seems to this Panel convincing and sufficiently proven.
Respondent has registered and used the disputed domain name with full knowledge of the Complainant's trademark.

On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

Massimo Cimoli

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **MAJEBOUTIQUE.ONLINE**: Transferred

PANELLISTS

Name	**Massimo Cimoli**

DATE OF PANEL DECISION 2018-12-17

Publish the Decision