Decision for dispute CAC-UDRP-102369

Case number	CAC-UDRP-102369
Time of filing	2019-02-22 11:29:11
Domain names	sandroparisfashion.org

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	SANDRO ANDY

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	ji zhou chen

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings.

IDENTIFICATION OF RIGHTS

According to the evidence submitted by Complainant, Complainant is the owner of the following trademarks: the International trademark SANDRO with No. 827287, registration date 4 March 2004, and the European Union trademark SANDRO with number 008772568 and a registration date of 27 July 2010.

FACTUAL BACKGROUND

According to the information provided Complainant is a French company in the fashion industry. Complainant's fashion articles for women are sold since 1984 and for men are sold since 2007 in France and other countries around the world. Complainant has 646 points of sale in 39 countries. Complainant also owns and uses an important domain name portfolio, which domain names include the trademark SANDRO, such as the domain name <sandro-paris.com> registered since 25 September 2003.

The disputed domain name <sandroparisfashion.org> was registered on 10 November 2018

The trademark registrations of Complainant have been issued prior to the registration of the disputed domain name. According to Complainant the disputed domain name is confusingly similar to Complainant’s trademarks since it contains

the SANDRO trademark of Complainant in its entirety. The addition of geographical and descriptive elements and the gTLD suffix “org” can be neglected.

According to Complainant, Respondent has no rights or legitimate interest in the disputed domain name. The disputed domain name redirects to an online shop dedicated to Complainant’s products and products of competitors. Complainant submits that Respondent is not affiliated with him in any way. According to Complainant Respondent has built, on the base of the disputed domain name, a very similar web site in which all the SANDRO distinctive signs are shown in order to mislead consumers and sell on line SANDRO branded products. By using the disputed domain name, the Respondent wants to create a likelihood of confusion in the Internet users’ mind. Moreover, the website sells products from competitors. There is no bona fide offering of goods or services within the meaning of paragraph 4(c) of the Policy. First, Respondent must use the site to sell only the trademarked goods; otherwise, it could be using the trademark to bait Internet users and then switch them to other goods. In this case the website to which the disputed domain name resolves also sells products of competitors. Second, the website to which the disputed domain name resolves must accurately disclose the registrant's relationship with the trademark owner; in this case there is no relationship and this is not disclosed. Complainant finally submits that Respondent has neither been authorized by Complainant to register the disputed domain name, nor has Respondent acquired a legitimate right to use the SANDRO trademarks by any preceding or current business activity.

According to Complainant the disputed domain name is registered and is being used in bad faith. Respondent should have known about the trademark SANDRO before the registration of the disputed domain name. It has to be highlighted that Complainant’s trademark registrations predate the creation of the disputed domain name and Respondent has never been authorized by Complainant to register and use the disputed domain name. Moreover, the website makes clearly reference to Complainant. Complainant asserts that Respondent registered the disputed domain name with full knowledge of Complainant's rights. First, Complainant obtained its first trademark registration long before the disputed domain name was registered and used it widely since then. Second, Respondent uses the disputed domain name to resolve to a website using Complainant's trademark, which is a clear indication that Respondent was aware of the trademarks of Complainant and demonstrates knowledge and targeting of Complainant and its trademark, i.e. registration and use in bad faith. Registering and using a confusingly similar domain with knowledge of Complainant’s rights in such domain name indicates bad faith registration and use. Complainant concludes that Respondent registered and is using the disputed domain name in attempts to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with Complainant’s mark as to source, sponsorship, affiliation, or endorsement.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

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 Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

Complainant has, to the satisfaction of the Panel, shown 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

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

Complainant has established that it is the owner of several trademark registrations for SANDRO. The disputed domain name, <sandroparisfashion.org>, incorporates the entirety of the SANDRO trademark as its distinctive element. Many UDRP panels have found that a disputed domain name is confusingly similar to a complainant's trademark where the disputed domain name incorporates a complainant's trademark in its entirety. The addition of the descriptive terms "paris" and "fashion" and the generic Top-Level Domain ("gTLD") ".org" is insufficient to avoid a finding of confusing similarity.

In the opinion of the Panel, Complainant has made a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Complainant has not licensed or otherwise permitted Respondent to use any of its trademarks or to register the disputed domain name incorporating its trademarks. Respondent is not making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademarks of Complainant.
The Panel accepts the undisputed submission of Complainant that the disputed domain name resolves to a website which is very similar to the website of Complainant. In the website of Respondent all the distinctive signs of Complainant are shown in order to mislead consumers and sell on line the products of Complainant. In addition the website sells products from competitors. According to the criteria of the decision in Oki Data Americas, Inc. v. ASD, Inc, WIPO Case No. D2001–0903, there is no bona fide offering of goods or services if the website to which the disputed domain name resolves also sells products of competitors. In addition, the website under the disputed domain name does not accurately and prominently disclose the relationship between Respondent and Complainant as the holder of the SANDRO trademarks, in particular as there has never been any business relationship between Complainant and Respondent. The Panel does not consider such use of the website to which the disputed domain name resolves a bona fide offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name. Respondent is also not commonly known by the disputed domain name nor has it acquired any trademark or service mark rights.
The Panel concludes that Respondent lacks rights or legitimate interests in the disputed domain name.

The Panel finds that the disputed domain name has been registered and is being used in bad faith. Noting the status of the SANDRO marks and the overall circumstances of this case, in particular the similar look-and-feel of the website of Respondent, the Panel finds it more likely than not that Respondent knew or should have known of Complainant's marks. The Panel notes that the disputed domain name resolves to a website which incorporates Complainant's marks, which indicates, in the circumstances of this case, that Respondent registered and used the disputed domain name with the intention to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the trademarks of Complainant as to the source, sponsorship, affiliation, or endorsement of its website or location or of a service on its website or location, which constitutes registration and use in bad faith pursuant to paragraph 4(b)(iv) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **SANDROPARISFASHION.ORG**: Transferred

PANELLISTS

Name	**Dinant T.L. Oosterbaan**

DATE OF PANEL DECISION 2019-03-25

Publish the Decision