Decision for dispute CAC-UDRP-102382

Case number	**CAC-UDRP-102382**
Time of filing	**2019-03-11 10:39:47**
Domain names	**majesoutlet.com**

Case administrator

Name	**Šárka Glasslová (Case admin)**

Complainant

Organization	**MAJE**

Complainant representative

Organization	**Nameshield (Enora Millocheau)**

Respondent

Name	**enchong lin**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any legal proceedings which are pending or decided and which relate 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.

The Complainant’s trademarks cover among other things, the class 25, namely clothing and footwear.

The Complainant also owns a 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:

Created in 1998, MAJE (the Complainant) is a company specialized in ready-to-wear collections and accessories for women.

As a part of the SMCP group, the Complainant has a worldwide presence, with 538 points of sale in 39 countries.

The disputed domain name <majesoutlet.com> was registered on June 28th, 2019.

The disputed domain name redirects to an online shop using the Complainant’s logo and appearing to be an official site of the Complainant which is not a site relating to the latter.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant states that the disputed domain name <majesoutlet.com> is confusingly similar to its trademarks MAJE®.

Indeed, the domain name <majesoutlet.com> includes the Complainant's trademark in its entirety. The Complainant contends that the addition of the letter “S” and the term “OUTLET” is insufficient to distinguish between the disputed domain name and the trademark MAJE®.

In this respect, please see Section 1.8 of WIPO Overview 3.0 which provides that “Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.”

Please see also Section 1.7 of WIPO Overview 3.0. and WIPO Case No. D2002-0615, Bayerische Motoren Werke AG v. bmwcar.com (“when a domain name wholly incorporates a complainant’s registered mark, that is sufficient to establish confusing similarity for purposes of the Policy.”)

Furthermore, the addition of the gTLD suffix “.COM” is not sufficient to escape the finding that the domain name is identical to the Complainant's trademark MAJE® and does not change the overall impression of the designation as being connected to the trademark of the Complainant.

Past Panels have held that the TLD suffix of the disputed domain name is merely a technical requirement for the operation of domain names, and as such it is not considered on the issue of confusing similarity.

Please see for instance WIPO Case No. D2014-2003, LEGO Juris A/S v. Wang Keke.

Prior Panels confirmed the Complainant’s rights:
- CAC Case No. 102223, MAJE v. Charles Lamontagne <majeboutique.online>;
- 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>;

Therefore, the Complainant contends that the disputed domain name <majesoutlet.com> is confusingly similar to the Complainant’s trademarks.

The Respondent does not have any rights or legitimate interest in the domain name(s)

According to the WIPO Case No. D2003-0455, Croatia Airlines d .d. v. Modern Empire Internet Ltd., the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy.

The Complainant asserts that the Respondent is not known as the disputed domain name but as “enchong lin”. Past panels have held that a Respondent was not commonly known by a disputed domain name if the WHOIS information was not similar to the disputed domain name. Please see for instance FORUM Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group (“Here, the WHOIS information of record identifies Respondent as “Chad Moston / Elite Media Group.” The Panel therefore finds under Policy paragraph 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy paragraph 4(c)(ii).”)

The Complainant contends that the Respondent is not affiliated with nor authorized by him in any way. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither license nor authorization has been granted to the Respondent to make any use of the Complainant’s trademark MAJE®, or apply for registration of the disputed domain name by the Complainant.

The Complainant contends that 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 on line products branded MAJE. Besides, there is no mention of the Respondent’s identity on the website in order to avoid the likelihood of confusion with the Complainant.

By using the disputed domain name, the Respondent wanted to create a likelihood a confusion in the Internet users’ mind.

According to the decision WIPO Case No. D2001–0903, Oki Data Americas, Inc. v. ASD, Inc., the use of a trademark as a domain name by an authorized or non-authorized third party can be regarded as a bona fide offering of goods or services within the meaning of paragraph 4(c) of the Policy if the following conditions are satisfied:

“- The Respondent must actually be offering the goods or services at issue. E.g., World Wrestling Federation Entertainment, Inc. v. Ringside Collectibles, WIPO Case No. D2000-1306 (WIPO Jan. 24, 2001) (respondent failed to show demonstrable preparations to use the domain name in connection with a bona fide offering);

- The 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. Nikon, Inc. v. Technilab, WIPO Case No. D2000-1774 (WIPO Feb. 26, 2001) (use of Nikon-related domain names to sell Nikon and competitive cameras not a legitimate use); Kanao v. J.W. Roberts Co., Case No. 0109 (CPR July 25, 2001) (bait and switch is not legitimate).

- The website must accurately disclose the registrant's relationship with the trademark owner; it may not, for example, falsely suggest that it is the trademark owner, or that the website is the official site, if, in fact, it is only one of many sales agents. E.g., Houghton Mifflin Co. v. Weatherman, Inc., WIPO Case No. D2001-0211 (WIPO April 25, 2001) (no bona fide offering where website's use of Complainant's logo, and lack of any disclaimer, suggested that website was the official Curious George website); R.T. Quaife Engineering v. Luton, WIPO Case No. D2000-1201 (WIPO Nov. 14, 2000) (no bona fide offering because domain name <quaifeusa.com> improperly suggested that the reflected site was the official U.S. website for Quaife, an English company; moreover, respondent's deceptive communications with inquiring consumers supported a finding of no legitimate interest); Easy Heat, Inc. v. Shelter Prods., WIPO Case No. D2001-0344 (WIPO June 14, 2001) (no bona fide use when respondent suggested that it was the manufacturer of complainant's products).

- The Respondent must not try to corner the market in all domain names, thus depriving the trademark owner of reflecting its own mark in a domain name. Magnum Piering, Inc. v. Mudjackers, WIPO Case No. D2000-1525 (WIPO Jan. 29, 2001) (“a single distributor is extremely unlikely to have a legitimate interest in precluding others from using numerous variants on a mark”).”

The Complainant asserts that the Respondent fails the test by building, 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, without any element showing that the website is not an official one. By using the disputed domain name, the Respondent wanted to create a likelihood a confusion in the Internet users' mind.

Please see CAC Case No. 101901, HUGO BOSS Trade Mark Management GmbH & Co/ HUGO BOSS AG v. Charles Carranza/ William Tillery.

Thus, in accordance with the foregoing, the Complainant contends that the Respondent has no right or legitimate interest in respect of the disputed domain name <majesoutlet.com>.

The domain name(s) has been registered and is being used in bad faith.

Moreover, the website makes clearly reference to the Complainant. The Complainant contends that the Respondent registered the disputed domain name with knowledge of Complainant's rights. First, the Complainant obtained its first trademark registration years before the disputed domain name was registered and used it widely since then. Second, the Respondent used 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 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 pursuant to Policy paragraph 4(a)(iii).

Please see FORUM Case No. FA 1031703, Minicards Vennootschap Onder FIrma Amsterdam v. Moscow Studios ("The Panel thus finds that Respondent had actual knowledge of Complainant's mark when registering the disputed domain name, and find bad faith registration and use under Policy paragraph 4(a)(iii).").

The Complainant finds that the Respondent, by registering and using the Disputed domain name incorporating the Complainants' trademark MAJE® along with generic terms related to the Complainant's business activity, tried to mislead Internet users and consumers, for commercial gain (for selling products), into thinking that the website at the disputed domain name is, in some way or another, connected to, sponsored by or affiliated with the Complainant and its business, which the Panel finds is evidence of bad faith.

Please see WIPO Case No. D2004-0649, Columbia Insurance Company v. Pampered Gourmet ("Complainant has established that Respondent has registered and used the domain name in bad faith by showing that Respondent uses the domain name to intentionally try to attract, for commercial gain, visitors to Respondent's site, by creating a likelihood of confusion with Complainant's THE PAMPERED CHEF mark as to the source, sponsorship, affiliation, or endorsement of Respondent's site or the goods and services on Respondent's site. See Policy, paragraph 4(b)(iv).")

The 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. See paragraph 4(b)(iv) of the Policy.

Consequently, the Complainant contends that the Respondent has registered the disputed domain name <majesoutlet.com> and is using it in bad faith.

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 disputed domain name registered in 2018 is confusingly similar to the Complainant's MAJE registered trademark (registered as an international trade mark for clothing since 2002) adding only the letter 's', the generic term 'outlet' and the gTLD.com none of which distinguish the disputed domain name from the Complainant's mark.

The Respondent is not commonly known by the disputed domain name and is not authorised by the Complainant.

The disputed domain name has been pointed to a site offering clothing under the MAJE mark using the Complainant's official logo which does not make it clear that the site attached to the disputed domain name is not connected to the Complainant but appearing to be an official site of the Complainant. As such this is not a bona fide offering of goods or services and as it is commercial cannot be non commercial legitimate fair use. The Respondent does not have legitimate rights or interest in the disputed domain name.

The use of the Complainant's logo on the Respondent's web page attached to the disputed domain name shows the Respondent is aware of the Complainant and its business. Respondent has intentionally registered and is using the disputed domain name in an attempt to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with Complainant's mark as to source, sponsorship, affiliation, or endorsement of the web site or products on it which is likely to disrupt the Complainant's business. Such conduct is registration and use of the disputed domain name in bad faith under paragraphs 4(b)(iii) and (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. **MAJESOUTLET.COM**: Transferred

PANELLISTS

Name	**Dawn Osborne**

DATE OF PANEL DECISION 2019-04-14

Publish the Decision