Decision for dispute CAC-UDRP-102668

Case number	CAC-UDRP-102668
Time of filing	2019-09-10 16:28:59
Domain names	salomonargentina.com

Case administrator

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

Complainant

Organization	SALOMON

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	See PrivacyGuardian.org

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant proved to be the owner of the following trademarks:

i) International registration no. 375807 of November 24, 1970, in class 9, 12, 22, 25, 28 and 40;
ii) International registration no. 489108 of July 19, 1984, in class 6, 8, 9, 12, 16, 18, 34;
iii) International registration no. 526127 of March 22, 1988, in class 1, 2, 6, 7, 8, 9, 12, 16, 18, 25, 28, 35, 36
iv) International registration no. 940740, of June 8, 2007, in class 35.

The Complainant also proved to be the owner of the domain name <salomon.com> registered on January 10, 1995 which links to the Complainant's official website.

FACTUAL BACKGROUND

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

The Complainant is a French based company active in the field of sports equipment manufacturing. The Company was created on 1947 by the Salomon's family in Annecy, France.

Salomon is active in more than 40 countries on five continents in the production and distribution of products for numerous sports, including trail running, hiking, climbing, adventure racing, skiing and snowboarding.

The Complainant is owner of various trademark registrations for the trademark SALOMON having effects in numerous countries and also owns the domain name <salomon.com> which host the Complainant's official website.

The disputed domain name <salomonargentina.com> was registered on December 6, 2018 and it is used in relation to a website displaying the Complainant's SALOMON trademark in relation to men and women footwear.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

As regards the First element of the Policy, the Complainant claims that the disputed domain name is confusingly similar to its prior trademarks SALOMON. The addition of the geographical term "Argentina" does not exclude the finding of confusing similarity for the purposes of the UDRP.

Finally, the Complainant contends that TLD are disregarded when assessing confusingly similarity as they are considered as standard registration requirements.

As regards the Second element of the Policy, the Complainant denies that the Respondent has rights or legitimate interests in registering the disputed domain name. According to the Complainant, the information provided in the WHOIS exclude that the Respondent is known as the disputed domain name. Moreover, the Complainant denies to have authorized the Respondent to use the trademarks SALOMON or to apply for registration of the disputed domain name.

Moreover, the current use of the disputed domain name does not amount to a bona fide offering of goods or services nor to a legitimate non-commercial or fair use.

As regards the Third and last element of the Policy, the Complainant supports that the Respondent was aware of its rights on the SALOMON trademark as the website to which the disputed domain name links contains several references to the Complainant's trademarks.

The Complainant concludes that the Respondent registered and used the disputed domain name in order to attract, for commercial gain, internet users to its website by creating a likelihood of confusion with the Complainant's trademark as to source, sponsorship, affiliation or endorsement.

RESPONDENT:

No administratively compliant Response has been submitted.

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. The disputed domain name is confusingly similar to a trademark in which the Complainant has rights

The disputed domain name is confusingly similar to the Complainant's registered trademarks as it wholly incorporates the sign SALOMON (see Six Continent Hotels, Inc. v. The Omnicorp, WIPO Case No. 2005–1249 and Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No. D2001-0903).

The addition of the element "ARGENTINA" increases rather than excludes the risk of confusion for the public which could easily perceive the domain name as an official SALOMON's online platform for the Argentinian public and for the Argentinian territory.

Furthermore, the addition of ".com" is generally disregarded in view of its technical function.

As a consequence, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks, for the purposes of the First Element of the Policy.

2. The Respondent lacks rights or legitimate interests in the disputed domain name

The Respondent has not submitted a response to the Complaint. Therefore, it has filed no information on possible rights or legitimate interests it might hold. On its part, the Complainant has submitted information and arguments which, according to the Panel, are sufficient to conclude that the Respondent has no rights or legitimate interest in the disputed domain name.

According to the information provided by the Complainant, and not contested, the Respondent is not commonly known by the disputed domain name nor he has been authorized to use the Complainant's trademark "SALOMON".

The Panel agrees that the current use of the disputed domain name does not amount to a bona fide offering of goods and services nor it could be qualified as a legitimate fair and non-commercial use. As a matter of fact, the website reproduces the Complainant's figurative trademark and the same look and feel of the Complainant's official website (www.salomon.com).

The Respondent did not provide any information which could avoid the likelihood of confusion with the Complainant nor did the Respondent provide information on the rights or legitimate interests which could authorize him to register and use the disputed domain name.

For these reasons, the Panel takes the view that the Respondent lacks rights or legitimate interests in the disputed domain name for the purposes of the Second Element of the Policy.

3. The disputed domain name has been registered and is being used in bad faith

The Panel agrees with the Complainant's allegations that the Respondent was aware of the Complainant's rights on the trademark "SALOMON" at the time of the registration of the disputed domain name.

First, the disputed domain name was registered well after the Complainant's trademarks which are undoubtedly well-known (as previously recognized by CAC Case No. 101284 SALOMON SAS v. hui Min <salomontw.com>). Furthermore, the disputed domain name redirects to a website which reproduces the Complainant's trademark (including the figurative version), the Complainant's products as well as a similar layout of the Complainant's official website. These facts show that the Respondent knew the SALOMON's trademarks, at the time of the registration of the disputed domain name.

As regards use in bad faith, the Respondent is using <salomonargentina.com> in a way that could clearly cause confusion for the public as to the source, sponsorship, affiliation or endorsement of its website. As previously stated, the website reproduces the Complainant's trademarks and similar graphics, images colors and design of the Complainant's official website. Such use could disrupt the Complainant's business and take unfair advantage of the reputation of the SALOMON trademarks. Under this regard, the combination between the trademark "SALOMON" and the geographical term "ARGENTINA" could be seen as a further suggestion of a sort of sponsorship or endorsement by the trademark owner with specific reference to the Argentinian territory.

According to Paragraph 4(b)(iv) of the Policy, use and registration in bad faith could be inferred when:

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of its website or location or of a product or service on its website or location.

All above considered, the Panel takes the view that the disputed domain name was registered and is used in bad faith for the purpose of the Third Element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **SALOMONARGENTINA.COM**: Transferred

PANELLISTS

Name	**Andrea Mascetti**

DATE OF PANEL DECISION 2019-10-18

Publish the Decision