Decision for dispute CAC-UDRP-102795

Case number	**CAC-UDRP-102795**
Time of filing	**2019-12-03 12:00:41**
Domain names	**uk-maje.com**

Case administrator

Name	**Šárka Glasslová (Case admin)**

Complainant

Organization	**MAJE**

Complainant representative

Organization	**Nameshield (Laurent Becker)**

Respondent

Name	**king santomi**

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant submitted evidence that it is the registered owner of the following trademarks:
(i) international trademark registration No. 801247 for "MAJE" (word), registered since 28 November 2002 for the classes 9, 14, 18 and 25;
(ii) international trademark registration No. 998746 for "MAJE", registered since 6 February 2009 for the class 3; and
(iii) international trademark registration No. 1370546 for "MAJE (figurative), registered since 20 July 2017 for the classes 3, 9, 14, 18 and 25.
The Complainant also provided information, supported by evidence, that it is the registered holder of the domain name <maje.com> which was registered and used since 12 December 1996.

FACTUAL BACKGROUND

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

Created in 1998, 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 <uk-maje.com> was registered on 8 November 2019.

The disputed domain name redirects to the Registrar parking page.

The Registrar confirmed that the Respondent is the current registrant of the disputed domain name and that the language of the registration agreement is English.

The Respondent has not filed a Response.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Complainant made the following contentions:

The Complainant argues that the disputed domain name is confusingly similar to its well-known and distinctive trademark "MAJE". In particular, the Complainant contends that the addition of the letters "UK" (in reference to the country code of the United Kingdom) at the beginning of the domain name and separated by a hyphen of the trademark MAJE and the gTLD ".COM" is not sufficient elements to escape the finding that the disputed domain name is confusingly similar to the Complainant's trademarks and it does not change the overall impression of the designation as being connected to the trademark "MAJE".

The Complainant refers to the various case law of earlier panels to support its arguments, mainly CAC case No. 101270 where it was found that the mere adding of the generic abbreviation "NL-", which stands for the country code of the Netherlands, is insufficient to prevent confusing similarity; and WIPO Case No. D2003-0888, which establishes that a domain name that wholly incorporates a Complainant’s registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP. In addition, the Complainant mentions that numerous UDRP decisions have recognized that the addition of a generic term following a trademark does not create a new or different right to the mark or diminish confusing similarity.

Thus, the Complainant concludes that there is a likelihood of confusion between the disputed domain name and the Complainant's trademark "MAJE" as well as its associated domain names.

Regarding the Respondent's rights or legitimate interests, the Complainant points to the decision in the WIPO Case No. D2003-0455, according to which the complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests and 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 UDRP. The Complainant asserts that it 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 trademark "MAJE", or to apply for registration of the disputed domain name by the Complainant.

The Complainant notes that the website in relation to the disputed domain name is not used or has not been used since the registration of the disputed domain name, and submits that the Respondent has no demonstrable plan to use the disputed domain name since its registration. According to the Complainant, past UDRP panels have held that the lack of use of a domain name is considered as an important indicator of the absence of legitimate interests by the Respondent (e.g. FORUM No. FA 933276 and WIPO No. D2000-1164).

Thus, the Complainant contends that the Respondent has no rights or legitimate interest on the disputed domain name, and has registered and used the domain name only in order to create a likelihood of confusion with the Complainant's trademarks.

Turning to the bad faith argument, the Complainant asserts that the disputed domain name is confusingly similar to the Complainant's well-known trademarks "MAJE". The Complainant refers to the WIPO Case No. D2018-1732 in which the panel

held that: "It is implausible that it was unaware of the Complainant when it registered the Domain Name especially since the Trade Mark has no other dictionary significance and considering the nature of the Domain Name". Given the distinctiveness of the Complainant's trademarks and reputation, the Complainant contends that it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of Complainant's rights in the trademark.

Moreover, the Complainant states that the fact that the disputed domain name is resolving to an inactive website does not prevent a finding of bad faith under the "passive holding" principles which are laid out in section 3.3 of the WIPO Overview 3.0.

Thus, the Complainant contends that the Respondent has registered the disputed domain name 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

This is a mandatory administrative proceeding pursuant to Paragraph 4 of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") and the CAC Supplemental Rules.

Paragraph 15 of the Rules provides that the Panel shall decide the complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

According to Paragraph 4(a) of the Policy, the Complainant must prove each of the following: (i) the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (ii) the Respondent has no rights or legitimate interests in respect of the domain name; (iii) the domain name has been registered and is being used in bad faith.

A. Identical or confusingly similar domain name

The Complainant demonstrated that it owns the asserted international trademark registrations for the word and figurative marks "MAJE", the first of which being registered already 17 years earlier than the disputed domain name. It is well established that a nationally or regionally registered trademark confers on its owner sufficient rights to satisfy the requirement of having trademark rights for the purposes of standing to file a UDRP case. Therefore, the Panel finds that the Complainant has established such rights.

It is also well established that the generic top-level suffix .com may be disregarded when considering whether a disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights, as it is a necessary technical requirement of a domain name.

The disputed domain name incorporates the Complainant's trademark "MAJE" in its entirety. The adding of a prefix "UK-" must be considered as insufficient to prevent or diminish confusing similarity. This is true especially given that "UK" is widely recognized as the country code for the United Kingdom and the prefix would very likely be perceived as a geographical designation, thus lacking distinctive character. This finding is consistent with earlier decisions of CAC (eg. CAC Case No. 101270 and CAC Case No. 101503).

The Panel, therefore, finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Lack of rights or legitimate interests

The Respondent has not filed a Response and has neither provided any other information that would oppose the Complainant's allegations. Therefore, the Panel holds that the Complainant successfully presented its prima facie case that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In particular, the Respondent is not in any way connected with the Complainant nor is it authorized to use the Complainant’s trademark for its commercial activities. In addition, the Respondent is not commonly known by the disputed domain name pursuant to Paragraph 4(c)(ii) of the Policy. Furthermore, it was demonstrated by evidence submitted by the Complainant that the disputed domain name has not been used for a bona fide offering of goods or services or a legitimate non-commercial or fair use.

The Panel, therefore, finds that the Respondent has no rights or legitimate interest in the disputed domain name.

C. Registration and use of the disputed domain name in bad faith

With respect to the bad faith argument, the Complainant states, in summary, that the disputed domain name is confusingly similar to its trademark, that the Respondent must have had actual knowledge of the Complainant's rights in the trademark, and that the disputed domain name is resolving to an inactive website.

The Panel has already found that the domain name is confusingly similar to the Complainant's trademark "MAJE". The Complainant submitted evidence that the Panel believes sufficiently demonstrates the Respondent must have or at least should have been aware of the existence of the Complainant, its trademark and at least its <maje.com> domain name. The evidence submitted by the Complainant also shows that, at least upon filing the complaint, the disputed domain name was inactive / directed to a parking page.

It is well established that mere registration of a domain name that is confusingly similar to a trademark by an unaffiliated entity can lead to the presumption of bad faith. Furthermore, typical circumstances demonstrating respondent's bad faith include a situation where the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location (see Paragraph 4(b)(iv) of the Policy).

Taking into account the above-described facts and evidence submitted by the Complainant, the Panel is satisfied that several signs of bad faith in registering and use of the disputed domain name by the Respondent can be found, in particular: (i) the degree of similarity between the disputed domain name and the Complainant's trademark; (ii) absence of rights or legitimate interests coupled with no response to Complaint with conceivable or credible explanations of the Respondent's conduct; (iii) lack of use of the disputed domain name; and (iv) absence of any conceivable good faith use.

Therefore, the Panel finds that the disputed domain name has been registered and has been used by the Respondent in bad faith.

In conclusion, the Panel finds that all three elements required by Paragraph 4(a) of the Policy were met and makes the following decision.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **UK-MAJE.COM**: Transferred

PANELLISTS

Name	**Mgr. Vojtěch Chloupek**

DATE OF PANEL DECISION 2020-01-22

Publish the Decision