Decision for dispute CAC-UDRP-102960

Case number	CAC-UDRP-102960
Time of filing	2020-03-10 13:59:26
Domain names	majesalefrance.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	MAJE

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	Colin Whitwell

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant claims ownership of various trademark registrations for the trademark MAJE in relation to a range of clothing and footwear products. These include the following:

- International Trademark Registration No. 801247, registered on November 28, 2002;
- International Trademark Registration No. 998746 registered on February 6, 2009; and
- International Trademark Registration No. 1370546, registered on July 20, 2017.

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 apparel collections and accessories for women. The Complainant also owns an important domain names portfolio containing the trademark MAJE including the domain name <maje.com> registered and used since December 12, 1996.

The disputed domain name <sandroparisuk.com> was registered on January 12, 2018 and resolves to a website that displays the MAJE trademark along with images of various apparel items that are being offered for sale. Among these items are products that claim to originate with the Complainant but others bear the trademarks of the Complainant's competitors in the apparel and accessories industry.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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

A. The disputed domain name is confusingly similar to a trademark or service mark in which the Complainant has rights Paragraph 4(a)(i) of the Policy is a standing requirement which is satisfied if the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. Furthermore, it is not as extensive as the "likelihood of confusion" test for trademark infringement applied by many courts. Rather, under the Policy confusing similarity is commonly tested by comparing the Complainant's trademark and the disputed domain name in appearance, sound, meaning, and overall impression. See Administradora de Marcas RD, S. de R.L. de C.V. v. DNS Manager / Profile Group, Case No. 101341 (CAC, November 28, 2016).

In this case, the Complainant has submitted evidence that it owns various registrations of the MAJE trademark and that it offers products in the area of apparel and accessories for women. Complainant also hosts its company website at <maje.com>.

The disputed domain name reproduces Complainant's trademark in its entirety and merely adds the words "sale" and "France" as well as the ".com" TLD. The addition of these descriptive words to the Complainant's trademark does not reduce the confusing similarity of the disputed domain name since it might lead internet users to wrongly believe that the disputed domain name is endorsed by Complainant. Kids Brands Group International S.a.r.l. v. Martine Sellenraad, Chinchilla, D2019-0800 (WIPO, June 19, 2019) (confusing similarity found where "[t]he disputed domain name differs from the Complainant's trademark NATIXIS merely by the addition of the suffix 'france'").

Further, as it adds no meaning or context, the extension ".com" is not to be taken into consideration when examining the identity or similarity between the Complainant's trademarks and the disputed domain name. Bentley Motors Limited v. Domain Admin / Kyle Rocheleau, Privacy Hero Inc., D2014-1919 (WIPO, December 26, 2014) (when considering the issue of confusing similarity, "it is well-established that the top-level domain name ".com" may be disregarded for this purpose.")

Accordingly, this Panel finds that the Complainant has rights to the MAJE trademark and that the disputed domain name is

confusingly similar to the Complainant's trademark. Thus, the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. The Respondent has no rights or legitimate interests in respect of the disputed domain name
Pursuant to paragraph 4(a)(ii) of the Policy, a complainant has the burden of making a prima facie showing that the respondent has no rights or legitimate interests in the disputed domain name. Cephalon, Inc. v. RiskIQ, Inc., 100834 (CAC, September 12, 2014). Once this burden is met, it shifts to the respondent to demonstrate that it does have rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy offers respondents several examples of how to demonstrate their rights or legitimate interests to a disputed domain name.

The Complainant states that it has no business with the Respondent and has never authorized the Respondent to use the MAJE trademark. The Respondent has defaulted in the case and so does not contest this. As such, the Panel concludes that the Respondent is not affiliated with the Complainant, nor is it authorized or licensed to use the Complainant's trademark or to seek registration of any domain name incorporating the aforementioned trademark.

Under Paragraphs 4(c)(i) and 4(c)(iii) of the Policy the Panel considers whether the Respondent is using the disputed domain name to make a bona fide offering of goods or services or whether it is making a legitimate non-commercial or fair use of the disputed domain name. Offering similar goods or services that compete with those offered by a Complainant is, absent specific and limited circumstances, not considered a bona fide offering or a legitimate non-commercial or fair use under past UDRP decisions. See, General Motors LLC v. MIKE LEE, FA 1659965 (FORUM, March 10, 2016) (finding that "use of a domain to sell products and/or services that compete directly with a complainant's business does not constitute a bona fide offering of goods or services pursuant to Policy paragraph 4(c)(i) or a legitimate non-commercial or fair use pursuant to Policy paragraph 4(c)(iii)").

Here, the Respondent's website claims to offer fashion products of the Complainant as well as those of its competitors. Furthermore, no indication is offered as to the Respondent's relationship, or lack thereof, with the Complainant. As such, it does not meet the test for distribution of a Complainant's products under the seminal case of Oki Data Americas, Inc. v. ASD, Inc., D2001-0903 (WIPO, November 6, 2001). Considering this evidence, it is apparent to this Panel that the Respondent is offering products under the disputed domain name that are substantially identical to, and commercially competitive with those offered by the Complainant under its registered MAJE trademark. Thus, the Respondent is not using the disputed domain name for a bona fide offering of goods or services or in connection with a legitimate non-commercial or fair use.

With respect to paragraph 4(c)(ii) of the Policy, the Respondent does not appear to be commonly known by the name Maje nor the disputed domain name. The Whois record for the disputed domain name identifies the Respondent only as "Colin Whitwell". As the Respondent has filed no Response to the Complaint or made any other submission in this case, this Panel cannot conclude that it is known otherwise than as identified in the Whois record.

For all of the above-cited reasons, this Panel finds, by a preponderance of the evidence, that the Complainant has met its burden of proof and that the Respondent has not refuted this to show that it has any rights or legitimate interests in the disputed domain name. Thus, it is held that the Respondent has no rights or legitimate interests in respect to the disputed domain name under Paragraph 4(a)(ii) of the Policy.

C. The disputed domain name was registered and is being used in bad faith

The Complainant must demonstrate both that the disputed domain name was registered and is being used in bad faith. Further guidance on that requirement is found in paragraph 4(b) of the Policy, which sets out four examples of actions by a respondent that may satisfy this burden of proof.

A threshold question here is whether, at the time that it registered the disputed domain name, Respondent was aware of the Complainant's MAJE trademark. The origin of the Complainant's trademark rights preceded the registration of the disputed domain name by many years. Further, as the Respondent's website uses the Complainant's trademark to offer women's

apparel products of both the Complainant's and its competitors, it is quite certain that the Respondent was aware of the Complainant and its trademark at the time that the disputed domain name was registered. UBS AG v. Frank Kelechi / Harmony House, FA 1832240 (FORUM, April 4, 2019) (the respondent was found to be aware of the complainant's trademark where the website of the disputed domain name displayed the Complainant's trademark and purported to offer financial services similar to those offered by the Complainant). This Panel thus concludes that the Respondent was aware of and intentionally sought to copy Complainant's trademark when it registered the disputed domain name.

Next, attention is given to the Complainant's claim that the Respondent uses the disputed domain name in bad faith. Here, the disputed domain name was created in 2018 which is after the issuance of the Complainant's cited trademark registrations and after the Complainant began use of its MAJE trademark in commerce. Paragraph 4(b)(iii) of the Policy states that disrupting the business of a competitor will suffice as evidence of bad faith registration and use under Paragraph 4(a)(iii) of the Policy. Furthermore, Paragraph 4(b)(iv) of the Policy states that bad faith may be found where a respondent intentionally attempts to attract, for commercial gain, internet users to its website by creating a likelihood of confusion with a complainant's trademark as to the source, sponsorship, affiliation, or endorsement of its products or services. It has been held in many prior UDRP decisions that the operation of a competing business using a confusingly similar domain name is evidence of bad faith. Ripple Labs Inc. v. Jessie McKoy / Ripple Reserve Fund, FA 1790949 (FORUM, July 9, 2018) (finding bad faith per Paragraphs 4(b)(iii) and 4(b)(iv) of the Policy where the Respondent used the disputed domain name to resolve to a website upon which the Respondent passes itself off as the Complainant and offers online cryptocurrency services in direct competition with the Complainant's business).

Here, the Respondent offers the same or very similar products as the Complainant to the same target consumer market using the disputed domain name which is confusingly similar to the Complainant's MAJE trademark. As such, the Panel finds that the disputed domain name falls within the descriptions of both Paragraphs 4(b)(iii) and 4(b)(iv) of the Policy.

Consequently, in view of the above-mentioned circumstances including the lack of a Response or any other submission in this case by the Respondent, this Panel finds, by a preponderance of the evidence, that the disputed domain name was registered and used in bad faith and that the Complainant has satisfied paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **MAJESALEFRANCE.COM**: Transferred

PANELLISTS

Name	**Steven M. Levy, Esq.**

DATE OF PANEL DECISION 2020-04-04

Publish the Decision