Decision for dispute CAC-UDRP-103174

Case number	CAC-UDRP-103174
Time of filing	2020-07-20 11:07:21
Domain names	sezanefrance.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	BENDA BILI

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	HAZAR Pierre ALexandre

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant owns a number of trade marks consisting of the name SEZANE, including the International trade mark SEZANE, registration number 1170876, registered on 3 June 2013, in international classes 14,18,25; and the EU trade mark SEZANE, registration number 016270531, registered on 19 January 2017, in international class 33. In addition, the Complainant owns the domain name <sezane.com>, which is connected to the Complainant's official website <sezane.com>. The Complainant asserts that it owns numerous domain names comprising the name SEZANE but has not adduced evidence of ownership of any other domain names.

FACTUAL BACKGROUND

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

The Complainant is a company specialised in ready-to-wear fashion collections and accessories for women and trading under the commercial name and trade mark SEZANE. The term SEZANE is said by the Complainant to be a contraction of the first name and last name of the Complainant's founder and President, Morgane Sezalory. SEZANE's clothing and accessories are available only through its online shop.

The Respondent registered the disputed domain name <sezanefrance.com> on 5 July 2020. As at the date of the Amended Complaint and of this decision, the disputed domain name is inactive. There is no evidence before the Panel that the disputed domain name has ever been linked to an active website since it was registered.

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

With regard to the first UDRP element, the Panel finds that the disputed domain name <sezanefrance.com> is, if not identical with, then at least confusingly similar to the Complainant's trade mark SEZANE. Indeed, the disputed domain name incorporates the Complainant's trade mark in its entirety. The addition of the geographical and descriptive term "France" is not sufficient to alter the overall impression of the designation as being connected to the Complainant's trade mark. The Panel notes in this connection that the Complainant is based in and operates from France. The addition of the geographical and descriptive term "France" does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trade mark, and its associated domain name; rather to the contrary, it increases the likelihood of confusion by suggesting that the disputed domain name provides access to the French website of the Complainant's business. The Panel follows in this respect the view established by numerous other panels that a domain name that wholly incorporates a Complainant's trade mark may be sufficient to establish confusing similarity for the purposes of the UDRP (see, for example, WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasiliy <porsche-autopartes.com>).

With regard to the second UDRP element, there is no evidence before the Panel to suggest that the Respondent has made any use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services. Neither is there any indication that the Respondent is making legitimate non-commercial or fair use of the disputed domain name. As at the time of the Amended Complaint and of this decision, the disputed domain name is not being used for any active website. A lack of content at the disputed domain has in itself been regarded by other panels as supporting a finding that the Respondent lacked a bona fide offering of goods or services and did not make legitimate non-commercial or fair use of the disputed domain name (see, for example, Forum Case No. FA 1773444, Ashley Furniture Industries, Inc v. Joannet Macket/JM Consultants; and WIPO Case No. D2000-1164, Boeing Co. v. Bressi). The Panel further finds that the Respondent is not affiliated with or related to the Complainant in any way and is neither licensed nor otherwise authorised by the Complainant to make any use of the Complainant's trade mark or to apply for or use the disputed domain name. Finally, the Whois information also does not suggest that the Respondent is commonly known by the disputed domain name <sezanefrance.com>. Absent any response from the Respondent, or any other information indicating the contrary, the Panel therefore concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

With regard to the third UDRP element, the Complainant adduced evidence to show that, if the Respondent had carried out a Google search for the distinctive trade mark SEZANE and the geographical term “France”, the search results would have yielded immediate and obvious references to the Complainant. It is therefore reasonable to infer that the Respondent either knew, or should have known, that the disputed domain name would be identical with or confusingly similar to the Complainant's trade mark, and that he registered the disputed domain name in full knowledge of the Complainant's trade mark.

Furthermore, the disputed domain name is currently inactive. The Respondent has not demonstrated any activity in respect of the disputed domain name. In any event, first, it is difficult to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate on the grounds that it would constitute passing off, an infringement of consumer protection legislation, or an infringement of the Complainant’s rights under trade mark law under circumstances where that disputed domain name corresponds to the Complainant’s trade mark and is similar to the Complainant’s domain name as currently used by the latter to promote and sell its goods. Secondly, numerous other UDRP panels have taken the view, which this Panel shares, that the passive holding of a domain name with knowledge that the domain name infringes another party’s trade mark rights may in itself be regarded as evidence of bad faith registration and use (see, for example, WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows; and WIPO Case No. D2004-0615, Comerica Inc. v. Horoshiy, Inc.).

Absent any response from the Respondent, or any other information indicating the contrary, the Panel therefore also accepts that the Respondent has registered and is using the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **SEZANEFRANCE.COM**: Transferred

PANELLISTS

Name	**Gregor Kleinknecht**

DATE OF PANEL DECISION 2020-08-26

Publish the Decision