Decision for dispute CAC-UDRP-103353

Case number	CAC-UDRP-103353
Time of filing	2020-10-16 09:24:45
Domain names	simonesoldes.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)

Complainant

Organization	SIMONE PERELE

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	liling weng

OTHER LEGAL PROCEEDINGS

None of which the Panel is aware of.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several trademarks “SIMONE PERELE”, such as:
- International trademark SIMONE PERELE® n° 272755, registered on August 9, 1963 for the class 25;
- European trademark SIMONE PERELE® n° 4367512, registered on March 30, 2005 for the class 25;
- European trademark SP SIMONE PERELE PARIS® n°13026216 registered on June 24, 2014; and
- European trademark SIMONE & SIMONE PERELE® n° 18269546, registered on July 8, 2020 for the classes 24, 25 and 26.

FACTUAL BACKGROUND

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

See similar case CAC n° 102223 MAJE v. Charles Lamontagne (“the disputed domain name points to website where clothing and accessories are offered for sale. The Complainant figurative trademark MAJE is used on the Registrant's website and in its title “MAJE | Vêtements et accessoires” uses also the French languages to increase the imitation […] the Respondent used on its website pictures directly taken from the Complainant’s official website and this increases the likelihood that Internet users would be confused into believing Respondent's website emanated from or was sponsored or authorized […]the Respondent has registered and is using the disputed domain name in bad faith.”).

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 not, 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

Because the three conditions are cumulative, the negative answer to the second condition makes it unnecessary to assess the third one.

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

FIRST CONDITION

It is commonly accepted that the first condition functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant’s trademark and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name. It this comparison, the cc- or g- TLD is usually not taken into account.

The disputed domain name includes the word "SIMONE", which is a large part of the Complainant’s trademark.

The replacement of the words "perele" by the word "soldes" is not sufficient to exclude confusing similarity, and even less since the addition of the French term "SOLDES" (“Sales”) increases the likelihood of confusion with the Complainant’s trademarks and activity because “SOLDES” refers to the Complainant activity.

First condition is satisfied.

SECOND CONDITION

The Complainant claims, without being contradicted, that:

- The Complainant has not licensed or authorized the Respondent to register or use the disputed domain name;
- There is no evidence that the Respondent is known by the disputed domain name or owns any corresponding registered trademarks;
- The Complainant's trademark is reproduced on several occasions on the website of the Respondent without permission to do so.

It appears from the Complaint and the annexes, that Respondent's website offers to sell products under the Complainant's trademark, at a discounted price.

Upon request from the Panel, both parties were invited to answer the following specific questions:

1) Does the Respondent's website actually sell products?
2) Are the products sold, of the quality and origin that the buyer can legitimately expect when buying a branded product?

None of the parties answered these questions. Thus, it cannot be excluded that Respondent is actually selling authentic products manufactured by the Complainant at a discounted price and, as a consequence, it cannot be excluded the Respondent is making a bona fide offering of goods and services and thus have a legitimate interest in the disputed domain name.

Altough Panels have recognized that where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name, it must be stressed that it is up to the Complainant to make out a sufficiently convincing prima facie demonstration.

The Panel has tried to apply the Oki Data test [i.e. the following cumulative requirements will be applied in the specific conditions of a UDRP case:
(i) the respondent must actually be offering the goods or services at issue;
(ii) the respondent must use the site to sell only the trademarked goods or services;
(iii) the site must accurately and prominently disclose the registrant’s relationship with the trademark holder; and
(iv) the respondent must not try to “corner the market” in domain names that reflect the trademark.]

However, the lack of answer to the Panel's specific questions makes it impossible to apply such test,

The Panel did not find, neither in the Complaint nor in the annexes, other element to conclude, with a sufficient level of certainty, that the Respondent lacks legitimate interest in the domain name.

Based on the elements available, the Panel finds that the second condition is not satisfied.

THIRD CONDITION

Because the three conditions are cumulative, the negative answer to the second condition makes it unnecessary to assess the third one.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **SIMONESOLDES.COM**: Remaining with the Respondent

PANELLISTS

Name	**Mr. Etienne Wéry**

DATE OF PANEL DECISION 2020-11-26

Publish the Decision