

Decision for dispute CAC-UDRP-103746

Case number CAC-UDRP-103746

Time of filing 2021-04-20 10:02:37

Domain names isabelmarant-fr.com

Case administrator

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

Complainant

Organization IM PRODUCTION

Complainant representative

Organization Nameshield (Laurent Becker)

Respondent

Organization FDSI

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 owns trademarks including the wording "ISABEL MARANT" in several countries, such as the international trademark ISABEL MARANT ® n° 1284453, registered since November 16, 2015 and the European trademark ISABEL MARANT ® n°568844 registered since December 23, 1998.

Furthermore, the Complainant owns multiple domain names consisting in the wording "ISABEL MARANT", such as <isabelmarant.com> registered since April 20, 2002.

The disputed domain name <isabelmarant-fr.com> was registered on January 18, 2021.

FACTUAL BACKGROUND

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

The Complainant is a French company specializing in the manufacture and marketing of ready-to-wear, shoes, handbags and jewellery. The Complainant markets these products under the brand "ISABEL MARANT", and now has stores around the

world.

The Complainant asserts that Respondent uses the disputed domain name to pass itself off as one of the Complainant's executive, in order to pay an invoice. Using the domain name in this manner is neither a bona fide offering of goods or services under Policy 4 (c)(i), nor a non-commercial or fair use pursuant to Policy 4(c)(iii).

Complainant refers to prior panel decisions:

- Forum Case No. 1775963, United Rentals, Inc. v. saskia gaaede / Mr ("Complainant submits that Respondent is intending to impersonate Complainant to contact customers of Complainant, posing as a credit supervisor of Complainant, directing customers to transmit payments to a bank account not controlled by Complainant. See Compl. Append. M. Therefore, the Panel agrees with Complainant and finds that Respondent has does not have rights or legitimate interests in the domain name per Policy 4(c)(i) or (iii)");

- WIPO Case No. D2014-1471, Accor v. SANGHO HEO / Contact Privacy Inc. ("The un-opposed allegation of phishing, and the evidence submitted in support of phishing, combined with the likelihood of confusion, is sufficient evidence of bad faith"); and

- Forum Case No. 1393436, Qatalyst Partners LP and Qatalyst Partners LLP v. Alyna Devimore / N/A ("the Panel holds that Respondent's registration and use of the <qatalystpartnerslp.com> domain name as part of the phishing scheme described above is sufficient evidence of bad faith registration and use pursuant to Policy 4(a)(iii)").

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

It is necessary for the Complainant, if it is to succeed in this administrative proceeding, to prove each of the three elements referred to in paragraph 4(a) of the Policy, namely that:

(i) the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interest in respect of the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

The Panel finds that the disputed domain name is confusingly similar to the trademarks of the Complainant. The domain name <isabelmarant-fr.com> incorporate entirely the Complainant's well-known, registered trademark Isabel Marant with a suffix "fr", abbreviation of France. The addition of the gTLD ".com" do not add any distinctiveness to the disputed domain name.

The Complainant rightfully contended that the disputed domain name is confusingly similar to the prior trademark of the Complainant. The Complainant also referred to the distinctiveness and reputation of its Isabel Marant trademarks.

This makes it highly unlikely that the Respondent had no knowledge of the Complainant's prior trademark rights at the time of registration of the disputed domain name. The Complainant rightfully contended that the Respondent has used the disputed domain name intentionally to attract visitors for commercial gain by creating likelihood of confusion with the Complainant's trademarks, see eg. CAC Case No. 102913, <Bolloreusa.com>. It is well-established that "a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP". WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasilij Terkin.

The geographical suffix does not prevent the likelihood of confusion between the disputed domain name and the Complainant and its trademark. Please see for instance CAC Case No. 102656, BOLLORE v. Chris Bull, <bollore-uk.com>.

The Complainant asserted and proved that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has not granted the Respondent any right to use the Isabel Marant trademark within the disputed domain name, nor is the Respondent affiliated to the Complainant.

Moreover, the Complainant contends and provides evidence that the Respondent has not developed a legitimate use in respect of the disputed domain name. The Complainant contends that the Respondent was seeking to use the disputed domain name only to mislead consumers to its own bank account and that the Respondent has no legitimate interests in respect of the disputed domain name. See: Forum Case No. FA 1654759, Upwork Global Inc. v. Shoaib Malik ("Previous panels have found such use by a respondent, whether to run a phishing scheme or to run a competing website, is neither a bona fide offering of goods or services, nor a legitimate noncommercial or fair use.").

The Complainant also claims that the disputed domain name was registered and being used in bad faith as the Respondent uses the disputed domain name illegally. Hence, the Complainant contends that the Respondent had actual knowledge of the Complainant's trademark at the time of registration of the disputed domain name which in turn, led the Respondent to register the disputed domain name anonymously.

Further the Respondent has used the disputed domain name with that intention, namely in bad faith. See e.g., Accor v. Shangheo Heo / Contact Privacy Inc., WIPO Case No. D2014-1471 where the Panel stated that: "The unopposed allegation of phishing, and the evidence submitted in support of phishing, combined with the likelihood of confusion, is sufficient evidence of bad faith. ...It seems likely, as Complainant alleges, that Respondent intentionally attempted to deceive consumers into providing personal and financial information, believing that Respondent was associated with the bona fide services offered by Complainant."

Reference is made also to: CAC cases no. 101810 MIGROS vs. Mary Hines; no. 101036, Boehringer Ingelheim Pharma GmbH & Co. KG vs. SKYRXSHOP - dulcolax.xyz and WIPO Case no. D2014-0306 Boehringer Ingelheim Pharma GmbH & Co. KG v. Klinik Sari Padma, BAKTI HUSADA.

In lack of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Furthermore, the Respondent was using a hidden identity. But this argument is not to be discussed further because bad faith is evident, whatsoever.

Accordingly, the Panel finds that the disputed domain name was both registered and used in bad faith and that the Complaint succeeds under 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. ISABELMARANT-FR.COM: Transferred

PANELLISTS

Name	Dr. jur. Harald von Herget
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DATE OF PANEL DECISION 2021-05-25

Publish the Decision
