

Decision for dispute CAC-UDRP-103978

Case number	CAC-UDRP-103978
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Time of filing	2021-08-12 09:57:41
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Domain names	simonesale.com
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Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	SIMONE PERELE
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Name	wywy oppu
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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

- International trademark SIMONE PERELE n° 272755, registered on August 09th, 1963 in class 25;
- European trademark SIMONE PERELE n° 4367512, registered on March 30th, 2005 in class 25;
- European trademark SIMONE & SIMONE PERELE n° 18269546, registered on July 8th, 2020 in classes 24, 25 and 26.

FACTUAL BACKGROUND

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

Created in 1948, the Complainant designs, manufactures and sells items of women's lingerie.

The Complainant also owns the domain name <simone-perELE.com> registered and used since August 7th, 1997.

The disputed domain name <simonesale.com> was registered on April 26th, 2021. It redirects to an online shop in reference with the Complainant's products.

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

In accordance with paragraph 4(a) of the Policy, to obtain transfer of a domain name, a complainant must prove the following three elements: (i) the respondent's 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 the domain name; and (iii) the respondent has registered the domain name and is using it in bad faith.

Under paragraph 15(a) of the Rules, "A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, asserted facts may be taken as true and reasonable inferences may be drawn from the information provided by the complainant. See *Reuters Limited v. Global Net 2000, Inc*, WIPO Case No. D2000-0441.

As to identity/confusing similarity, the Complainant has shown that it has subsisting rights in the trademark SIMONE PERELE, through numerous registrations, including International trademark No. 272755, registered on August 9, 1963. While the Complainant's SIMONE PERELE mark is not easily recognized in the disputed domain name <simonesale.com>, the SIMONE element of the Complainant's mark is recognizable, and is combined with the descriptive term "sale" and the inconsequential gTLD ".com", which may be disregarded. In addition, the disputed domain name resolves to a website displaying the Complainant's SIMONE PERELE mark and offering for sale products under that mark. Having regard to this context, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's mark. See *VF Corporation v. Vogt Debra*, WIPO Case No. D2016-2650.

The Complainant has established this element.

As to legitimacy, paragraph 4(c) of the Policy sets out three illustrative circumstances as examples which, if established by a respondent, shall demonstrate rights to or legitimate interests in a domain name for purposes of paragraph 4(a)(ii) of the Policy, i.e.

(i) before any notice to the respondent of the dispute, the use by the respondent of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) the respondent (as an individual, business or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

The Complainant asserts that the Respondent lacks rights and legitimate interests in the disputed domain name, which was registered on April 26th, 2021, many years after the Complainant acquired its rights in the SIMONE PERELE mark. It resolves to a website purporting to be a website of the Complainant and offering what appear to be the Complainant's branded products for sale. These circumstances, coupled with the Complainant's assertions, are sufficient to constitute a prima facie showing of absence of rights or legitimate interests in respect of the disputed domain name on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show that it does have rights or legitimate interests in the disputed domain name. See Cassava Enterprises Limited, Cassava Enterprises (Gibraltar) Limited v. Victor Chandler International Limited, WIPO Case No. D2004-0753. The Respondent has made no attempt to do so. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant has established this element.

As to bad faith, paragraph 4(b) of the Policy sets out four illustrative circumstances, which, though not exclusive, shall be evidence of the registration and use of the disputed domain name in bad faith for purposes of paragraph 4(a)(iii) of the Policy, including:

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

The circumstances set out above in relation to the second element satisfy the Panel that the Respondent registered the <simonesale.com> domain name in bad faith while fully aware of the Complainant's SIMONE PERELE mark and is using the disputed domain name intentionally to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and of the products on its website. Even if the products offered for sale on the Respondent's website are the genuine products of the Complainant, the disputed domain name is being used in bad faith because the Respondent's website is masquerading as that of the Complainant. See Kurt Geiger Limited v. Ralph Grunwald, WIPO Case No. D2021-1558 ("Here, the Respondent's website did not disclose its (lack of) relationship with the Complainant. Rather, the Respondent has sought to create an impression of association with the Complainant, by running a website that prominently displayed the KURT GEIGER trademark, while copying some graphics elements of the Complainant's official website.").

The Complainant has established this element.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **SIMONESALE.COM**: Transferred

PANELLISTS

Name	Mr. Alan Lawrence Limbury
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DATE OF PANEL DECISION 2021-09-07

