

Decision for dispute CAC-UDRP-104241

Case number CAC-UDRP-104241

Time of filing 2021-12-21 09:34:58

Domain names isabelmaran.com

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization IM PRODUCTION

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Organization Zhichao Yang

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 is the owner of the trademarks ISABEL MARANT (International Registration no. 1284453) designating China and other countries, French trademark no. 98738832, and European trademark no. 001035534 which were registered on November 16, 2015, June 25, 1998, and May 3, 2000, respectively.

The Complainant also holds domain name registrations which contain the ISABEL MARANT trademark, such as <isabelmarant.com> which was registered on April 19, 2002.

FACTUAL BACKGROUND

The Complainant, IM PRODUCTION, 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" which has retail stores worldwide.

The disputed domain name <isabelmaran.com> was registered on December 9, 2021, which resolved to a parking page containing pay-per-click ("PPC") links.

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to the ISABEL MARANT mark on the basis that the disputed domain name is an obvious misspelling of the Complainant's trademark with the deletion of the letter "T" and the generic top-level domain name suffix ("gTLD") ".com" are insufficient to avoid the finding that the disputed domain name is confusingly similar to its ISABEL MARANT mark.

The Complainant also argues that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Respondent is not commonly known by the disputed domain name. In addition, the Respondent is not affiliated with the Complainant nor did the Complainant license or authorize the Respondent to use the ISABEL MARANT mark. The Complainant further asserts that the disputed domain name has been registered and is being used in bad faith as the Respondent should have known of the Complainant's ISABEL MARANT mark at the time of registration of the disputed domain name. The Complainant also asserts that the Respondent is attempting to attract, for commercial gain, Internet users to the Respondent's 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 or of a product or service on the Respondent's website.

RESPONDENT:

The Respondent did not reply to the Complainant's contentions.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that 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 Uniform Domain-Name Dispute-Resolution Policy ("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.

Preliminary Issue: Administrative Order

On January 19, 2022 the Panel issued the following order: "Since Complainant has relied on trademarks "ISABEL MARANT" (International Registration no. 1284453) designating China and other countries and European trademark no. 001035534 which were registered on November 16, 2015 and December 23, 1998 respectively but has failed to attach evidence showing ownership of said trademark, the Complainant is ordered to provide the Panel with proof of ownership of the trademark no later than close of January 21, 2022."

On January 27, 2022 following several reminders the Complainant complied with the Order and provided two trademark certificates showing the ISABEL MARANT trademark as registered in Europe and France. Despite the claim to registration in China, a trademark certificate from China was not produced. The reliance on an international registration as showing registered rights in China is insufficient without producing a copy of the registration in China, which Complainant failed to do.

Preliminary Issue: Language of Proceedings

Paragraph 11 of the Rules provides that:

"(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding."

The language of the Registration Agreement for the disputed domain name <isabelmaran.com> is Chinese.

The Complainant requested that the language of the proceeding be English for the following reasons:

- (i) English is the most widely used language in international relations;
 - (ii) the disputed domain name is in English and not in Chinese script;
 - (iii) the proceeding will be put through unnecessary trouble and delay if Chinese were made the language of the proceeding.
- The Respondent did not comment on the language of the proceeding.

The Panel cites the following with approval: "Thus, the general rule is that the parties may agree on the language of the administrative proceeding. In the absence of this agreement, the language of the Registration Agreement shall dictate the language of the proceeding. However, the Panel has the discretion to decide otherwise having regard to the circumstances of the case. The Panel's discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time and costs. It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her abilities to articulate the arguments for the case." (See *Groupe Auchan v. xmxzl*, WIPO Case No. DCC2006 0004).

Having considered the above factors, the Panel determines that English be the language of the proceeding. The Panel agrees that the Respondent appear to be familiar with the English language, taking into account its selection of the English-language trademark and the domain name in dispute. In the absence of an objection by the Respondent, the Panel does not find it procedurally efficient to have the Complainant translate the Complaint and evidence into Chinese.

PRINCIPAL REASONS FOR THE DECISION

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a complainant to show that a domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns the ISABEL MARANT trademark in France and Europe.

The differences between the disputed domain name and the Complainant's ISABEL MARANT trademark are the deletion of the letter "T" and a gTLD ".com".

It is established that a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. (See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.9).

It is also established that gTLD is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test (WIPO Overview 3.0, section 1.11). The addition of a gTLD to a disputed domain name does not avoid confusing similarity as the use of a TLD is technically required to operate a domain name (see *Accor v. Noldc Inc.* WIPO Case No. D2005-0016; *F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.*, WIPO Case No. D2006-0451; *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003; *L'Oréal v Tina Smith*, WIPO Case No. 2013-0820; *Titoni AG v Runxin Wang*, WIPO Case No. D2008-0820; and *Alstom v. Itete Peru S.A.*, WIPO Case No. D2009-0877).

The disputed domain name consists of a misspelling of the Complainant's ISABEL MARANT mark being the deletion of the letter "T" and a gTLD ".com" which in the Panel's view does not avoid confusing similarity with the Complainant's trademark. Therefore, the Panel finds that the disputed domain name is confusingly similar to the ISABEL MARANT mark and the element under paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the complainant to show that the respondent has no rights or interests in respect of the domain name. Once the complainant establishes a prima facie case that the respondent lacks rights or legitimate interests in the domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the domain name (see WIPO Overview 3.0, paragraph 2.1).

In the present case, the Complainant has demonstrated prima facie that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant submitted evidence that it did not authorize or license the Respondent to use the ISABEL MARANT mark (see *OSRAM GmbH. v. Mohammed Rafi/Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org*, WIPO Case No. D2015-1149; *Sanofi-Aventis v. Abigail Wallace*, WIPO Case No. D2009-0735).

In addition, the evidence submitted by the Complainant shows that the Respondent is not commonly known by the disputed domain name.

The Complainant also submitted evidence that the disputed domain name is a typosquatted version of its ISABEL MARANT trademark which is further proof that the Respondent has no rights or legitimate interests under the Policy (see Spotify AB v. The LINE, NAF Case No. 1765498; The Hackett Group, Inc. v. Brian Hems, NAF Case No. 1597465).

The Complainant further submitted evidence that the disputed domain name resolved to a parking page with PPC links which past panels have found that is not a bona fide offering of goods or services or legitimate non-commercial or fair use of the disputed domain name (see Vance Int'l, Inc. v. Abend, NAF Case No. FA 970871; Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe, WIPO Case No. D2007-1695).

The Respondent did not submit a response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain name which is sufficient to rebut the Complainant's prima facie case. In the particular circumstances of the present case, the Respondent's use of the disputed domain name to host a parked page comprising PPC links which compete with the Complainant does not represent a bona fide offering of goods or services. The Panel is therefore of the view that the Respondent has no rights or legitimate interests in respect of the disputed domain name and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The complainant must show that the respondent registered and is using the disputed domain name in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence that the disputed domain name resolved to a parked page comprising PPC links which compete with the Complainant.

In this case, the evidence shows that the Complainant's mark is distinctive and has attained significant reputation. The strong reputation and distinctive character of the Complainant's mark is evidence that the Respondent is unlikely to have registered the disputed domain name without sight and knowledge of the Complainant's mark and it is implausible that there is any good faith use to which the disputed domain name may be put to. It is also the Complainant's evidence that the Respondent could not have registered the disputed domain name without prior knowledge of the Complainant's mark as the Respondent's name has no connection with the Complainant's ISABEL MARANT mark which was registered long ago. This is another indicator of bad faith on the part of the Respondent (see Boursorama SA v. Estrade Nicolas, WIPO Case No. D2017-1463).

The Respondent did not submit a Response in this proceeding which is a further indication of the Respondent's bad faith, which was considered by the Panel.

Based on the evidence presented to the Panel, including the confusing similarity between the disputed domain name and the Complainant's mark and the fact that the disputed domain name was used to host a parked page comprising PPC links, the Panel draws the inference that the disputed domain name was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. ISABELMARAN.COM: Transferred

PANELLISTS

Name	Mr. Jonathan Agmon
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DATE OF PANEL DECISION 2022-01-25

Publish the Decision
