Decision for dispute CAC-UDRP-101339

Case number	CAC-UDRP-101339
Time of filing	2016-11-14 09:02:53
Domain names	Chantelle.shop

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	CHANTELLE SA

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Name	Er Chuang Li

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 uses the domain name <chantelle.com> which is connected to the official web site of the Complainant, and is also the owner of the trademark for the name “CHANTELLE” (international trademark registration No. 160643 “CHANTELLE”, in classes 24 and 25, priority March 27, 1952).

FACTUAL BACKGROUND

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

Complainant is a lingerie brand which belongs to the Groupe Chantelle, a French lingerie company which has a long history. The Complainant is the owner of the international trademark CHANTELLE no. 160643 registered and renewed since March 27, 1952. The trademark CHANTELLE is also registered in the Trade Mark Clearing House since August 04, 2011.The Complainant has also registered numerous domain names including the domain name <chantelle.com> since August 17, 1995.

The Respondent has registered the disputed domain name <CHANTELLE.SHOP> on September 28, 2016, and the website

attached to this domain name displays a registrar parking page.

On October 20, 2016, a cease-and-desist letter has been sent to the Respondent by the Complainant's agent. The Respondent answered to this cease-and-desist letter via email (dated October 21, 2016) explaining that:

"I received your letter, I registered the domain name because my girlfriend used CHANTELLE products, but i did not create any sites about the domain name and not for any commercial activity, also did not have any publicity in this domain within the scope of the public behavior. I can only guarantee that I will not put CHANTELLE.shop this domain name to establish any site or for any commercial behavior, or in the public sphere of publicity about CHANTELLE.shop."

The Complainant then sent the Respondent another email (dated October 21, 2016) explaining that his domain name registration infringes the Complainant's rights and asking him to transfer the disputed domain name to the Complainant mentioning that otherwise the Complainant will initiate a legal action against him. The Respondent furthermore replied on this via email communication (dated October 22, 2016) as follows:

"Thank you for your reply. And i want to to know: why is this new.Shop domain name suffixes sunrise period beginning from June 30, 2016 to August 29. 2016 until end Chantelle company have not registered the domain? As You know, the sunrise period as long as 60 days, so I can understand the Chantelle company announced all over the world to give up its right of the domain name "Chantelle.shop" registration, and the Chantelle company does not require the "Chantelle.shop" domain name, right? And I registered domain name in September 28.2016the time belonged period (GA),It was open to the public when i registered, so I did not infringe the Chantelle company rights, I was legitimate,and I payed time vigour and money, now I am the legitimated owner of "Chantelle.shop" domain name , i did not create any sites about the domain name and not for any commercial activity, also did not have any publicity in this domain within the scope of the public behavior. No commercial behavior and Chantelle conflict or compete with the content, products. So on this point, I hope Chantelle company can to make clear. Now Chantelle company needs "Chantelle.shop" this domain name for commercial behavior, i can understand and be interested to give supports.I think we may through more communication to solve this problem. I hope Chantelle company handled properly, and I will be friendly to transfer the domain namered to Chantelle company, and I also promise that before the transfer of the domain name, I do not make any negative influence about the behavior and actions.

PS:
June 30.2016 to August 29.2016 is the new top-level domain .Shop sunrise period, during which only the TMCH trademark holder may apply for registration. Beijing time in September 1st.2016 23:00 .Shop domain name through advance sale plan (EAP) to the purchase of.Shop's business and personal.Shop registratio in advance to buy." Beijing time in September 26th .2016 23:00, .Shop domain will enter the normal registration period (GA period), officially open to the public."

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the 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 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 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

The Complainant has rights in the mark CHANTELLE by virtue of its registered trademark.

Many UDRP panels have found that a disputed domain name is confusingly similar to a complainant's trademark where the disputed domain name incorporates the complainant's trademark in its entirety (e.g. Volkswagen AG v. Nowack Auto und Sport - Oliver Nowack, WIPO Case No. D2015-0070 ; Chloé S.A.S. v. DVLPMNT Marketing, Inc., WIPO Case No. 2014-0039). The Panel shares this view in the case at issue where the Complainant's registered trademark CHANTELLE is fully included in the disputed domain name and combined with the gTLD suffix ".shop".

In accordance with the well-established precedent (see paragraph 1.2 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition, hereinafter the "WIPO Overview 2.0") the TLD suffix in a domain name will be generally disregarded under the confusing similarity test as it is a technical requirement of registration.

Even if the gTLD suffix ".shop" is taken into consideration here, in the Panel's view this would not serve to distinguish the disputed domain name and the trade mark. Here, ".shop" is simply an additional descriptive term (plus a dot) which is far from sufficient to prevent threshold Internet user confusion. The trade mark remains by far the most dominant part of the disputed domain name.

For the above reasons, the Panel concludes that the disputed domain name is identical or confusingly similar to the Complainant's trade mark.

The Complainant contends that the Respondent has made no use of, or demonstrable preparations to use, the domain name in connection with a bona fide offering of goods or services, is not making a legitimate non-commercial or fair use of the disputed domain name, and is not commonly known under the disputed domain name.

The Panel notes that the domain name holder´s name or contact details contain no reference to CHANTALLE or similar word or name. The domain name is not used for an active website. Even if the Panel would consider Respondents argument in the answer to the cease-and-desist letter (that he registered the disputed domain name, because "his girlfriend used Chantelle product") the Panel concludes that the Respondent has no right or legitimate interests in respect of the domain name <chantelle.shop>.

Based on the evidence before it, this Panel is satisfied that the Respondent knew or should have known that the disputed domain name consisted of the Complainant's CHANTELLE trademark when he registered the disputed domain name. In fact, the Complainant has established that its trademarks have existed for a long time and its products have been marketed under the trademark CHANTELLE for a long time throughout the world. In addition, the disputed domain name was registered during the trademark claims period for the ".shop" gTLD. The Complainant's trademark was validated by the Trademark Clearinghouse prior to the disputed domain name's registration. As a result, the Respondent must have been given a trademark claims notice of the Complainants rights in the CHANTELLE trademark.

Furthermore, the Respondent admitted that he knew about the products of Complainant in the email communication, were he answered that he registered the disputed domain name because his "girlfriend used Chantelle products".

Furthermore, the website is used for a parking page and is thus likely to confuse the users or business partners as to the identity of the entity behind the domain name. Even more when considering the new gTLD ".shop".

Considering the foregoing, the Panel concludes that the Respondent registered and is using the 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. **CHANTELLE.SHOP**: Transferred

PANELLISTS

Name	**Jan Christian Schnedler, LL.M.**

DATE OF PANEL DECISION 2016-12-11

Publish the Decision