

Decision for dispute CAC-UDRP-104571

Case number	CAC-UDRP-104571
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Time of filing	2022-06-28 09:09:40
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Domain names	twinsetsoldes.com
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Case administrator

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

Organization	TWINSET S.p.A.
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Complainant representative

Organization	Coöperatieve Vereniging SNB-REACT U.A.
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Respondent

Name	Chunmei Tang
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OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the domain name <twinsetsoldes.com> (“the disputed domain name”).

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade marks, amongst others:

- International trade mark registration no. 1373313, registered on 5 July 2017, designating, amongst others, China, for the word mark TWINSET, in classes 3, 9 and 24 of the Nice Classification;
- EU trade mark registration no. 017390493, registered on 14 March 2018, for the word mark TWINSET, in classes 4, 11, 14 and 20 of the Nice Classification;
- EU trade mark registration no. 017390485, registered on 30 March 2018, for the word mark TWINSET MILANO, in classes 3, 4, 9, 11, 14, 16, 18, 20, 24, 25 and 35 of the Nice Classification; and
- US trade mark registration no. 5876344, registered on 8 October 2019, for the word mark TWINSET, in classes 14 and 20 of the Nice Classification.

(hereinafter, collectively or individually, “the Complainant’s trade mark”; “the Complainant’s trade mark TWINSET”; or “the trade mark TWINSET” interchangeably).

FACTUAL BACKGROUND

The Complainant’s contentions can be summarised as follows:

A. Background history

The Complainant is an Italian fashion company with more than 120 flagship stores around the world.

In addition to the trade marks mentioned in the section “Identification of Rights” above, and other trade marks in its portfolio, the Complainant informs that it is also the owner of domain names which contain the term “TWINSET”, including <twinset.com> (registered in 2001); <twinset.fr> (registered in 2012); and <twinset.cn> (registered in 2012).

By way of relief, the Complainant seeks the transfer of the disputed domain name <twinsetsoldes.com> to the Complainant on the grounds advanced in section B below.

B. Legal grounds

I. The disputed domain name is identical or confusingly similar to trade marks in which the Complainant has rights

The Complaint submits that the disputed domain name <twinsetsoldes.com> incorporates the Complainant’s trade mark TWINSET in its entirety; that the additional generic term “soldes” refers to the French word for “Sales” in the English language; and that such generic term is insufficient to prevent a finding of confusing similarity with the Complainant’s trade mark TWINSET.

II. The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent does not carry out any activity for, or has any business with, the Complainant. Neither licence nor authorisation has been given to the Respondent to make any use of the Complainant’s trade mark TWINSET or the disputed domain name. Moreover, the Respondent is not known by the disputed domain name.

The Complainant avers that the disputed domain name was registered on 31 December 2021, and that it resolves to a website where the Complainant’s products appear to be commercialised (“the Respondent’s website”). The Complainant further avers that the Respondent’s website demonstrates neither a bona fide offering of goods nor a legitimate interest of the Respondent. In addition, the Complainant claims that the Respondent has failed to meet the Oki Data test, in so far as (i) the Complainant has unsuccessfully attempted to purchase goods from the Respondent’s website (first requirement of the Oki Data test); and (ii) the Respondent’s website does not disclose accurately and prominently the Respondent’s relationship with the trade mark holder (third requirement of the Oki Data test).

In view of the above, the Complainant concludes that the Respondent has no rights or legitimate interests in the dispute domain name.

III. The Respondent registered and is using the disputed domain name in bad faith

Registration

The Complainant has trade mark rights in TWINSET since at least 2017, whereas the disputed domain name, which fully

incorporates the Complainant's trade mark, was registered on 31 December 2021. The Complainant states that a simple trade mark search by the Respondent would have revealed the Complainant's trade mark registrations. Taken these factors together, as well as the choice of the disputed domain name and the use of the Respondent's website, the Respondent could not reasonably have been unaware of the Complainant's trade mark TWINSET at the time of registration of the disputed domain name.

Use

The Complainant states that the Respondent uses the disputed domain name in bad faith in so far as the Respondent's website creates the false impression of a potential affiliation or connection with the Complainant, without authorisation being given to the Respondent to register and use the trade mark TWINSET nor the trade mark TWINSET MILANO on the Respondent's website, or at all.

Furthermore, the Respondent's website does not contain express disclaimers regarding the absence of relationship between the Complainant and the Respondent.

The Complainant contends that the Respondent has therefore intentionally used the disputed domain name to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation, or endorsement of the Respondent's website (paragraph 4(b)(iv) of the UDRP Policy).

In view of the above, the Complainant therefore concludes that the Respondent has registered and is using the disputed domain name in bad faith.

PARTIES CONTENTIONS

The Respondent has not filed an administratively compliant Response within the deadline prescribed under the UDRP Rules, or at all.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the UDRP 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 UDRP 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 UDRP 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 UDRP threshold

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy provides the following threshold for the Complainant to meet in order to divest the Respondent of the disputed domain name:

- i. The disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- ii. The Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- iii. The disputed domain name has been registered and is being used in bad faith.

It is therefore incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP proceedings is the balance of probabilities, which lays down the foundations for panels to determine each of the three UDRP Policy elements.

I. Identical or Confusingly Similar

The Panel is satisfied that the Complainant owns trade mark rights in “TWINSET” since 2017.

The disputed domain name is <twinsolds.com>, and the Complainant’s trade mark is TWINSET.

The Panel has no difficulty in finding that the disputed domain name is confusingly similar to the Complainant’s trade mark TWINSET, in accordance with paragraph 4(a)(i) of the UDRP Policy.

The adjacent French language word “solds” in the disputed domain name string, which has the meaning of “sales” in the English language, has no material impact on the confusing similarity assessment, such that the disputed domain name clearly evokes the Complainant’s trade mark TWINSET. For the definition and translation of the word “solds”, the Panel has consulted the Cambridge dictionary at <<https://dictionary.cambridge.org/>>.

The Panel therefore finds that the Complainant has met the requirement under paragraph 4(a)(i) of the UDRP Policy.

II. Rights or Legitimate Interests

The Respondent has defaulted in these UDRP proceedings. Nevertheless, the Panel is empowered to draw adverse inferences from the Respondent’s silence (Rule 14 (b) of the UDRP Rules).

The Panel notes that the Complainant firmly denies any affiliation and/or association with, or authorisation/endorsement/sponsorship for, the Respondent of any nature. Moreover, the Complainant argues that the Respondent is not known by the disputed domain name; and that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name.

The Panel also notes that the Complainant claims not to have authorised the Respondent to use the Complainant’s trade mark TWINSET nor to sell the Complainant’s products on the Respondent’s website. On this particular point, the Panel refers to paragraph 2.8 of the WIPO Panel Views on Selected UDRP Questions, Third Edition, paragraph 3.1.4 (“WIPO Jurisprudential Overview 3.0”), according to which resellers, distributors or service providers using a domain name containing a complainant’s trade mark to undertake sales or repairs related to the complainant’s goods or services may be making a bona fide offering of goods and services, and thus have a legitimate interest in such domain name. UDRP Panels have termed this as the “Oki Data test” (Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No. D2001-0903), which comprises the following four cumulative

requirements:

1. The respondent must actually be offering the goods or services at issue;
2. The respondent must use the site to sell only the trade marked goods or services;
3. The website must accurately and prominently disclose the registrant's relationship with a trade mark holder; and
4. The respondent must not try to "corner the market" in domain names that reflect the trademark.

The Complainant argues that the Respondent would have failed the Oki Data test under items 1 and 3 above. With respect to item 1, the Complainant informs that it has unsuccessfully attempted to purchase goods from the Respondent's website. The Panel is regrettably unable to verify this circumstance and, therefore, would not rule on this particular requirement. Nonetheless, the Respondent would fail to meet the Oki Data test, the Panel being unable to locate any disclaimer regarding the relationship between the Respondent and the Complainant (item 3. above).

The Panel is furthermore unconvinced that, before any notice of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services.

The Respondent has submitted no evidence to refute any of the Complainant's assertions. Instead, there is robust evidence on the available record suggesting that the Respondent has attempted to impersonate the Complainant, as discussed under item III. below.

The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(ii) of the UDRP Policy.

III. Registered and Used in Bad Faith

Registration

The following elements are compelling evidence to this Panel that the disputed domain name was registered in bad faith:

- The Complainant has been using the trade mark TWINSET since at least 2017, albeit it has been in operation since much earlier, through the domain name <twinset.com> (registered in 2001), including in China, through the domain name <twinset.cn> (registered in 2012), where the Respondent appears to reside. The disputed domain name <twinsetsoldes.com>, on the other hand, was registered in 2021;
- UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names incorporating the mark plus a descriptive term) to a famous or widely-known trade mark can by itself create a presumption of bad faith (paragraph 3.1.4 of the WIPO Jurisprudential Overview 3.0), and the Panel accepts that the Complainant's trade mark is widely known in its segment of business; and
- The Respondent's lack of participation in the course of these UDRP proceedings.

Use

The Complainant refers to the Respondent as being engaged in the conduct described in paragraph 4(b)(iv) of the UDRP Policy, which provides as follows:

“(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 the respondent’s website or location.”

At the time of writing, the Respondent’s website appears to offer for sale the Complainant’s products, in an unauthorised manner, and absent any disclosure as to the relationship between the Respondent and the Complainant. Furthermore, the Respondent’s website displays the Complainant’s mark TWINSET MILANO in a rather prominent position, mirroring almost identically the layout of the Complainant’s official website <twinsset.com>. On balance, the Panel considers that the Respondent has attempted to impersonate the Complainant through the use of the Complainant’s trade marks TWINSET and TWINSET MILANO on the Respondent’s website. The Respondent’s behaviour would therefore fall into the remit of circumstance (iv) of paragraph 4(b) of the UDRP Policy.

The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(iii) of the UDRP Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **TWINSETSOLDES.COM**: Transferred

PANELLISTS

Name	Yana Zhou
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DATE OF PANEL DECISION 2022-07-28

Publish the Decision