

Decision for dispute CAC-UDRP-104923

Case number CAC-UDRP-104923

Time of filing 2022-10-14 09:06:40

Domain names isabelmarant.store

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization IM PRODUCTION

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name Charles Emeka

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, inter alia, a registered owner of the following trademarks containing word elements "ISABEL MARANT":

(i) ISABEL MARANT (word), International Trademark, registration date 16 November 2015, registration no. 1284453, registered for goods in classes 4, 8, 11, 16, 20, 27 and 28;

(ii) ISABEL MARANT (word), EU Trademark, filing (priority) date 23 December 1998, registration no. 001035534, registered for goods in classes 3, 14, and 25;

besides other national and international trademarks consisting of or containing the "ISABEL MARANT" wording.

(Collectively referred to as "Complainant's trademarks").

The Complainant has also registered a number of domain names under generic Top-Level Domains ("gTLD") and country-code Top-Level Domains ("ccTLD") containing the term „ ISABEL MARANT" such as <ISABELMARANT.COM> and others.

FACTUAL BACKGROUND

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 operates stores around the world.

The disputed domain name was registered on 9 October 2022 and they are held by the Respondent.

The domain name website (i.e. website available under internet address containing the disputed domain name) do not resolve to any active website. It is merely linked to website available at < DAN.COM> displaying a general offer to sell the disputed domain name.

The Complainant seeks transfer of the disputed domain name to the Complainant.

PARTIES CONTENTIONS

COMPLAINANT:

CONFUSING SIMILARITY

The Complainant states that:

- The disputed domain name contains the "ISABEL MARANT" word elements of the Complainant's trademarks in its entirety and thus it is identical to the Complainant's trademarks.
- The gTLD ".STORE" element is not relevant in the appreciation of confusing similarity as it is necessary technical aspect of the domain name registration.

Thus, according to the Complainant the confusing similarity between Complainant's trademarks and the disputed domain name is clearly established.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant states that:

- The Respondent has not been commonly known by the disputed domain name;
- The Complainant has not authorized, permitted or licensed the Respondent to use Complainant's trademarks in any manner. The Respondent has no connection or affiliation with the Complainant whatsoever. On this record, Respondent has not been commonly known by either of disputed domain name;
- Furthermore, the domain name website has not been used for any legitimate or fair purposes.

BAD FAITH REGISTRATION AND USE

The Complainant states that:

- Seniority of the Complainant's trademarks predates the disputed domain name registration and such trademarks are well known in relevant business circles. The Respondent can be considered aware of the Complainant's trademarks when registering the disputed domain name due to well-known character thereof, which should have been checked by the Respondent by performing a simple internet search;
- The disputed domain name (at the time of filing of the complaint or anytime thereafter) were not used for any bona fide offerings of goods or services;
- Furthermore, the Complainant contends that the Respondent has registered the disputed domain name only in order to sell it back for out-of-pockets costs, which evinces bad faith registration and use.

RESPONDENT:

The Respondent has not provided any response to the complaint.

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

RIGHTS

The disputed domain name and the Complainant's trademarks are identical since both fully and solely incorporate the word elements "ISABEL MARANT".

For sake of completeness, the Panel asserts that the top-level suffix in the domain name (i.e. the ".store") must be disregarded under the identity and confusing similarity tests, as it is a necessary technical requirement of registration.

Therefore, the Panel has decided that there is identity in this case, it also concludes that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant's assertions that the Respondent is not commonly known by the disputed domain name and is not affiliated with nor authorised by the Complainant are sufficient to constitute prima facie showing of absence of rights or legitimate interest in the disputed domain name on the part of the Respondent.

Given the facts above and in the absence of the Respondent's response, the Panel concludes that there is no indication that the disputed domain name was intended to be used in connection with a bona fide offering of goods or services as required by UDRP.

Consequently, the evidentiary burden shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in that name. However, the Respondent failed to provide any information and evidence that it has relevant 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 Respondent has not used the disputed domain name in any manner, however, the Panel concludes (as it has been ruled in many similar cases, as for example *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003, <telstra.org>, *Jupiters Limited v. Aaron Hall*, WIPO Case No. D2000-0574, <jupiterscasino.com>, *Ladbroke Group Plc v. Sonoma International LDC*, WIPO Case No. D2002-0131, <ladbrokespoker.com>) that the apparent lack of so-called active use (e.g., to resolve to a website) of the domain name(s) without any active attempt to sell or to contact the trademark holder (passive holding), does not as such prevent a finding of bad faith.

Examples of what may be cumulative circumstances found to be indicative of bad faith include cases in which (i) the Complainant has a well-known trademark and (ii) there is no genuine use (e.g. a mere "parking") of the disputed domain name by the Respondent (irrespective of whether the latter should also result in the generation of incidental revenue from advertising referrals).

Also, the Panel contends that the Respondent has registered the disputed domain name likely in order to sell it back to the Complainant, which evinces bad faith registration and use.

The use of the top-level suffix STORE also indicates that the disputed domain name might be intended for "phishing" purposes as it may mislead internet users that the domain name is dedicated for hosting a web page imitating a real e-shop of the Complainant with an intention to mislead customers and have them disclosed confidential information as, for example, passwords, login etc.

Based upon the concepts above, which the Panel finds satisfied in this case, even though there is no real use of the dispute domain name, the Panel contends, on the balance of probabilities, that the disputed domain name has been registered and is being used (held) by the Respondent in bad faith.

It is well-founded that registration of the domain name that is confusingly similar to the Complainant's trademarks which enjoys strong reputation, plus other facts, such as above-described potential unfair use of the domain name, are sufficient to establish bad faith under the 4(a)(iii) of the Policy.

Thus, the Panel has taken a view that 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).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **isabelmarant.store**: Transferred

PANELLISTS

Name	Jiří Čermák
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DATE OF PANEL DECISION 2022-11-23

Publish the Decision
