

Decision for dispute CAC-UDRP-104946

Case number CAC-UDRP-104946

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Domain names shopsezane.com

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization BENDA BILI

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Organization Wu Long

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 owner of the international trademark SEZANE no. 1170876 registered on 3 June 2013 in classes 14, 18, 25.

The Complainant is also owner of the domain name <sezane.com> registered on 3 April 2003.

FACTUAL BACKGROUND

The Complainant is a French company specialized in ready-to-wear collections and accessories for women and trading under the trademark SEZANE. The term "SEZANE" is a contraction of the first name and last name of the Complainant's founder and president Morgane Sezalory. The Complainant's clothing and accessories are available only through its online shop accessible at <https://www.sezane.com>.

The disputed domain name <shopsezane.com> was registered on 16 November 2021 and resolves to an e-commerce site offering for sale women clothing and accessories and displaying the Complainant's SEZANE trademark.

The facts asserted by the Complainant are not contested by the Respondent.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to its trademark, because it includes in its entirety such mark and the addition of the term "SHOP" is not sufficient to escape the finding that the disputed domain name is confusingly similar to the SEZANE trademark.

The Complainant also contends that the Respondent lacks rights or legitimate interest in respect of the disputed domain name. The Respondent is not affiliated with nor authorised by the Complainant in any way. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorisation has been granted by the Complainant to the Respondent to make any use of the SEZANE trademark or apply for registration of the disputed domain name.

The Respondent is using the disputed domain name to disrupt the Complainant's business and to attract Internet users by using the SEZANE trademark and impersonating the Complainant and, thus, seeking to defraud or confuse users. This is not a bona fide or fair use of the disputed domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's trademark.

The Complainant states that the disputed domain name includes the distinctive SEZANE trademark. Given the distinctiveness of the Complainant's trademark and its reputation, it is reasonable to infer that the Respondent has registered and used the domain name with full knowledge of the Complainant's trademark.

Furthermore, the Respondent used a privacy registration service and fictitious underlying registration data to register the disputed domain name corresponding to Complainant's registered mark without authorization, and is using the domain name to pass off as the Complainant, promote counterfeit versions of Complainant's products, and likely engage in other fraudulent activities. Such conduct is indicative of bad faith registration and use under the Policy.

The Complainant, therefore, requests the transfer of the disputed domain name.

RESPONDENT:

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

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to succeed in the administrative proceeding:

(i) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;

and
(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 by the Respondent in bad faith.

I. THE COMPLAINANT'S RIGHTS AND CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAME TO THE COMPLAINANT'S MARK

The Complainant has established that it has rights in the SEZANE trademark since 2013.

In assessing identity or confusing similarity, the Panel finds that the disputed domain name is confusingly similar to the SEZANE trademark, because it incorporates the entirety of such mark and differs from it by merely adding the generic, non-distinctive and descriptive term "SHOP" and the TLD ".COM".

In UDRP cases where the relevant trademark is recognisable within the disputed domain name, panels agree that the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element (see paragraph 1.7 of WIPO Overview 3.0).

UDRP panels also agree that the TLD is usually to be ignored for the purpose of determination of identity or confusing similarity between the disputed domain name and the Complainant's trademark, as it is a technical requirement of the registration (see paragraph 1.11.1 of WIPO Overview 3.0).

The content of the website associated with the domain name is usually disregarded by UDRP panels when assessing confusing similarity under the first element. In some instances, panels have however taken note of the content of the website associated with a domain name to confirm confusing similarity whereby it appears prima facie that the respondent seeks to target a trademark through the disputed domain name (see paragraph 1.9 of WIPO Overview 3.0 and the decisions mentioned thereto).

In the dispute at hand, considered that the disputed domain name resolves to an e-commerce site offering for sale women clothing and accessories and displaying the Complainant's SEZANE trademark, it is clear that the Respondent had in his mind the Complainant, its activities and the SEZANE trademark, and intended to create confusion with such mark by registering the disputed domain name.

Hence, the Panel finds that the Complainant has proven the first element of the paragraph 4(a) of the Policy and the disputed domain name is confusingly similar to the Complainant's mark.

II. THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS TO THE DISPUTED DOMAIN NAME

It is a consensus view of UDRP panels that a complainant shall establish a prima facie case that the respondent lacks rights or legitimate interests in the disputed domain name to shift the burden of proof to that respondent (see paragraph 2.1 of the WIPO Overview 3.0: "where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element").

The Complainant has no relationship with the Respondent whatsoever. The Respondent has never received any approval of the Complainant, expressed or implied, to use the SEZANE trademark or to register the disputed domain name.

The disputed domain name was registered with privacy or proxy service on 16 November 2021 by Wu Long, an individual residing in Hong Kong, China. There is no evidence that the Respondent has been commonly known by the disputed domain name or has acquired any rights in a trademark or trade name corresponding to the disputed domain name.

UDRP panels have largely held that the composition of domain names consisting of a trademark plus an additional term cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (see paragraph 2.5.1 of WIPO Overview 3.0).

The disputed domain name is confusingly similar to the Complainant's SEZANE trademark, since it incorporates such mark in its entirety by merely adding the generic, non-distinctive and descriptive term "SHOP" and carries a high risk of implied affiliation.

Moreover, the disputed domain name resolves to an e-commerce site offering for sales women clothing and accessories and displaying the Complainant's trademark.

Therefore, the Panel finds that the use of the disputed domain name by the Respondent before any notice of the present dispute is clearly not a bona fide offering of goods or services or legitimate noncommercial or fair use, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's mark under the Policy. To the contrary, as per the evidence on record, it is apparent that the Respondent not only lacks rights or legitimate interests in the disputed domain name, but is instead trading off the Complainant's reputation and goodwill, impersonating the Complainant and misleading the Internet users.

While the Complainant has established its prima facie case, the Respondent has not submitted a Response and, thus, has failed to invoke any of the circumstances, which could demonstrate any rights or legitimate interests to the disputed domain name.

The Panel is satisfied that the Complainant has met the second requirement of the paragraph 4(a) of the Policy and finds that the Respondent lacks rights or legitimate interests to the disputed domain name.

III. REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME BY THE RESPONDENT IN BAD FAITH

The disputed domain name has been registered and is being used by the Respondent in bad faith for the following cumulative reasons.

The Respondent has used a privacy or proxy service when registering the disputed domain name. Although the use of such service is not in and of itself an indication of bad faith, the circumstances and the manner in which such service is used may however impact a panel's assessment of bad faith (see paragraph 3.6 of WIPO Overview 3.0).

The Respondent registered the disputed domain name, incorporating in its entirety the Complainant's prior mark. The addition of the generic, non-distinctive and descriptive term "SHOP" and the TLD .COM (a technical requirement of the registration) is insufficient to escape the finding of identity or confusing similarity between the disputed domain name and the Complainant's mark, and, together with the website content, even enhances the risk of confusion.

Indeed, the disputed domain name resolves to an e-commerce site offering for sales women clothing and accessories and displaying the Complainant's trademark. Thus, it is clear that the Respondent registered and has used the disputed domain name with actual knowledge of the Complainant, its business and its mark and the intention to exploit the reputation and the goodwill built by the Complainant by diverting traffic away from the Complainant's website.

Irrespective of whether the goods offered on the Respondent's website are in fact counterfeit, the reproduction of the Complainant's trademark on the Respondent's website without also displaying a clear disclaimer of a lack of relationship between the Respondent and the Complainant, trading off the Complainant's reputation and goodwill and impersonating the Complainant and, thus, misleading the Internet users are indicative of bad faith.

Therefore, the Panel finds that Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to source, sponsorship, affiliation, or endorsement of the Respondent's website (paragraph 4(b)(iv) of the Policy).

Taken into account all circumstances of this case, the Panel finds that the Complainant has discharged the burden of proof to show that the disputed domain name has been registered and is being used in bad faith (paragraph 4(a)(iii) of the Policy).

The disputed domain name is to be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. shopsezane.com: Transferred

PANELLISTS

| | |
|------|------------------------|
| Name | Ivett Paulovics |
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DATE OF PANEL DECISION **2022-11-24**

Publish the Decision
