

Decision for dispute CAC-UDRP-104947

Case number	CAC-UDRP-104947
Time of filing	2022-10-25 10:18:44
Domain names	sezaneoutlet-paris.shop

Case administrator

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

Organization	BENDA BILI
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Name	grimm tessa
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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 submitted evidence that it is the registered owner of the following trademarks:

- the international trademark registration no. 1170876 for the "SÉZANE" word registered on 3 June 2013 in classes 14, 18 and 25 designating numerous countries around the world and having its basic registration in France; and
- the French trademark no. 4308523 for the "SEZANE" word registered on 24 March 2017 in classes 11 and 20.

FACTUAL BACKGROUND

The Complainant is a company specialized in ready-to-wear collections and accessories for women and trading under its commercial name and trademark SEZANE. The term "SEZANE" is a contraction of the first name and last name of the Complainant's founder and President Morgane Sézalory. SEZANE's clothing and accessories are available only through its online shop.

The Complainant is also the owner of numerous domain names comprising the wording "SEZANE", such as the domain name <sezane.com> registered on 3 April 2003.

The disputed domain name was registered on 19 October 2022 and resolves to an online store selling SEZANE clothes.

The Registrar confirmed that the Respondent is the current registrant of the disputed domain name, and that the language of the registration agreement is English.

The Respondent has not filed a Response.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Complainant made the following contentions:

The disputed domain name is confusingly similar to its trademark and its domain names associated. The addition of the terms "OUTLET" and "PARIS" is not sufficient to escape the finding that the domain name is confusingly similar to the trademark "SEZANE". It does not change the overall impression of the designation as being connected to the Complainant's trademark "SEZANE". It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and domain names associated. It is well-established that "a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP".

Furthermore, the Complainant contends that the addition of the New gTLD ".SHOP" does not change the overall impression of the designation as being connected to the Complainant's trademark. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated.

The Complainant then points to established case law on prima facie case and reversing of burden of proof to the Respondent.

According to the Complainant, the Respondent is not identified as the disputed domain name. The Complainant further contends that the Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademarks "SEZANE" or apply for registration of the disputed domain name by the Complainant.

The Respondent uses the disputed domain name to disrupt Complainant's business and to attract users by impersonating the Complainant. Impersonation of a complainant, by using its trademark in a disputed domain name and seeking to defraud or confuse users, indicates a lack of rights or legitimate interests by a Respondent.

Thus, in accordance with the foregoing, the Complainant contends that the Respondent has no right or legitimate interest in respect of the disputed domain name.

Turning to the bad faith argument, the Complainant states that the disputed domain name includes the distinctive trademark "SEZANE". Thus, 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 a domain name corresponding to the Complainant's registered mark without authorization and is using the domain name to pass off as 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.

By using the domain name, the Complainant contends that 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.

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

This is a mandatory administrative proceeding under Paragraph 4 of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") and the CAC Supplemental Rules.

Paragraph 15 of the Rules provides that the Panel shall decide the complaint based on the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

According to Paragraph 4(a) of the Policy, a complainant must prove each of the following: (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; (ii) the respondent has no rights or legitimate interests in respect of the domain name; (iii) the domain name has been registered and is being used in bad faith.

1. Identical or confusingly similar domain name

The Complainant demonstrated that it owns the asserted trademark registrations for the word mark "SEZANE" which were obtained long before the registration of the disputed domain name. It is well established that a nationally or regionally registered trademark confers on its owner sufficient rights to satisfy the requirement of having trademark rights for standing to file a UDRP case. Therefore, the Panel finds that the Complainant has established such rights.

The disputed domain name incorporates the Complainant's trademark "SEZANE" in its entirety.

The disputed domain name differs from the Complainant's trademark insofar as it incorporates the terms "OUTLET" and "PARIS", and the gTLD ".shop".

It is well established that the generic top-level suffix (.shop in this case) may be disregarded when considering whether a disputed domain name is confusingly similar to a trademark in which the Complainant has rights because it is a necessary technical requirement of registration.

The addition of the words "OUTLET" and "PARIS" must be considered insufficient to prevent or diminish confusing similarity. This is true especially given that "PARIS" is not only a non-distinctive geographical term, but Paris is the place of the Complainant (and not of the Respondent). The term "OUTLET" is a generic term which lacks distinctive character in principle but in this case, it is even used descriptively.

The content of the website associated with the disputed domain name is usually disregarded to assess confusing similarity. However, in some instances, panels have taken note of the content of the website associated with the disputed domain name to confirm confusing similarity where it appears prima facie that the respondent seeks to target a trademark through the disputed domain name. In the present dispute, the disputed domain name resolves to an e-commerce site offering women's clothing and accessories for sale and displaying the Complainant's SEZANE trademark. The Panel believes it is self-evident that the Respondent intended to create confusion with the Complainant's trademark (and its activities) by registering the disputed domain name.

Therefore, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

2. Lack of rights or legitimate interests

The Respondent has not filed a Response and has neither provided any other information that would oppose the Complainant's allegations. Therefore, the Panel holds the Complainant successfully presented its prima facie case that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In particular, the Respondent is not known as the disputed domain name according to Paragraph 4(c)(ii) of the Policy, nor is it affiliated with or authorized by the Complainant to use its trademark for commercial activities. Furthermore, it was demonstrated by evidence submitted by the Complainant that the disputed domain name is used to disrupt the Complainant's business and to attract users by impersonating the Complainant and mimicking its website. The Panel agrees with the Complainant that impersonation of a complainant by using its trademark in a disputed domain name and seeking to defraud or confuse users indicates a lack of rights or legitimate interests by a Respondent.

The Panel has therefore determined that the Respondent has no rights or legitimate interest in the disputed domain name.

3. Registration and use of the disputed domain name in bad faith

Concerning the bad faith argument, the Complainant states, in summary: (a) that the disputed domain name includes its distinctive trademark; (b) that the Respondent must have had actual knowledge of the Complainant's trademark; (c) that the Respondent used a privacy registration service and fictitious underlying registration data to register the disputed domain name; and (d) that the Respondent uses the disputed domain name to promote counterfeit versions of the Complainant's products and likely engages in other fraudulent activities.

The Panel has already found that the disputed domain name is confusingly similar to the Complainant's trademark "SEZANE". It is well established that the mere registration of a domain name that is confusingly similar to a trademark by an unaffiliated entity can lead to the presumption of bad faith.

In addition, the Panel believes that the Complainant submitted evidence that sufficiently demonstrates the Respondent must have been aware of the existence of the Complainant, its trademark as well as its domain names. It is difficult to find any good-faith reason for the registration of the disputed domain name by the Respondent.

Regarding the use of the disputed domain name which contains a website that mimics the Complainant's website, including the Complainant's trademark and logo, and allegedly offers counterfeit or unauthorized versions of the Complainant's products, in the absence of any plausible explanation by the Respondent, the Panel finds this a blatant example of bad faith use of a domain name.

With that in mind, the Panel concludes that several signs of bad faith in registering and use of the disputed domain name by the Respondent can be found in this case. Therefore, the Panel finds that the disputed domain name has been registered and has been used by the Respondent in bad faith.

In conclusion, the Panel finds that all three elements required by Paragraph 4(a) of the Policy were met and makes the following decision.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. sezaneoutlet-paris.shop: Transferred**

PANELLISTS

Name	Vojtěch Chloupek
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DATE OF PANEL DECISION **2022-11-27**

Publish the Decision
