

Decision for dispute CAC-UDRP-105042

Case number	CAC-UDRP-105042
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Time of filing	2022-12-09 11:15:02
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Domain names	sephoraco.com
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Case administrator

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

Organization	SEPHORA SAS
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Complainant representative

Organization	INSIDERS
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Respondent

Organization	Naan Hut
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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 <sephoraco.com> ("the disputed domain name").

In the Complaint, the Complainant states as follows: "SEPHORA tried to contact the Respondent in 2020 and again in 2021 with no response. SEPHORA also succeeded to shut down the website to which the domain sephoraco.com resolved in 2020".

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade marks:

- US trade mark registration no. 2431967, registered on 27 February 2001, for the word mark SEPHORA, in classes 3, 35, 38 and 42 of the Nice Classification; and
- International trade mark registration no. 1462976, registered on 25 September 2018, for the word mark SEPHORA, in classes 3, 4, 5, 8, 9, 10, 11, 14, 16, 18, 20, 21, 24, 25, 26, 32, 35, 41 and 44 of the Nice Classification.

(hereinafter, collectively or individually, "the Complainant's trade mark"; "the Complainant's trade mark SEPHORA"; or "the trade mark SEPHORA" interchangeably).

At the time of writing, the disputed domain name redirects to the website www.teargans.com (for present purposes, "the Respondent's website").

FACTUAL BACKGROUND

The Complainant's contentions can be summarised as follows:

A. Background History

The Complainant, founded in France in 1970, has become a well known cosmetics retail company. The Complainant operates over 2,700 stores in 35 countries worldwide and through its e-commerce at www.sephora.com.

The Complainant seeks to obtain the ownership of disputed domain name on the grounds set out in section B below.

B. Legal Grounds

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

The Complainant submits that the disputed domain name <sephoraco.com> is confusingly similar to the Complainant's trade mark SEPHORA, to the extent that it incorporates the Complainant's trade mark SEPHORA in its entirety, and that the adjoint term "co" has no meaning and is therefore insufficient to dispel the likelihood of confusion.

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

The Complainant submits 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 SEPHORA. Moreover, the Respondent is not known by the disputed domain name.

The Complainant further submits that the disputed domain name resolves to the website at www.teargans.com, which operates in the business of hair products. On the Respondent's website there is a US phone number and a mention "Trademark of Sephoraco LLC".

According to the Complainant, Sephora Co LLC was first registered as "Biltmore Fashion Salon LLC" in 2003 and changed its company name to Sephora Co LLC in 2015, when the Respondent registered the disputed domain name, at which time the Complainant was already widely known in Europe and in Americas.

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 names in bad faith

The Complainant asserts that a professional retailer of hair and other cosmetic products, with an over 10 year experience in the field, could not be unaware of the trade mark SEPHORA at the time of registration of the disputed domain name.

The Complainant avers that the Respondent has intentionally used the disputed domain name to attract, for commercial gain, the Complainant's clients to the Respondent's website and therefore exploit SEPHORA's popularity and renown (paragraph 4(b)(iv) of the UDRP Policy).

The Complainant therefore concludes that the Respondent has registered and is using the disputed domain name in bad faith.

PARTIES CONTENTIONS

The Respondent has failed to serve a Response in this administrative proceeding, the result of which being that the Complainant's allegations are uncontested.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that 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 are 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 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 obtain the ownership of the disputed domain name:

1. The disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
2. The Respondent has no rights or legitimate interests in respect of the disputed domain name; and
3. The disputed domain name has been registered and are 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 Policy elements.

I. Identical or Confusingly Similar

The Panel is satisfied that the Complainant owns trade mark rights in “SEPHORA” since at least 2001.

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

The Panel has no difficulty in finding that the disputed domain name is confusingly similar to the Complainant’s trade mark SEPHORA. The suffix/adjacent acronym “co” in the disputed domain name string has no material impact on the confusing similarity assessment, such that the disputed domain name clearly evokes the Complainant’s trade mark SEPHORA.

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 this administrative proceeding. 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; that the Respondent does not hold any trade mark rights in the term “sephoraco”; and that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name.

The Respondent has submitted no evidence to refute any of the Complainant’s assertions. On balance, the Panel considers the available evidence to lend credence to the Complainant’s contentions.

The Panel has furthermore taken stock of paragraph 2.5.3 of the WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Jurisprudential Overview 3.0”), according to which UDRP panels have held that a respondent’s use of a complainant’s trade mark to redirect users would support a claim to rights or legitimate interests.

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 indicia to this Panel that the disputed domain name was registered in bad faith:

- The Complainant has been used the trade mark SEPHORA since at least 2001, with trade mark rights in US, where the Respondent appears to be based;

- The Complainant has operated its activities through an e-commerce marketplace to which the domain name <sephora.com> resolves (registered in 1996);
- 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 SEPHORA is widely known in its segment of business; and
- The Respondent's lack of participation in the course of this administrative proceeding.

Use

The Complainant refers to the Respondent as being engaged in the conducts described in paragraphs 4(b)(i) and 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."

The Panel takes account of paragraph 3.1.4 of the WIPO Jurisprudential Overview 3.0, according to which panels have considered various types of evidence to support a finding under the above circumstances, most compellingly in the present matter: (i) the actual confusion between the disputed domain name and the Complainant's trade mark; (ii) the lack of the Respondent's own rights to, or legitimate interests in, the disputed domain name; (iii) the Respondent's attempt to gain reputational advantage by redirecting Internet users to a Complainant's competitor's website; and (iv) the absence of any conceivable good faith use of the disputed domain name.

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. **sephoraco.com**: Transferred

PANELLISTS

Name	Yana Zhou
DATE OF PANEL DECISION	2023-01-09
Publish the Decision	