

Decision for dispute CAC-UDRP-105209

Case number	CAC-UDRP-105209
Time of filing	2023-02-17 09:27:49
Domain names	fashionisabelmarant.com, isabelmarantlady.com

Case administrator

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

Organization	IM PRODUCTION
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Organization	GNN
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OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings relating to the disputed domain names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the International trademark (Azerbaijan, Switzerland, China, Algeria, Egypt, Croatia, Kazakhstan, Liechtenstein, Morocco, Monaco, Montenegro, Serbia, Russian Federation, Viet Nam) "ISABEL MARANT" n° 1284453 registered since November 2015 and the European trademark "ISABEL MARANT" n°001035534 registered since May 2000.

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 now has stores around the world.

The disputed domain names were registered by the same respondent on February 11, 2023 and redirect to a website purporting to be an online store selling the Complainant's ISABEL MARANT products at discounted prices.

PARTIES CONTENTIONS

COMPLAINANT:

1. The disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights

The Complainant states that the disputed domain names are confusingly similar to its well-known and distinctive trademark "ISABEL MARANT" and its domain names associated.

The Complainant asserts that adding the generic term "FASHION" or "LADY" is insufficient to avoid the likelihood of confusion. Furthermore, 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.

Moreover, the Complainant contends that the gTLD ".COM" is not relevant in the appreciation of confusing similarity. Finally, the Complainant asserts that its rights over the terms "ISABEL MARANT" have been confirmed in several previous UDRP decisions.

Thus, the disputed domain names are confusingly similar to the Complainant's trademark "ISABEL MARANT".

1. The Respondent has no rights or legitimate interests in respect of the disputed domain names

The Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain names. Past panels have held that a Respondent was not commonly known by a disputed domain name if the WHOIS information was not similar to the disputed domain name. Thus, the Respondent is not known as the disputed domain names.

The Complainant contends that the Respondent has no rights or legitimate interests regarding the disputed domain names, and it is unrelated to the Complainant. The Complainant claims that it 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 use the Complainant's trademark, "ISABEL MARANT" or apply for registration of the disputed domain names by the Complainant.

The Complainant maintains that the disputed domain names are used to host websites to impersonate the Complainant and attempt to mislead consumers into thinking that the goods purportedly offered for sale on the websites originate from Complainant. Such use demonstrates neither a bona fide offering of goods nor a legitimate interest of the Respondent.

Furthermore, there is no information/disclaimer on the website page to identify its owner. The Complainant argues that, therefore, the Respondent failed at least in one of the elements of the Oki Data test, i.e., the websites linked to the disputed domain names do not disclose accurately and prominently the registrant's relationship with the trademark holder. Thus, the Complainant contends that the Respondent has no rights or legitimate interest in the disputed domain names.

1. The disputed domain names were registered and are being used in bad faith

The Complainant states that the disputed domain names are confusingly similar to its trademark, "ISABEL MARANT". The Complainant's trademark was registered several years before registering the disputed domain names. In addition, the trademark "ISABEL MARANT" and "ISABEL MARANT ETOILE" are displayed on the websites. Thus, given the distinctiveness of the Complainant's trademark and its reputation, the Complainant argues that it is reasonable to infer that the Respondent has registered and used the disputed domain names with full knowledge of the Complainant's trademark.

The Complainant claims that the Respondent registered and uses the disputed domain names in bad faith to create confusion with the Complainant's trademarks for commercial gain by using the confusingly similar domain names to resolve to websites offering counterfeit or unauthorized versions of the Complainant's products in direct competition with the Complainant's products. The Complainant contends that using a confusingly similar domain name to trade upon the goodwill of a complainant can evince bad faith under Policy 4(b)(iv).

Based on the above, the Complainant contends that the Respondent acquired the disputed domain names with the only intention to attract for commercial gain Internet users to the Respondent's websites. On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain names in bad faith.

RESPONDENT

No administratively compliant Response was filed.

To the satisfaction of the Panel, the Complainant has shown that the disputed domain names are identical or confusingly similar to the trademark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

To the satisfaction of the Panel, the Complainant has shown the Respondent to have no rights or legitimate interests in respect of the disputed domain names (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

To the satisfaction of the Panel, the Complainant has shown the disputed domain names have 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 have been met, and there is no other reason why it would be unsuitable for providing the Decision.

PRINCIPAL REASONS FOR THE DECISION

1. Identical or Confusingly Similar

First, the Panel is satisfied that the Complainant has shown it owns rights in the "ISABEL MARANT" trademark, with registration and evidence, provided dating the trademark registration back to at least 2000.

Turning to analyze if there is a confusing similarity between the disputed domain names and the trademark, the Panel notes, based on the record at hand, that the disputed domain names reproduce the trademark in its totality, namely "ISABEL MARANT", with an addition of a term, respectively.

In the case of the first disputed domain name, namely <fashionisabelmarant.com>, it adds the term "fashion" preceding the trademark. In the case of the second disputed domain name, namely <isabelmarantlady.com>, it adds the term "lady" following the trademark.

These slight differences are immaterial to dispel the confusing similarity between the disputed domain names and the Complainant's trademarks.

In addition, these terms are related and emphasize a perception of association with the business of the Complainant. Although an analysis of this is not relevant under this first element, the Panel notes it for further analysis under the elements below.

Consequently, the Panel determines that the Complaint has satisfied the Policy's first element set under paragraph 4(a)(i).

2. Rights or Legitimate Interests

Based on the evidence on record and acknowledging that the Respondent failed to produce any allegations or evidence necessary to demonstrate its rights or legitimate interests in the disputed domain names, the Panel must turn to the uncontested facts.

The uncontested facts indicate that a) the Respondent is not commonly known by the disputed domain names; b) the Respondent is not affiliated with the Complainant; c) the Respondent is not authorized to carry out any business activity for the Complainant; d) the Respondent has no license or authorization to use the trademarks; and e) the Respondent has not been authorized to apply for registration of the disputed domain names.

Based on the above, the record at hand, and on the balance of probability, and considering that the Respondent has failed to respond to the Complainant's contentions, the Respondent has consequently not rebutted the prima facie case, as described in paragraph 2.1 of WIPO 3.0 Overview.

In addition to this, the Respondent's use of the trademark plus the term "fashion" and "lady", respectively, in the disputed domain names seems to indicate, on the balance of probabilities, that the Respondent not only was aware of the Complainant but deliberately targeted the Complainant to benefit from a perceived link to the business of the Complainant by confusing Internet users. This is further reinforced by the content of the disputed domain names, which includes goods purportedly offered for sale

made to appear as originating from the Complainant. A practice like this can never be considered a bona fide offering under the Policy, but further analysis will be conducted under the last element below.

These facts lead the Panel to conclude that the Respondent did not have rights or legitimate interests in the disputed domain names.

Consequently, the Panel determines that the Respondent has no rights or legitimate interests in the disputed domain names. Subsequently, the Complainant has fulfilled the second requirement set under paragraph 4(a)(ii) of the Policy.

3. Registered and Used in Bad Faith

Per the record and evidence at hand, the Panel finds that the Respondent was likely aware of the Complainant and had the Complainant's trademark in mind when registering the disputed domain names. This is further reinforced by the specific connection the disputed domain names appear to evoke through the use of the terms "fashion" and "lady", which are linked to the business of the Complainant and the fact that "ISABEL MARANT" is a widely used trademark worldwide.

Additionally, the products appearing for sale appear to be counterfeit or unauthorized versions of the Complainant's products in direct competition with the Complainant's products in the disputed domain names are meant to confuse the Internet users through the use of the Complainant's trademark, which appears to misrepresent the origin of the disputed domain names, as they are meant to appear as an official channel of an organization. In this case, that organization is the Complainant. If this is true, the Respondent appears to have targeted the Complainant on the balance of probabilities.

All the preceding analysis leaves the Panel no other option than to conclude that the most likely intention of the Respondent was to intentionally attempt to attract, for commercial gain, Internet users to its website/disputed domain name by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and/or disputed domain name, as per illustrated under paragraph 3.1 of WIPO 3.0 Overview.

In light of the case's circumstances, based on the available records, the Panel finds that the Complainant has proven that the disputed domain names were registered and are used in bad faith according to paragraph 4(a)(iii) of the Policy.

4. Decision

For the preceding reasons and in concurrence with the provisions specified under Paragraph 4(i) of the Policy and Paragraph 15 of the Rules, the Panel orders the transfer of the disputed domain names to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **fashionisabelmarant.com**: Transferred
2. **isabelmarantlady.com**: Transferred

PANELLISTS

Name	Rodolfo Rivas Rea
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DATE OF PANEL DECISION 2023-03-14

Publish the Decision
