Decision for dispute CAC-UDRP-105267

Case number	**CAC-UDRP-105267**
Time of filing	**2023-03-08 10:38:38**
Domain names	**sezanefroutlet.shop, sezaneonline-fr.shop**

Case administrator

Name	**Olga Dvořáková (Case admin)**

Complainant

Organization	**BENDA BILI**

Complainant representative

Organization	**NAMESHIELD S.A.S.**

Respondents

Name	**grimm tessa**
Name	**Ronald P. Shrader**

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 names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of international trademark registration no. 1170876- SÉZANE, registered on June 3 2013 for products in classes 14, 18 and 25. This international registration extents to Australia, Switzerland, China, European Union, Republic of Korea, Monaco, Mexico, Norway, New Zealand, Russia, Singapore and the US.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

BENDA BILI (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 SEZALORY. SEZANE’s clothing and accessories are available only through its online shop.

The Complainant is the owner of numerous trademarks, including the international trademark SEZANE® n° 1170876 registered on June 3rd, 2013.

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

The disputed domain names were registered on September 26, 2022 (<sezanefroutlet.shop>) and February 13, 2023 (<sezaneonline-fr.shop>) and are resolving to the similar website.

Notwithstanding differences in at-issue domain names, the Complainant alleges that they are nevertheless effectively controlled by the same person and/or entity. The domain names in the present dispute are similarly constructed as each domain name contains Complainant’s trademark and include generic or descriptive terms. The domain names address websites that are substantially similar to each other and offer Complainant’s products in a similar manner. While it is possible that the domain names’ underlying registrants may or may not differ in the relevant WHOIS data, the at-issue domain names clearly appear to be related to, or controlled by, the same person, persons, or entity.

Therefore, the Complainant contends that the Respondents be treated as a single entity.

The Complainant contends that the disputed domain name) are identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The disputed domain names are confusingly similar to its trademark and its domain names associated. Indeed, the domain names include in its entirety the Complainant’s trademark.

The addition of terms “OUTLET” (for < sezanefroutlet.shop >) or “ONLINE” (for < sezaneonline-fr.shop >) and the country code “FR” is not sufficient to escape the finding that the domain names are 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 names 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”. Please see WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasiliy Terkin.

The Respondent has no rights or legitimate interests in respect of the domain name(s);

The Respondent is noz identified 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. Please see for instance Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> (“Here, the WHOIS information of record identifies Respondent as “Chad Moston / Elite Media Group.” The Panel therefore finds under Policy ¶ 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy ¶ 4(c)(ii).”).

The Complainant contends that the Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain names. 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 names by the Complainant.

Furthermore, the disputed domain names redirect to Complainant’s competitors’ websites. Please see for instance Forum Case No. FA 1659965, General Motors LLC v. MIKE LEE (“Past panels have decided that a respondent’s use of a domain to sell products and/or services that compete directly with a complainant’s business does not constitute a bona fide offering of goods or services pursuant to Policy ¶ 4(c)(i) or a legitimate non-commercial or fair use pursuant to Policy ¶ 4(c)(iii).”).

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

1. The domain name(s) was/were registered and is/are being used in bad faith.

The Complainant states that the disputed domain names include 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. . Please see for instance WIPO Case No. D2004-0673, Ferrari S.p.A v. American Entertainment Group Inc.

Furthermore, the disputed domain names redirect to online store which compete with the products offered by the Complainant. Using a domain name in order to offer competing services is often been held to disrupt the business of the owner of the relevant mark is bad faith. Please see Forum Case No. FA 768859, Instron Corporation v. Andrew Kaner c/o Electromatic a/k/a Electromatic Equip't ("Complainant asserts that Respondent registered and is using the disputed domain names to disrupt Complainant's business, because Respondent is using the disputed domain names to operate a competing website. The Panel finds that Respondent has registered and used the disputed domain names in bad faith according to Policy ¶ 4(b)(iii).").

By using the domain names, 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, as mentioned by Policy, paragraph 4(b) (iv). Please see Forum Case No. 94864, Southern Exposure v. Southern Exposure, Inc. ("The Respondent is using the domain name to attract Internet users to its website by creating confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Complainant's website. Policy ¶ 4(b)(iv). The Respondent registered and used the domain name in question to profit from the Complainant's mark by attracting Internet users to its competing website. This is evidence of bad faith.").

PARTIES CONTENTIONS

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.

The Complainant has submitted evidence that the domain names in dispute are effectively controlled by the same person and/or entity. The domain names in the present dispute are similarly constructed as each domain name contains Complainant's trademark and include generic or descriptive terms. The domain names address websites that are substantially similar to each other and offer Complainant's products in a similar manner and actually the "À propos de nous" section is identical. Therefore, the domain names in dispute clearly appear to be under the same control.

PRINCIPAL REASONS FOR THE DECISION

1. RIGHTS

The disputed domain names are confusingly similar to the Complainant's registered trademark since they reproduce the Complainant's mark 'SEZANE', merely adding OUTLET and ONLINE, besides the country code FR.

As stated in Crédit Industriel et Commercial v. Manager Builder, Builder Manager, WIPO Case No. D2018-2230:

"The disputed domain name incorporates the CIC trademark in its entirety. Numerous UDRP panels have recognized that incorporating a trademark in its entirety can be sufficient to establish that the disputed domain name is at least confusingly similar to a registered trademark (see e.g., PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS Computer Industry (a/k/a EMS), WIPO Case No. D2003-0696). Moreover, it has been held in many UDRP decisions and has become a consensus view among panelists (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.8), that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element of the UDRP. Accordingly, the addition of the term "banks", which even is the English translation of the French term "banques" as it is reflected in Complainant's CIC BANQUES trademark, does not avoid the confusing similarity arising from the incorporation of Complainant's CIC trademark in the disputed domain name."

2. NO RIGHTS OR LEGITIMATE INTERESTS

The Respondents have not submitted any response. Therefore, they have submitted no information on possible rights or legitimate interests they might hold. On its part, the Complainant has submitted information and arguments which, *prima facie*, allow it to be reasonably assumed that the Respondents have no rights or legitimate interest in the domain names in dispute.

As the WIPO Arbitration and Mediation Center pointed out in UDRP case No. D2002-0856:

"As mentioned, [in the decision], the Respondent has not filed a Response and is therefore in default. In those circumstances when the Respondent has no obvious connection with the disputed domain name, the prima facie showing by the Complainant that the Respondent has no right or legitimate interest is sufficient to shift the burden of proof to the Respondent to demonstrate that such a right or legitimate interest exists." WIPO Case No. D20020273 <sachsenanhalt>; WIPO Case No. D20020521 <volvovehicles.com>.

Furthermore, the Complainant has provided evidence that the Respondents' websites sell products of the Complainant's competitors. Obviously, this use cannot be considered as legitimate.

Accordingly, the Panel finds that the Respondents have no rights or legitimate interests in the disputed domain names.

3. BAD FAITH

The Respondents have, as a result of their default, not invoked any circumstances which could invalidate the Complainant´s allegations and evidence with regard to the Respondents' registration and use of the disputed domain names in bad faith.

The Complainant has filed evidence of its relevant activity under the SEZANE trademark and that the Respondents' websites sell products of the Complainant's competitors. It seems clear that the Respondents are trying to impersonate the Complainant specifically in France (FR).

It is therefore clear that the Respondents registered the disputed domain names for this fraudulent purpose.

Paragraph 4(b) (iiii) of the Policy provides that the following circumstances are deemed to be evidence that the Respondent has registered and is using the disputed domain name in bad faith:

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of its website or location or of a product or service on its website or location.

As mentioned in Andrey Ternovskiy dba Chatroulette v. Alexander Ochki, WIPO Case No. D2017-0334:

"It is clear in the Panel's view that in the mind of an Internet user, the disputed domain names could be directly associated with the Complainant's trademark, which is likely to be confusing to the public as suggesting either an operation of the Complainant or one associated with or endorsed by it (see AT&T Corp. v. Amjad Kausar, WIPO Case No. D2003-0327)."

It has, therefore, been satisfactorily demonstrated to the Panel that the disputed domain names have been registered and used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **sezanefroutlet.shop**: Transferred
2. **sezaneonline-fr.shop**: Transferred

PANELLISTS

Name	**José Ignacio San Martín**

DATE OF PANEL DECISION 2023-04-11

Publish the Decision