

Decision for dispute CAC-UDRP-105376

Case number CAC-UDRP-105376

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Domain names sezane-online.com

Case administrator

Name Olga Dvořáková (Case admin)

Complainant

Organization BENDA BILI

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name Mark Kean

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 owner of the international trademark "SEZANE" (wordmark), no 1170876, registered on June 3, 2013, in Nice class 14, 18 and 25.

FACTUAL BACKGROUND

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

The Complainant claims to be a company specialized in ready-to-wear collections and accessories for women. The Complainant operates under the name "SEZANE" to sell its products around the world, via its online shop.

The Complainant claims to be the owner of several trademarks comprising the term "SEZANE". The Complainant submitted evidence that it is the owner of the international word trademark "SEZANE", number 1170876, registered on June 3, 2013, in Nice classes 14, 18 and 25. This international trademark is valid in various countries, including in the USA (at least for classes 18 and 25). This international trademark is hereafter referred to as the "Trademark".

The Complainant also states that it is the owner of multiple domain names which include the word "SEZANE". The Complainant submitted evidence that it is the registered owner of the domain name <sezane.com>, registered since April 3, 2003.

The disputed domain name <sezane-online.com> was registered on November 8, 2022. According to the Complainant, the disputed domain name resolves to a blog that redirects the users to a competitor of the Complainant.

PARTIES CONTENTIONS

The Complainant's contentions are summarised below.

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

1. Confusing similarity

The disputed domain name consists of the Complainant's Trademark "SEZANE" with the addition of a hyphen and the term "ONLINE".

According to the Complainant, the addition of the term "online" is not sufficient to avoid a likelihood of confusion with the Trademark. The Complainant states that the addition of this term does not change the overall impression of the designation as being connected to the Trademark.

The Complainant states 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".

The Panel notes that the disputed domain name incorporates the entirety of the Complainant's "SEZANE" Trademark, with the sole addition of a hyphen and the term "ONLINE".

The Panel remarks that Section 1.7 of WIPO Overview 3.0, states that, "in cases where a domain name contains the whole of a trademark, or where at least one dominant feature of the relevant trademark is recognisable in the domain name, the domain name shall normally be considered confusingly similar to that trademark for the purposes of UDRP status".

The Panel is of the opinion that the sole addition of the descriptive term "online" does not prevent a finding of confusing similarity under the first element of paragraph 4(a) of the Policy. This is supported by section 1.8 of WIPO Overview 3.0, which states: "Where the relevant mark is recognisable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless or otherwise) would not preclude a finding of confusing similarity under the first element".

The gTLD ".com" may be disregarded when it comes to considering whether a domain name is confusingly similar to a trademark in which the Complainant has rights.

For these reasons, the Panel concludes that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

2. Rights or legitimate interests

As regards paragraph 4(a)(ii) of the Policy, while the overall burden of proof rests with the Complainant, it is commonly accepted that this should not result in an often-impossible task of proving a negative. Therefore, numerous previous Panels have found that the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of production shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to come forward with such appropriate allegations or evidence, the Complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy. If the Respondent does come forward with some allegations or evidence of relevant rights or legitimate interests, the panel then must weigh all the evidence, with the burden of proof always remaining on the Complainant.

The Complainant argues that:

- The Respondent is not identified in the WHOIS database as the disputed domain name.
- The Respondent is not affiliated or authorized by the Complainant in any way. The Complainant does not carry out any activity for, nor has any business with the Respondent.
- No license or authorisation was granted to the Respondent to make use of the Complainant's Trademark.
- The disputed domain name is used to redirect consumers to the Amazon marketplace. Thus, the Respondent tries to defraud or confuse users by impersonating the Complainant. The use of a disputed domain name to offer competing goods or services does not qualify as a bona fide offering of goods and services and is not a legitimate non-commercial or fair use under the Policy.

The Respondent did not file an administratively compliant (or any) response. The Respondent did not provide evidence that it has rights or legitimate interests in the disputed domain name (the Respondent could, inter alia, have provided evidence of the factors mentioned in paragraph 4(c) of the Policy, but failed to do so).

The Panel finds that the Respondent does not appear to have any rights or legitimate interests in the disputed domain name from the following facts:

- There is no evidence at all that the Respondent is or has been commonly known by the disputed domain name or by the term "SEZANE". The WHOIS information does not provide any information that might indicate any rights to use of the term "SEZANE".
- The Complainant's Trademark has been used well before the registration date of the disputed domain name. The disputed domain name was registered on November 8, 2022, whereas the Trademark of the Complainant was registered on June 3, 2013.
- There is no evidence to show that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers. On the contrary, it appears that the Respondent is taking advantage (or at least intends to take advantage) of the Complainant's name and registered Trademark to profit from the sale of similar or competing goods to those offered by the Complainant through the disputed domain name and the webpage linked to it.
- The Respondent did not show to have any trademark rights or other rights in the term "SEZANE".
- The Respondent does not seem to have any consent or authorisation to use the Trademark or variations thereof and does not seem to be related in any way to the Complainant.

In sum, on the balance of probabilities, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Complainant has made a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Panel concludes that the Respondent does not have rights or legitimate interests in the disputed domain name.

3. Bad faith

The Complainant asserts that the Respondent registered the disputed domain name with actual knowledge of the Trademark.

Furthermore, the Complainant states that the Respondent registered and used the disputed domain name to attract Internet users

and offer possibly fraudulent services while impersonating the Complainant or, at a minimum disrupt the Complainant's business by offering services in direct competition with the Complainant.

Finally, the Complainant asserts that the Respondent registered the disputed domain name through a privacy service and did not provide information about its identify on the disclaimer that is published on the website available via the disputed domain name.

The Panel weighs these arguments and facts as follows:

The Panel notes that the Complainant is based in France and that the Respondent is based in the USA (at least, the address used for the Whois details is an address in the USA). Nevertheless, the texts on the website available through the disputed domain name are drafted in French. It thus seems that the Respondent is primarily targeting a French public, i.e., the public of the Complainant's home country. Also, the website available through the disputed domain name mentions an address in France (Lyon) and a French telephone number. It thus seems likely that the Respondent had actual knowledge of the Complainant and it's Trademark.

The Respondent uses the disputed domain name to publish a blog about clothing, whereby the Respondent refers internet users to various sellers of clothing on Amazon.fr. The landing pages on the Amazon.fr marketplace are all drafted in French. Again, it seems that the Respondent is primarily targeting a French public.

Also, the Complainant's Trademark is valid in the USA (the home country of the Respondent), specifically for class 25 (clothing).

In other words, the Trademark was valid in both the country of the target public (France) and of the Respondent himself. The Respondent is specifically blogging about clothing and referring internet users to clothing sales places on Amazon.fr. The Trademark was specifically registered for clothing (class 25).

From these facts, the Panel concludes that the Respondent must have had actual knowledge of and had the Complainant and its Trademark in mind when registering and using the disputed domain name.

The landing pages on Amazon.fr are online shops of competitors of the Complainant.

Also, the website available via the disputed domain name mentions the following (in Spanish; the rest of the website is in French):

"Nuestro blog un participante en el Programa de Asociados de Amazon Services LLC, un programa de publicidad de afiliados diseñado para proporcionar un medio para que los sitios ganen tarifas de publicidad publicitando y vinculando a Amazon.es. Muchos enlaces son enlaces de afiliados, lo que significa que recibo una compensación cuando compra a través de estos sin cargo adicional para usted."

Free translation in English:

"Our blog (is) a participant in the Associates Program of Amazon Services LLC, an affiliate advertising program designed to provide a means for sites to earn advertising fees by advertising and linking to Amazon.es. Many links are links of affiliates, which means that I receive a compensation when you purchase through these at no additional charge to you."

In other words, the Respondent gains financially by referring internet users to competing online clothing shops on Amazon.

From these facts, the Panel concludes that the Respondent registered and used the disputed domain name to attract internet users to disrupt the business of the Complainant.

For all the reasons set out above, the Panel concludes that the Complainant did prove that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **sezane-online.com**: Transferred

PANELLISTS

Name	Bart Van Besien
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DATE OF PANEL DECISION **2023-05-17**

Publish the Decision
