

Decision for dispute CAC-UDRP-105511

Case number CAC-UDRP-105511

Time of filing 2023-06-09 10:18:13

Domain names seazne.com

Case administrator

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

Complainant

Organization BENDA BILI

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name Eldon Adams

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 relies on international Trademark registration <SÉZANE> (verbal) number 1170876, registered on 1 June 2013, which has been granted protection in many states, including the European Union, where the Respondent is located. According to the evidence before the Panel, the mark has duly been renewed.

FACTUAL BACKGROUND

According to the Registrar verification, the Respondent registered the disputed domain name on 21 March 2023. The language of the registration agreement is English.

The website to which the disputed domain name resolves is inactive. However, MX records are configured.

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.

PRINCIPAL REASONS FOR THE DECISION

1.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark.

The trademark <SÉZANE> remains readily identifiable within the disputed domain name.

The fact that the trademark is slightly distorted by inverting the letters "ZA" into "AZ" does not add any distinctive matter so as to distinguish the disputed domain name from Complainant's trademark. It is rather a common and obvious misspelling of the registered trademark.

2.

In the absence of any Response, or any other information from the Respondent indicating the contrary, the Panel further holds that the Complainant successfully presented its prima facie case and that the Respondent has no rights or legitimate interests in respect of the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy.

In particular, the Panel notes that there is no evidence in the record that could lead the Panel to conclude that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

In addition, it results from the Complainant's uncontested evidence that the Respondent has no connection or affiliation with the Complainant who has not granted the Respondent any license or consent, express or implied, to use the Complainant's trademark in domain names or in any other manner.

Furthermore, no content is displayed on the website to which the disputed domain name resolves. Such use can neither be considered a bona fide offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name in the sense of paragraph 4(c)(i) and (iii) of the Policy.

3.

Finally, the Panel finds that the disputed domain name has been registered and is being used in bad faith according to paragraph 4(a)(iii) of the Policy.

According to the Complainant's undisputed allegations, the Respondent does not actively use the disputed domain name. With comparative reference to the circumstances set out in paragraph 4(b) of the UDRP deemed to establish bad faith registration and use, prior UDRP panels have found that the apparent lack of active use (e.g., to resolve to a website) of the domain name without any active attempt to sell or to contact the trademark holder (passive holding), does not as such prevent a finding of bad faith under the doctrine of passive holding. The Panel must therefore examine all the circumstances of the case to determine whether the

Respondent is acting in bad faith.

In the case at hand, the Panel considers the following circumstances surrounding the registration as suggesting that the Respondent was aware that it has no rights or legitimate interests in the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith:

- (i) the distinctiveness of the trademark <SÉZANE> which has existed since many years and which has no generic or descriptive meaning for the relevant goods and services;
- (ii) the respondent's concealing its identity behind a privacy shield;
- (iii) the Respondent's failure to respond to the Complaint;
- (iv) the fact that Respondent configured MX-servers.

In the light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant is therefore deemed to also have satisfied the third element, 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. **sezne.com**: Transferred

PANELLISTS

Name	Tobias Malte Müller
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DATE OF PANEL DECISION 2023-07-24

Publish the Decision
