

Decision for dispute CAC-UDRP-105526

Case number	CAC-UDRP-105526
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Time of filing	2023-07-10 10:32:16
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Domain names	nazansaatci.com
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Case administrator

Name	Olga Dvořáková (Case admin)
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Complainant

Name	Nazan Saatci
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Complainant representative

Name	Dmytro Chyrkin
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Respondent

Name	
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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 personal name is Nazan Saatçi, Nazan Saatci. The Complainant uses her personal name as an unregistered trademark associated with the marketing and sales of different products of the Complainant.

The disputed domain name <nazansaatci.com> was registered on 19 January 2023, expires on 20 January 2024.

The denomination of the Respondent is Eranet International Limited, name Sharon Cao.

FACTUAL BACKGROUND

The Complainant personal name is Nazan Saatçi, Nazan Saatci. She was born on 22 June 1958, being a Turkish actress. She is known for her performances in Tokatçı (1983), Ölümsüz (1982), and Hulchal (1985). She was the second runner-up in Miss Asia Pacific beauty pageant in 1983.

Since 2018, Complainant Nazan Saatçi has amassed over 600 audio recordings of fairy voices and nearly 300 video recordings of different fairy appearances as it can be found in her biography.

Nazan Saatçi has over 14,000 followers on Instagram and her videos on YouTube have thousands of views.

Complainant Nazan Saatçi sells arts under her personal name Nazan Saatçi/Nazan Saatci on <pictorem.com>.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

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

In order to succeed in its claim, the Complainant has to prove that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied:

- (i) The disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) The Respondent has no rights or legitimate interests with respect to the disputed domain names; and
- (iii) The disputed domain names have been registered and are being used in bad faith,

The Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations because of the Respondent's failure to submit a response. Therefore, it accepted as true all allegations of the Complainant as well of its legal assessments.

A. THE DISPUTED DOMAIN NAME IS SIMILAR TO A TRADEMARK IN WHICH THE COMPLAINANT HAS RIGHTS

The Complainant as a performer being a Turkish actress and known for her performances in Tokatçi, Ölüksüz and Hulchal and the second runner-up in Miss Asia Pacific beauty pageant in 1983, has amassed over 600 audio recordings of fairy voices and nearly 300 video recordings of different fairy appearances since 2018: This can be honoured by the conclusion of the Panel that it uses her personal name "Nazan Saatçi, Nazan Saatci" as a trade mark for trade or commerce, by the marketing and sales of different product. This protection falls to the paragraph 1.6, WIPO Overview 2.0, which stipulates also on this matter as follows: "Personal names that have been registered as trademarks are generally protected under the UDRP. While the UDRP does not specifically protect personal names as such, in situations where a personal name unregistered as a trademark is being used for trade or commerce, the complainant may be able to establish common law or unregistered trademark rights in that name. In order to do so, proof of use of the person's name as a distinctive identifier of goods or services offered under that name would normally be required, also supported by paragraph 1.7. A trademark-equivalent basis has been found in the common law action of passing-off, which is generally intended to prevent the making

of misrepresentations to the public in the context of trade, and which if established may provide grounds for reliance on a personal name for the purpose of the UDRP." The personal name of the Complainant in question is in the view of the Panel actually used in trade or commerce as an identifier of goods or services to establish unregistered trademark rights for the purpose of the Policy.

The Complainant recalled the decision in *Adam Leitman Bailey v. Erwin Rohman*, WIPO Case No. D2013-1090 that the Complainant had common law trademark rights in his personal name since it had been directly exploited his personal name on a commercial basis.

The Panel therefore considers the disputed domain names to be confusingly similar to the trademark in which the Complainant has rights and its conduct falls within the meaning of paragraph 4(a)(i) of the Policy.

B. RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTEREST IN RESPECT OF THE DISPUTED DOMAIN NAME

In the Panel's conclusion the Complainant produced not only prima facie evidence of its right to the disputed domain name because its identical personal name "Nazan Saatçi, Nazan Saatci" is undisputed. Therefore, the burden of proof is shifted to the Respondent. It is nevertheless a well-settled principle that satisfying this burden is unduly onerous, since proving a negative fact is logically less feasible than establishing a positive. The mere registration of a disputed domain name does not establish rights or legitimate interests in a disputed domain name.

The Panel finds that the Respondent should have already performed a careful search before registering the disputed domain names and should have quickly learnt that the personal name "Nazan Saatçi, Nazan Saatci" of the Complainant is obviously owned by the Complainant and that the Complainant has been using it as its trademark not only in its country but due the social media worldwide. Nevertheless, the Panel finds that the evidence shows that the Respondent obviously knew about the Complainant and its personal name "Nazan Saatçi, Nazan Saatci" and its trademark when it registered the disputed domain names and chose to register them as such.

The Respondent is not licensee, authorized agent of the Complainant or in any other way authorized to register and use the disputed domain name.

The Panel does not find and the Respondent neither even alleges that the Complainant and the Respondent have ever had any previous relationships, nor that the Complainant has ever granted the Respondent with any rights to use the name "Nazan Saatçi, Nazan Saatci" its trademark in any forms, including the disputed domain name. The Panel cannot be known by the disputed domain name or have any legitimate interests over the disputed domain name because the Respondent can be identified under its company denomination "Eranet International Limited" or at least under the name "Sharon Cao" alike.

The Respondent has not provided the Complainant with any evidence of the use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services before any notice of the dispute. It is apparent that the Respondent's use could be considered neither a bona fide offering of goods or services nor a legitimate non-commercial or fair use of the disputed domain names.

The Panel therefore finds that the Respondent has no rights or legitimate interest in respect of the disputed domain name in accordance with paragraph 4(a)(ii) of the Policy).

C. THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS BEING USED IN BAD FAITH

Registration of the disputed domain name in bad faith

The Panel finds that the Complainant's personal name is "Nazan Saatçi/Nazan Saatci" and became the trade mark of the Complainant by its commercial activities worldwide, as stated by the Panel above. This pre-dates the registration of the disputed domain name without any authorisation of the Respondent to use the trademark "Nazan Saatçi, Nazan Saatci".

The Panel finds that as far as registration in bad faith is concerned, the Respondent registered disputed domain name which contain a well-known third party's (personal) trademark "Nazan Saatçi, Nazan Saatci" without authorization. The Respondent should have already performed a carefully search before registering the disputed domain name and should have quickly learnt that the trademark "Nazan Saatçi, Nazan Saatci" are the well known personal name of the Complainant. Nevertheless, the Panel finds that the evidence shows that the Respondent obviously knew about the Complainant and its trademark "Nazan Saatçi, Nazan Saatci" when it registered the disputed domain name and chose to register it as such.

The Panel finds that the Respondent has registered the disputed domain name with the intention to refer to the Complainant and its trademark.

The registration of a disputed domain name with the knowledge of the Complainant's trademark "Nazan Saatçi, Nazan Saatci" is an evidence of bad faith and the misappropriation of a well-known trademark as disputed domain names by itself constitutes a bad faith registration.

The disputed domain name is being used in bad faith

A conduct where Respondent sought or realized commercial gain, at least earning commission whenever an Internet user visits its website and clicks on one of the links published therein, indicates in the Panel's conclusion a bad faith by using the disputed domain name.

The Panel finds that the disputed domain name was used for posting pornographic content. A pornographic content on a respondent's website of the disputed domain name constitutes a significant indicator of bad faith. The Complainant recalled the decisions in ABB Asea Brown Boveri Ltd. v. Quicknet, WIPO Case No. D2003-0215 and its conclusion that "the use of ABB as part of a Domain Name offering pornographic material certainly tarnishes the Complainant's existing marks, which is also evidence of bad faith)" and America Online v. Viper, WIPO Case No. D2000-1198 that "the fact that the site operated by Respondent is pornographic in nature has been found in prior decisions to be evidence of bad faith" and MatchNet plc v. MAC Trading, WIPO Case No. D2000-0205 that "the Respondent has used its website to furnish sexually explicit and pornographic material under the domain name and in the circumstances, given the likelihood of confusion, there is a prima facie case that this could tarnish the Complainant's goodwill in its common law service mark" and Coral Trademark Limited v. Eastern Net Inc, WIPO Case No. D2000-1295 that "the posting of pornographic contents on a website under a domain name that corresponds to a third party's mark is a bad faith use of the Domain Name". The Panel does not differ from these legal views of a use of adult content on the dispute domain name pages as a bad use of the disputed domain name by the Respondent.

The registration and subsequent use of the disputed domain name, containing an exact representation of the Complainant's even unregistered mark "Nazan Saatçi, Nazan Saatci", either to promote adult content as services or otherwise in an apparent attempt to generate income from referral fees on the website associated with the disputed domain name is in the view of the Panel the proof of a bad faith use of the disputed domain name.

The Panel therefore finds that the Respondent registered and is using the disputed domain name in bad faith in accordance with 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. **nazansaatci.com**: Transferred

PANELLISTS

Name	Vojtěch Trapl
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DATE OF PANEL DECISION 2023-08-03

Publish the Decision