

Decision for dispute CAC-UDRP-105867

Case number CAC-UDRP-105867

Time of filing 2023-10-11 10:22:48

Domain names salesezane.com

Case administrator

Name Olga Dvořáková (Case admin)

Complainant

Organization BENDA BILI

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Organization Mandy Wolf

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that are pending or decided and that relate to the Disputed Domain Name.

IDENTIFICATION OF RIGHTS

Complainant states, and provides relevant evidence, that it is the owner of Int'l Reg. No. 1,170,876 for SEZANE (registered June 3, 2013) for use in connection with, inter alia, "jewelry" and "clothing, footwear, [and] headgear." This registration is referred to herein as the "SEZANE Trademark."

FACTUAL BACKGROUND

Complainant states that it is "a company specialized in ready-to-wear collections and accessories for women and trading under its commercial name and trademark SEZANE" and that its "clothing and accessories are available only through its online shop" using the domain name <sezane.com>, which is registered to Complainant and was created on April 3, 2003.

The Disputed Domain Name was created on July 26, 2023, and is being used in connection with a website that, as described by Complainant and as shown in a screenshot provided by Complainant, "resolves to an online store which competes with the products offered by the Complainant and displays the Complainant's official trademark."

PARTIES CONTENTIONS

Complainant contends, in relevant part, as follows:

Paragraph 4(a)(i): Complainant states that the Disputed Domain Name is confusingly similar to the SEZANE Trademark because it “includes in its entirety the Complainant’s trademark” and “[t]he addition of the term ‘SALE’ is not sufficient to escape the finding that the domain name is confusingly similar to the trademark SEZANE®.”

Paragraph 4(a)(ii): Complainant states that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, inter alia, “Respondent is identified on the website as ‘Times Jane (Guangzhou) Trading Co., Ltd.’ and not as the disputed domain name”; “Respondent is not affiliated with nor authorized by the Complainant in any way” and “does not carry out any activity for, nor has any business with the Respondent”; and “Respondent uses the disputed domain name to disrupt Complainant’s business and to attract users by impersonating the Complainant, as the Respondent does not disclose its relationship with the Complainant.”

Paragraph 4(a)(iii): Complainant states that the Disputed Domain Name was registered and is being used in bad faith because, inter alia, “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”; “the disputed domain name redirects to an online store which competes with the products offered by the Complainant” and “[u]sing a domain name in order to offer competing services is often held to disrupt the business of the owner of the relevant mark is bad faith”; and “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.”

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 UDRP).

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 UDRP).

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 UDRP).

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

Identical or Confusingly Similar: Paragraph 4(a)(i):

Based upon the trademark registrations cited by Complainant, it is apparent that Complainant has rights in and to the SEZANE Trademark.

As to whether the Disputed Domain Name is identical or confusingly similar to the SEZANE Trademark, the relevant comparison to be made is with the second-level portion of the Disputed Domain Name only (i.e., “salesezane”) because “[t]he applicable Top Level Domain (‘TLD’) in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.” WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”), section 1.11.1.

Here, the Disputed Domain Name contains the SEZANE Trademark in its entirety, simply adding the word “sale.” “[I]n cases where a

domain name incorporates the entirety of a trademark... the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.” WIPO Overview 3.0, section 1.7. Further, “[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.” WIPO Overview 3.0, section 1.8.

Accordingly, the Panel finds that Complainant has proven the first element of the Policy.

Rights or Legitimate Interests: Paragraph 4(a)(ii)

Complainant states that Respondent has no rights or legitimate interests in respect of the Disputed Domain Names because, inter alia, “Respondent is identified on the website as ‘Times Jane (Guangzhou) Trading Co., Ltd.’ and not as the disputed domain name”; “Respondent is not affiliated with nor authorized by the Complainant in any way” and “does not carry out any activity for, nor has any business with the Respondent”; and “Respondent uses the disputed domain name to disrupt Complainant’s business and to attract users by impersonating the Complainant, as the Respondent does not disclose its relationship with the Complainant.”

WIPO Overview 3.0, section 2.1, states: “While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of ‘proving a negative’, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.”

The Panel finds that Complainant has established its prima facie case and without any evidence from Respondent to the contrary, the Panel is satisfied that Complainant has satisfied the second element of the UDRP.

Registered and Used in Bad Faith: Paragraph 4(a)(iii)

Whether a domain name is registered and used in bad faith for purposes of the UDRP may be determined by evaluating four (non-exhaustive) factors set forth in paragraph 4(b) of the UDRP: (i) circumstances indicating that the registrant has registered or the registrant has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the registrant’s documented out-of-pocket costs directly related to the domain name; or (ii) the registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the registrant has engaged in a pattern of such conduct; or (iii) the registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the registrant has intentionally attempted to attract, for commercial gain, Internet users to the registrant’s 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 the registrant’s website or location or of a product or service on the registrant’s website or location.

Here, Complainant has specifically argued that bad faith exists pursuant to, inter alia, paragraph 4(b)(iv) of the UDRP because the website associated with the Disputed Domain Name “resolves to an online store which competes with the products offered by the Complainant and displays the Complainant’s official trademark.” The Panel agrees, as numerous previous panels have reached similar conclusions. See, e.g., *Reebok International Limited v. Web Commerce Communications Limited, Client Care*, WIPO Case No. D2022-2738 (finding bad faith where “Respondent’s Website features Complainant’s... Mark prominently throughout the website to sell footwear using photographs that look similar to the photographs that Complainant uses to sell footwear on its website”); and *“Dr. Martens” International Trading GmbH and “Dr. Maertens” Marketing GmbH v. Domain Administrator, See PrivacyGuardian.org / Stephan Naumann*, WIPO Case No. D2020-0379 (finding bad faith where disputed domain name was used in connection with a website that included complainant’s logo and “offered a variety of footwear bearing the [complainant’s] trademark for online sale at discounted prices without a disclaimer”).

Accordingly, the Panel finds that Complainant has proven the third element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **salesezane.com**: Transferred

PANELLISTS

Name	Douglas Isenberg
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DATE OF PANEL DECISION 2023-11-07
