Decision for dispute CAC-UDRP-106164

Case number	CAC-UDRP-106164
Time of filing	2024-01-16 13:32:38
Domain names	sezanevip.shop

Case administrator

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

Complainant

Organization	BENDA BILI

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	zongqin zhang

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 is the owner of, inter alia, International trademark registration no. 1170876 for “SEZANE”, registered on June 3, 2013. The Complainant registered the domain name on April 3, 2003. The Respondent registered the disputed domain name on January 14, 2024. Currently, the disputed domain name resolves to a webpage offering for sale clothes and accessories at discounted prices under the SEZANE brand.

FACTUAL BACKGROUND

The Complainant, Benda Bili, 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 Sézalory. The Complainant’s goods are available only through its online shop.

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

Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Uniform Domain Name Dispute Resolution Policy (the "Rules"), paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Panel decided that the language of the proceeding be English for several reasons, including the fact that:-

(i) The disputed domain name does not consist of words in the Chinese language.

(ii) The disputed domain name contains the English terms "vip" and "shop, "vip" being a commonly used abbreviation for "very important person".

(iii) The Respondent's registered address is in New York, United States of America, where English is the national language.

(iv) The disputed domain name resolves to a webpage consisting of words in the English language, which is evidence of Respondent's familiarity with the English language.

(v) The Complainant is French and appears to be unfamiliar with the Chinese language. It would be prejudiced, if it were required to translate the Complaint and participate in this proceeding in Chinese. Requiring Complainant to translate the Complaint and all documents into Chinese would cause delay and added expense of translating these pleadings if Respondent fails to participate in the dispute process. It would also be inefficient to hold the proceedings in any other language than English.

The Respondent did not make any specific submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

Other procedural matters

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.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a complainant to show that a domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns the trademark registration of the SEZANE mark.

In this case, the disputed domain name contains the entirety of the Complainant's SEZANE trademark with the addition of the suffix "vip". It is well-established that where 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. The nature of such additional term(s) may however bear on assessment of the second and third elements. (see WIPO Overview 3.0, section 1.8).

In addition, the disputed domain name comprises the Complainant's SEZANE trademark and the generic Top-Level Domain ("gTLD") ".shop". It is well established that the addition of a gTLD ".shop" does not avoid confusing similarity between the Complainant's trademark and the disputed domain name (see WIPO Overview 3.0, section 1.11.1).

Consequently, the Panel finds that the Complainant has shown that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Once the complainant establishes a prima facie case that the respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the disputed domain name (see WIPO Overview 3.0, section 2.1).

In the present case, the Complainant has demonstrated prima facie that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant has provided evidence that it owns trademark registrations of the SEZANE mark long before the date that the disputed domain name was registered and that it is not licensed or otherwise authorised the Respondent to use the Complainant's trademark.

The Complainant also provided evidence that the Respondent is not commonly known by the disputed domain name. See WIPO Overview 3.0, section 2.3. The Complainant has not consented to the use of its SEZANE trademark, or part thereof, in the disputed domain name.

It is noted that the disputed domain name resolves to a webpage advertising and offering for sale goods sold under the SEZANE trademark, which appear to be competing with the offerings of the Complainant. The Respondent's goods are also being offered at a steep discount as compared to the Complainant's goods, with some goods offered at up to an 80% discount.

Further, the Respondent did not submit a Response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain name which would be sufficient to rebut the Complainant's prima facie case.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The Complainant must also show that the respondent registered and is using the disputed domain name in bad faith (see Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant provided evidence that the disputed domain name resolves to a webpage advertising and offering for sale goods sold under the SEZANE trademark, competing with the offerings of the Complainant.

Further, the disputed domain name incorporates the Complainant's trademark with the addition of the suffix "vip". The Panel finds that this is an attempt by the Respondent to confuse and/or mislead Internet users seeking or expecting the Complainant. Given that the SEZANE mark is highly distinctive, it is unlikely that the Respondent was not aware of the Complainant prior to the registration of the disputed domain name.

Further, the Complainant has submitted evidence which shows that the Respondent registered the disputed domain name long after the Complainant registered the SEZANE trademark. Given the evidence presented to the Panel, the Panel finds that it is highly likely that the Respondent was aware of the Complainant and its SEZANE trademark at the time of registering the disputed domain name and specifically targeted the Complainant and its goodwill.

Moreover, the Respondent failed to submit a response and did not provide any explanation for registering the disputed domain

name not evidence of good-faith use. The Panel finds that under the specific circumstances of this case, it is also implausible that the Respondent could put the disputed domain name into a good faith use.

Accordingly, given the particular circumstances of this case, the reputation of the Complainant's trademark, and based on the evidence presented to the Panel, including (1) the registration of the disputed domain name long after the registration of the Complainant's trademark, (2) the incorporation of the Complainant's trademark with the addition of a suggestive suffix , (3) the reputation of the Complainant in the SEZANE trademark, (4) the failure of the Respondent to submit a response, and, (5) the use of the disputed domain name to sell what appears to be counterfeit goods, the Panel draws the inference that the disputed domain name was registered and is being used in bad faith.

Accordingly, having regard to the circumstances of this particular case, the Panel finds that the Complainant has met its burden under 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. **sezanevip.shop**: Transferred

PANELLISTS

Name	**Jonathan Agmon**

DATE OF PANEL DECISION 2024-02-25

Publish the Decision