Decision for dispute CAC-UDRP-106347

Case number	CAC-UDRP-106347
Time of filing	2024-03-13 09:59:45
Domain names	sezanegiftsale.shop

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	BENDA BILI

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	Daryl Saxton

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 owner of the international trademark SEZANE n° 1170876 registered on June 3 , 2013.
The Complainant is also owner of numerous domain names containing “SEZANE”, such as the TLD domain name <sezane.com>

FACTUAL BACKGROUND

The Respondent registered the domain name <sezanegiftsale.shop> on December 27 , 2023. It serves an online store selling clothes and accessories at discounted prices containing the trademark SEZANE.

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 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

Paragraph 15(a) of the Rules for the UDRP ('the Policy') instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable." Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

(1) the disputed domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and

(2) Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(3) the disputed domain name has been registered and is being used in bad faith.

In view of the Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules.

The Panel confirms that the Complainant is owner of the international trademark SEZANE n° 1170876 registered on June 3 , 2013, for goods in class 14, jewellery • jewellery products, precious stones • timepieces and chronometric instruments • precious metals and alloys thereof • works of art of precious metal • jewellery cases [caskets] • boxes of precious metal • watch cases, straps, chains, springs or glasses • key rings [trinkets or fobs] • statues or figurines (statuettes) of precious metals • cases or presentation cases for timepieces • medals, class 18, leather and imitations of leather • animal skins • trunks and suitcases • umbrellas, parasols and walking sticks • whips, harness and saddlery • wallets • purses (coin purses) • handbags, backpacks, wheeled bags • bags for climbers and campers, travel bags, beach bags, school bags • vanity cases (empty) • collars or clothing for animals • bags or net bags for shopping and goods in class 25: clothing, footwear, headgear • shirts • leather or imitation leather clothing • belts (clothing) • furs (clothing) • gloves (clothing) • scarves • neckties • hosiery • socks • slippers • beach, ski or sports footwear • underwear.

The Complainant has to the satisfaction of the Panel provided evidence that the disputed domain name <sezanegiftsale.shop> with the addition of the words “gift” "sale" and the TLD “shop” causes potential confusion with the trademark SEZANE. The words "gift" nor "sale" are not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark SEZANE. It does not change the overall impression of the designation as being connected to the Complainant’s trademark SEZANE. The disputed domain name potentially causes confusion with the Complainant's trademark SEZANE, and the domain names associated, like <sezane.com>. Moreover, the addition of the gTLD "shop" worsens the likelihood of confusion between the disputed domain name and the Complainant’s trademark SEZANE, as it directly lands on a webshop where goods bearing SEZANE trademarks are sold.

The Panel holds that the disputed domain name registered by Respondent is identical or confusingly similar to the trademark SEZANE, owned by the Complainant.

(2)

The Respondent is not known by the Complainant. The Respondent is not affiliated with nor authorized by the Complainant in any way. The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademarks SEZANE, or apply for registration of the disputed domain name by the Complainant.
The Complainant has convincingly proven to the Panel that the Respondent used the disputed domain name to disrupt Complainant's business and to attract users by impersonating the Complainant, as the Respondent identified itself as "SEZANE".

The Panel holds that the impersonation of the Complainant, by using its trademark in a disputed domain name and seeking to defraud or confuse users, indicates a lack of rights or legitimate interests by the Respondent.

(3) Bad Faith

The disputed domain name comprises the distinctive trademark SEZANE which has existed since many years and has no generic or descriptive meaning.

The Respondent makes references to the Complainant and its trademark and logo on the website. The Complainant convincingly has demonstrated that the Respondent must have been aware of its trademark and intended to create a likelihood of confusion with the Complainant's mark by impersonating the Complainant. Past panels have held that this is sufficient to prove bad faith in similar cases (Arla Foods Amba and Mejeriforeningen Danish Dairy Board v Mohammed Alkurdi, WIPO Case No. D2017-0391).

Thus, given the distinctiveness of the Complainant's trademark and its reputation, the Panel holds that the Respondent has registered and used the disputed domain name with full knowledge of the Complainant's trademark.

The disputed domain name redirected to an online store which competed with the products offered by the Complainant. Using a domain name in order to offer competing services is often been held to disrupt the business of the owner of the relevant mark is bad faith. (see Forum Case No. FA 768859).

The 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, as mentioned by Policy, paragraph 4(b) (iv). (see Forum Case No. 94864)

The Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **sezanegiftsale.shop**: Transferred

PANELLISTS

Name	**Gie Van den Broek**

DATE OF PANEL DECISION 2024-04-10

Publish the Decision