Decision for dispute CAC-UDRP-106681

Case number	CAC-UDRP-106681
Time of filing	2024-07-15 10:08:44
Domain names	camesolde.com, camesoldes.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	CAME S.p.A.

Complainant representative

Organization	Barzanò & Zanardo Milano S.p.A.

Respondents

Organization	ZhangHaiqing
Organization	NIL

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 Names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the following trademarks:

-CAME (device), EU reg. no. 4112215, filed on 09/11/2004 and registered on 12/01/2006 in class 6, 7 and 9;

-(device), EU reg. no. 015968076, filed on 25/10/2016 and registered on 10/02/2017 in class 6, 7, 9, 19, 20, 35, 37, 38, 41, 42, 45.

FACTUAL BACKGROUND

Came S.p.A., is a company active in the production and supply of technological solutions for the automation of residential, public and urban environments.

The Complainant develops automation for entrances, home automation and anti-intrusion systems, video intercom systems, thermoregulation systems, parking management systems and access control and security systems in public environments.

The Disputed Domain Name <camesolde.com> was registered on March 28, 2024, and it redirects to a website that reproduces the Complainant's trademarks and offers for sale goods in competition with the Complainant. The Respondent is ZhangHaiqing.

The second Disputed Domain Name <camesoldes.com> was registered on December 25th, 2023, and redirects to a website that reproduces the Complainant's trademarks and offers for sale goods in competition with the Complainant. The Registrant is Kyle PBrowder.

Both websites are hosted by Cloudflare Inc.

The layout of the website is, in the view of the Complainant, very similar.

The Complainant requests the consolidation of the Disputed Domain Names in a single UDRP proceeding.

In the present case, the WHOIS contact information show that the Disputed Domain Names are registered by two different entities:

-<camesolde.com> - ZhangHaiqing

-<camesoldes.com> - Kyle PBrowder

However, numerous elements show in the view of the Complainant a common control and support a consolidation request.

In particular:

a) the Disputed Domain Names have been registered in a short period of time, namely:

<camesoldes.com> was registered on December 25, 2023 and <camesolde.com> was registered on March 28, 2024;

b) the Disputed Domain Names are using the same Hosting services, namely Cloudflare;

c) the Disputed Domain Names are practically identical and they reflect a clear naming pattern as they are composed by the CAME trademark combined with the words SOLDE and SOLDES (which have the same meaning);

d) The Disputed Domain Names redirect to very similar websites that have the same look and feel as the official CAME website. Moreover, these websites are both in French, and entire sections of the websites are identical.

The Complainant argues that it is not necessary for the Panel to find that the Disputed Domain Names are registered nominally to a single entity or person. As the issue is whether the Respondents can be treated as a single domain name holder, because they are involved in a common enterprise, and whether it is procedurally fair and efficient to do so. The definition of the “Respondent” under paragraph 1 of the Rules does not exclude the “holder” of the domain name registrations from being a common enterprise, being carried out by multiple individuals.

The Complainant is the owner of trademarks including the wording "CAME".

The Complainant argues that the disputed domain names are all confusingly similar to the Complainant’s earlier trademarks as they all contain the well-known CAME trademark combined with the French generic words "sold" and "solves," which means sales in English. These terms, rather than excluding a similarity with the earlier well-known CAME trademark, increase the likelihood of confusion since they could be perceived as original websites that offer original CAME goods at lower prices. The addition of the domain name extensions has no impact in the confusing similarity assessment since they have a technical function.

The Disputed Domain Names are, therefore, in the view of the Complainant, confusingly similar to the earlier CAME well-known trademarks, and the first requirement under para. 4 (a), (i) of the Policy and of para. 3(b), (viii), (b)(ix)(1) of the Rules is satisfied.

In the case at issue, the Complainant excludes that the Respondents are authorized dealers, agents, distributors or resellers of CAME nor that they are authorized to register and use the CAME trademark in a domain name.

Furthermore, the Disputed Domain Names lead to active websites that reproduce part of the images of the Complainant’s official marketing campaigns. The layout adopted for the fake websites is, in the view of the Complainant, very similar to the layout of the Complainant’s official website: in all the websites, the Respondent is using the Complainant’s figurative trademarks.

Therefore the Complainant argues that these Disputed Domain Names were registered and are used with the specific aim of misleading potential consumers in order to push consumers to purchase apparently CAME products.

For all reasons mentioned above the Complainant deems to have sufficiently proved that the Respondent lacks rights and legitimate interests in respect of the Disputed Domain Names.

The Complainant states, that as far as registration in bad faith is concerned, the Respondent registered domain names containing a known third party’s trademark without any authorization by the holder. The Respondent could not ignore the existence of the CAME trademark at the time of the registration of the Disputed Domain Names, not only because CAME is well-known trademark, but also in consideration of the type of domain names registered (consisting of trademark + terms that potential consumers may very well associate with the Complainant’s activity) and of the websites’ contents (clearly similar to the CAME official website).

As far as use in bad faith is concerned, the Disputed Domain Names redirect to a website that apparently "CAME" goods and unduly

depicts copyrighted pictures taken from the Complainant's official website. This kind of use is, in the view of the Complainant, certainly not used in good faith. It may cause (and has effectively caused) substantial damages not only to the Complainant but also to consumers. On the one side, the Complainant's image and reputation are strongly affected by websites, very similar to the official one, with the concrete risk that the goods offered for sale are counterfeit (given the price). On the other side, consumers share confidential information when they pay for the purchased goods, with the concrete risk that this information is stolen and used fraudulently by the Respondent.

The Complainant argues that it appears from the above that these Disputed Domain Names have been registered and are used to intentionally attract for commercial gain, Internet users to the Respondent's web sites, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site and of a product or service on the Respondent's web site or location.

In light of the foregoing, the Complainant believes to have successfully demonstrated that the Complainant registered and used the Disputed Domain Names in bad faith.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the Disputed Domain Names should be transferred to it.
No administratively compliant Response has been filed.

RIGHTS

Before launching itself into the usual threefold test, according to paragraph 4(a) of the Policy, the Panel needs to address the issue of the request by the Complainant for consolidation of the two Disputed Domain Names and of their respective Respondents. This matter was well presented by panels in quite a few occasions, such as in WIPO Case No. D2016-0759 Mou Limited v Zeng Xiang et al.

Article 4(f) of the Uniform Domain Name Dispute Resolution Policy ("UDRP") provides, among others, that the "Administrative Panel may consolidate before it any or all such disputes in its sole discretion".

Further, the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") stipulate under Rule 3(c):

The complaint may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder.

The Rules have a further provision, Rule 10(e), which confirms Article 4(f) UDRP mentioned above and enables the Panel to decide in its own discretion upon a request for consolidation:

"A Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules."

Also, as decided in WIPO Case No. D2010-0281 Speedo Holdings v Programmer et al., "consolidation will permit multiple domain name disputes arising from a common nucleus of facts and involving common legal issues to be heard and resolved in a single administrative proceeding. Doing so promotes the shared interests of the parties in avoiding unnecessary duplication of time, effort and expense, and generally furthers the fundamental objectives of the Policy".

The WIPO Jurisprudential Overview 3.0 analyses the topic of a complaint consolidated against multiple respondents under its Paragraph 4.11.2, where it is stated:

"Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario.

Panels have considered a range of factors, typically present in some combination, as useful to determining whether such consolidation is appropriate, such as similarities in or relevant aspects of (i) the registrants' identity(ies) including pseudonyms, (ii) the registrants' contact information including email address(es), postal address(es), or phone number(s), including any pattern of irregularities, (iii) relevant IP addresses, name servers, or webhost(s), (iv) the content or layout of websites corresponding to the disputed domain names, (v) the nature of the marks at issue (e.g., where a registrant targets a specific sector), (vi) any naming patterns in the disputed domain names (e.g., <mark-country> or <mark-goods>), (vii) the relevant language/scripts of the disputed domain names particularly where they are the same as the mark(s) at issue, (viii) any changes by the respondent relating to any of the above items following communications regarding the disputed domain name(s), (ix) any evidence of respondent affiliation with respect to the ability to control the disputed domain name(s), (x) any (prior) pattern of similar respondent behavior, or (xi) other arguments made by the complainant and/or disclosures by the respondent(s)."

In the case at hand, the Complainant cited the following as reasons to support its allegation that the three disputed domain names are subject to common control:

In particular:

a) the Disputed Domain Names have been registered in a short period of time, namely:

<camesoldes.com> was registered on December 25th, 2023 and <camesolde.com> was registered on March 28, 2024;

b) the Disputed Domain Names are using the same Hosting services, namely Cloudflare;

c) the Disputed Domain Names are practically identical and they reflect a clear naming pattern as they are composed by the CAME trademark combined with the words SOLDE and SOLDES (which have the same meaning);

d) The Disputed Domain Names redirect to very similar websites that have the same look and feel as the official CAME website. Moreover, these websites are both in French, and entire sections of the websites are identical.

On its part, the Panel finds the following:

- No sufficient concrete evidence has been furnished by the Complainant, to establish that both Disputed Domain Names are subject to common control.

Indeed, the two Disputed Domain Names were registered on different dates by different registrants, apparently residing in different countries (one in China and one in the US). No obvious connection seems to exist between them. The websites' comparison and similarities also seem more coincidental.

The links in the footer of both websites also do not necessarily speak for common control. The footer is mostly similar in many websites that sell products, and the law sets rules for what information should be presented on a website. The Panel infers that the interface appearance of both websites is very different; they have quite different layouts, fonts, and colors. The same hosting service can not be sufficient to find for common control.

With all the above in mind, the Panel decides to not admit, in its sole discretion, the Complainant’s request for consolidation of two Disputed Domain Names. It is, of course, open to the Complainant to bring a separate Complaint in respect of the Disputed Domain Name <camesoldes.com>, if it so desires.

The Complainant has, to the satisfaction of the Panel, shown the Disputed Domain Name <camesolde.com> 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 Names (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 Names have been registered and are 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

A. Identical or Confusingly Similar

The Complainant has rights in the mark by virtue of its registered trademarks CAME.

The Disputed Domain Name <camesolde.com> incorporates the whole of the Complainant’s CAME trademark, and add the French generic word "solde" as a suffix and the gTLD suffix “.com". Whilst the addition of the term "solde"” is enough to preclude the

Disputed Domain Name from being identical to the Complainant’s registered trademark, it does not help to escape the conclusion that the Disputed Domain Name is confusingly similar to the "CAME" mark, and the Panel accepts the Complainant’s submissions in so finding.

The Panel agrees with the Complainant that the addition of the French generic term "solde" without a hyphen at the end of the Disputed Domain Name, which means sales in English is not sufficient to escape the finding that the Disputed Domain Name is confusingly similar to the Complainant's trademark and does not change the overall impression of the designation as being connected to the trademark CAME, as the CAME trademark at the beginning of the Disputed Domain Name is the distinctive part of the Disputed Domain Name. Therefore the Panel finds, that the Disputed Domain Name is confusingly similar to the Complainant’s trademark CAME.

B. Rights or Legitimate Interests

When a respondent remains completely silent in the face of a prima facie case that it lacks any rights or legitimate interests in respect of a domain name, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy. Here the Complainant has presented an abundance of evidence to show that the Respondent has no plausible right or legitimate interest in respect of the Disputed Domain Names and the Panel so finds.

C. Bad Faith

The Panel believes that the Respondent registered the Disputed Domain Name with knowledge of the Complainant's rights. The Disputed Domain Name was registered decades after the registration of several trademarks of the Complainant and Complainant used it widely since then. Furthermore, the combination in the Disputed Domain Name of the CAME mark with the business-related term "solde" shows that Respondent could not be ignorant to the Complainant´s trademark. Furthermore, Respondent uses the trademark CAME of Complainant on several places on the website of the Disputed Domain Name.

Moreover, the Panel agrees with Complainant that the Disputed Domain Names have also been registered in an effort to take advantage of the goodwill that Complainant had built up in its CAME trademark, and to unduly benefit from creating a diversion of the internet users of the Complainant by pretending to be an official online partner of the Complainant or even the Complainant himself, because the Respondent is at least pretending to offering and is displaying the trademark and products of the Complainant.

Finally, the Respondent has, by prominently displaying the Complainant's trademark on the website, intentionally attempted to attract Internet users to the Respondent's website for commercial gain by offering (and probably selling) the Complainant's products/services and, therefore, creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of such websites.

On these grounds, the Panel concludes that the Respondent has registered and is using the Disputed Domain Name <camesolde.com> in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Partially Accepted/Partially Rejected

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

1. **camesolde.com**: Transferred
2. **camesoldes.com**: Terminated (consolidation not granted)

PANELLISTS

Name	**Jan Schnedler**

DATE OF PANEL DECISION 2024-08-11

Publish the Decision