Decision for dispute CAC-UDRP-107141

Case number	CAC-UDRP-107141
Time of filing	2024-12-12 14:06:02
Domain names	sezane-denmark.com, jp-sezanejapan.com, sezaneuaesale.com, sezane-greece.com, sezanenorge.com

Case administrator

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

Complainant

Organization	BENDA BILI

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondents

Name	Katrin Waechter
Name	Barth Birgit
Name	Petra Freisler
Name	Zhang Fei

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 international registration No. 1170876 for the word mark SÉZANE, registered on June 3, 2013.

The Complainant is also owner of the domain name <sezane.com> registered on April 3, 2003.

FACTUAL BACKGROUND

The Complainant is a company specialized in ready-to-wear collections and accessories for women, trading under its commercial name and trademark SÉZANE. The term Sézane is a contraction of the first and last name of the Complainant's founder and

President Morgane SEZALORY. SÉZANE's clothing and accessories are available only through its online shop at the website www.sezane.com.

The disputed domain names are the following:

- <jp-sezanejapan.com>, registered on November 26, 2024, in the name of Barth Birgit;

- <sezaneuaesale.com>, registered on September 5, 2024, in the name of Petra Freisler;

- <sezane-denmark.com>, registered on May 3, 2024, in the name of Katrin Waechter;

- <sezane-greece.com>, registered on February 20, 2024, in the name of Zhang Fei;

- <sezanenorge.com>, registered on January 31, 2024, in the name of Zhang Fei.

All the disputed domain names resolve to websites offering for sale alleged SÉZANE apparel and accessories at discounted prices.

PARTIES CONTENTIONS

I. Complainant

The Complainant requests the consolidation of its UDRP disputes filed against multiple respondents for the following reasons.

The disputed domain names <jp-sezanejapan.com>, <sezaneuaesale.com> and <sezanedenmark.com> were registered through the Registrar "Dynadot", while the disputed domain names <sezanegreece.com> and <sezanenorge.com> were registered through the registrar "Alibaba.com Singapore E-Commerce Private Limited Dominet (HK) Limited". All the disputed domain names use the same proxy service provider to display the content of the associated website in relation with the target country. All the disputed domain names use the same hosting provider. The disputed domain names redirect to websites with similar contents, namely online stores selling clothes and accessories at discounted prices under the trademark SEZANE. All the websites use similar online shop models, in particular with the reference 'Copyright © 2024 [Domain name] Powered By [Domain name]'.
Therefore, the Complainant contends that the disputed domain names are registered by the same Respondent.

The Complainant further contends that the disputed domain names are confusingly similar to the SÉZANE mark. The addition of the geographical terms "jp", "uae", "japan", "denmark", "greece" and "norge" is not sufficient to avoid a likelihood of confusion with the Complainant's trademark. It is well-established that a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP.

The Complainant maintains that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent is not known as the disputed domain names and is not affiliated with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent. The Complainant did not authorize the Respondent to make use of the Complainant's trademark or apply for the registration of the disputed domain names. The Respondent used the disputed domain names to impersonate the Complainant and disrupt the Complainant's business. The impersonation of the Complainant by using its trademark in the disputed domain names, seeking to defraud or confuse users, indicates the Respondent's lack of rights or legitimate interests.

Lastly, in respect of registration and use of the disputed domain names in bad faith, the Complainant states that the disputed domain names comprise the distinctive trademark SÉZANE, which has existed since many years and has no generic or descriptive meaning. In the Complainant's view, the Respondent was aware of the Complainant's mark when it registered the disputed domain names and intended to create a likelihood of confusion with that mark by impersonating the Complainant. Furthermore, the disputed domain names redirected to online stores that competed with the products offered by the Complainant. Using a domain name to offer competing services is often been held to disrupt the business of the owner of the relevant mark and is considered use in bad faith. Thus, the Complainant contends that by using the disputed domain names, 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.

II. Respondent

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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.

With respect to the consolidation request of the Complainant, the Panel notes the following.

According to the Registrars' s verifications, with the sole exception of the disputed domain names <sezane-greece.com> and <sezanenorge.com>, both registered in the name of Zhang Fei, all other disputed domain names have been apparently registered by different Respondents.

Paragraph 10(e) of the Rules states that a "[p]anel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules". Paragraph 10(c) of the Rules provides that "the [p]anel shall ensure that the administrative proceeding takes place with due expedition". According to section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), 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.

Section 4.11.2 of the WIPO Overview 3.0 indicates a series of factors that, if present, are usually considered relevant to conclude that the disputed domain names, or corresponding websites, are subject to a common control. In particular, and without limitation, these factors are: (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 issue, the Complainant has noticed the following circumstances, which apply to all the disputed domain names: (i) same proxy service provider; (ii) same hosting service provider; (iii) similar websites, in that all the disputed domain names resolve to websites offering for sale clothing and accessories under the SÉZANE mark; and (iv) identical wording at the end of the websites associated with the disputed domain names.

Having reviewed the overall circumstances of this case, the Panel notes that the common aspects highlighted by the Complainant are certainly a good indication that the disputed domain names are subject to a common control. In addition, the Panel notes that the disputed domain name <sezane-denmark.com> is identical in pattern to the disputed domain name <sezane-greece.com> and similar to <sezanenorge.com>, which lacks the addition of a hyphen between the Complainant's mark and the country name. Moreover, all the disputed domain names contain the Complainant's SÉZANE mark without the accent on the letter "e", and at least one geographical designation, being it a country name or the two-letter country abbreviation. All the disputed domain names have been registered under the generic Top-Level domain ".com". As to the relevant websites, the Panel notes that they share identical contents, identical layout and even identical promotional materials. Hence, the Panel agrees with the Complainant that the disputed domain names are subject to a common control.

The Respondent has failed to present any valuable argument under which consolidation in this case would be unfair or inequitable. Accordingly, the Panel allows the Complainant's consolidation request.

PRINCIPAL REASONS FOR THE DECISION

I. Confusing similarity.

The Complainant has provided evidence that it owns registered rights over the SÉZANE mark, which predate the date of registration

of all the disputed domain names. The Complainant's mark is included in all the disputed domain names, albeit without the accent on the first letter "e", which is a very minor if not insignificant difference, and is clearly recognizable within them, despite the addition of hyphens, geographical terms or abbreviations and, in the case of <sezaneuaesale.com>, the descriptive word "sale".

According to section 1.8 of the WIPO Overview 3.0, 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.

In light of the foregoing, the Panel is satisfied that the first condition under the Policy has been met.

II. Respondent's rights or legitimate interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. WIPO Overview 3.0, section 2.1.

In the instant case, the Complainant states that it does not have any relationship with the Respondent, that the Respondent is not a licensee of the Complainant, and that the Complainant did not authorize the Respondent to make use of its SÉZANE mark in any manner whatsoever, including as part of the disputed domain names. Moreover, the Respondent does not appear to be commonly known by the disputed domain names.

The disputed domain names are highly misleading as they all contain the Complainant's mark along with a geographical designation and, in the case of the domain name <sezaneuaesale.com>, the term "sale", which is strictly connected to the Complainant's activity. Moreover, all disputed domain names resolve to websites displaying the Complainant's mark and offering for sale alleged SÉZANE products at discounted prices. The photographs appearing on the websites associated with the disputed domain names are, in some cases, the same photographs appearing on the Complainant's websites, which entails that the Respondent is violating the Complainant's copyrighted promotional materials.

The use of misleading domain names to attract the Complainant's customers to lead them to confusing websites, where the Complainant's mark is prominently displayed, and where the same kind of products sold by the Complainant are promoted using the Complainant's promotional materials with no authorization and at a discounted price, cannot amount to legitimate noncommercial or fair use of the disputed domain names, or to a bona fide offering of goods or services.

In light of the overall circumstances described above, the Panel believes that the Complainant has at least made a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. Accordingly, the burden of proof shifts to the Respondent. However, the Respondent has failed to provide adequate evidence of its rights or legitimate interests in the disputed domain names. Hence, the Panel is satisfied that the second condition under the Policy is met.

III. Bad Faith

The Complainant asserts that its SÉZANE mark is highly distinctive as it is a coined term deriving from the contraction of the first and last name of the Complainant's founder. Accordingly, this mark is uniquely associated with the Complainant. The Panel agrees with the Complainant that the Respondent was aware of the Complainant's mark when it registered the disputed domain name. This is clear from the pattern of the disputed domain names, all including the Complainant's mark, followed or preceded by a geographical indication and, in the case of <sezaneuaesale.com> of the term "sale", which is strictly related to the Complainant's business. In addition, all websites associated with the disputed domain names display the Complainant's mark prominently, and photographs taken from the Complainant's official website. Accordingly, the Respondent had very clear in mind the Complainant and its mark and business when it registered the disputed domain names. The registration of the disputed domain names incorporating the Complainant's mark being aware of such mark and without rights or legitimate interests amounts to registration in bad faith.

As far as use in bad faith is concerned, the Respondent is using the disputed domain names to resolve to a website offering for sale clothing and accessories under the Complainant's mark and at a discounted price. To promote the products appearing on the Respondent's website, the Respondent is using the Complainant's copyrighted promotional materials without authorization. By using the disputed domain names, the Respondent is targeting the Complainant's mark to attract Internet users to its own misleading websites in order to obtain an economic advantage or for other illegitimate reasons. Accordingly, the Panel finds that by using the disputed domain names, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its websites, by creating a likelihood of confusion with the Complainant's mark.

Therefore, the Panel establishes that also the third and last condition under the Policy is met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **sezane-denmark.com**: Transferred
2. **jp-sezanejapan.com**: Transferred
3. **sezaneuaesale.com**: Transferred
4. **sezane-greece.com**: Transferred
5. **sezanenorge.com**: Transferred

PANELLISTS

Name	**Angelica Lodigiani**

DATE OF PANEL DECISION 2025-01-20

Publish the Decision