

## ADMINISTRATIVE PANEL DECISION

IRO v. 菊霞 池

Case No. D2022-1192

### 1. The Parties

The Complainant is IRO, France, represented by Fiducial Legal By Lamy, France.

The Respondent is 菊霞 池, China.

### 2. The Domain Name and Registrar

The disputed domain name <irosoldes.com> is registered with Name.com, Inc. (Name.com LLC) (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 5, 2022. On April 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 11, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on April 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 3, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 4, 2022.

The Center appointed Evan D. Brown as the sole panelist in this matter on May 17, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### 4. Factual Background

The Complainant is in the clothing and accessories business. It owns the trademark IRO, which it has registered in various forms in many jurisdictions around the world, including France (Reg. No. 99800550, registered on June 28, 1999).

According to the Whois records, the disputed domain name was registered on January 4, 2022. The Respondent has used the disputed domain name to direct Internet users to an online store, which reproduces the Complainant's IRO trademark, its photographs, and brand line of clothing, and purports to offer for sale the IRO products at discounted prices, without authorization. The Respondent did not reply to cease and desist communications the Complainant sent concerning the disputed domain name.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's trademark; that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

##### B. Respondent

The Respondent did not reply to the Complainant's contentions.

#### 6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights, (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name, and (iii) the disputed domain name has been registered and is being used in bad faith. The Panel finds that all three of these elements have been met in this case.

##### A. Identical or Confusingly Similar

This element requires the Panel to consider two issues: first, whether the Complainant has rights in a relevant mark; and, second, whether the disputed domain name is identical or confusingly similar to that mark. This element under the Policy functions primarily as a standing requirement. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#). The Complainant has demonstrated its rights in the IRO mark by providing evidence of its trademark registrations.

The disputed domain name incorporates the IRO mark in its entirety. This is sufficient for showing confusing similarity under the Policy. The presence of the additional term "soldes" ("sales" in English) does not prevent a finding of confusing similarity. The IRO mark remains sufficiently recognizable for a showing of confusing similarity under the Policy.

The content of the website associated with a disputed domain name is usually disregarded by panels when assessing confusing similarity under the first element. [WIPO Overview 3.0](#), section 1.15. In some instances, however, panels have taken note of the content of the website associated with a domain name to confirm confusing similarity whereby it appears *prima facie* that the respondent seeks to target a trademark through

the domain name. Guided by these principles, the Panel takes note of the content of the Respondent's website - which purports to provide products of the Complainant (and which the Complainant asserts to be counterfeit) - to confirm the confusing similarity between the disputed domain name and the Complainant's mark.

Accordingly, the Panel finds that the Complainant has established this first element under the Policy.

## **B. Rights or Legitimate Interests**

The Panel evaluates this element of the Policy by first looking to see whether the Complainant has made a *prima facie* showing that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. If the Complainant makes that showing, the burden of production of demonstrating rights or legitimate interests shifts to the Respondent (with the burden of proof always remaining with the Complainant).

On this point, the Complainant asserts, among other things, that: (1) the Respondent is currently not and has never been known under the name "IRO Soldes" and has never been offering any goods or services under that name, (2) the Complainant has not licensed or authorized the Respondent in any way to use the trademark IRO, and (3) the Respondent has not adduced any evidence of legitimate use of, or demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. On the contrary, the Respondent is using the disputed domain name for an infringing online store, to sell infringing products, demonstrating a lack of rights or legitimate interests not without an attempt to obtain commercial gain.

The Panel finds that the Complainant has made the required *prima facie* showing. The disputed domain name resolves to an online store, which reproduces the Complainant's IRO trademark and purports to offer for sale the IRO products at discounted prices, without prominently and accurately disclosing lack of relationship between the Complainant and the Respondent. The Respondent has not presented evidence to overcome this *prima facie* showing. And nothing in the record otherwise tilts the balance in the Respondent's favor. Moreover, the Panel finds that the nature of the disputed domain name carries a risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

Accordingly, the Panel finds that the Complainant has established this second element under the Policy.

## **C. Registered and Used in Bad Faith**

The Policy requires a complainant to establish that the disputed domain name was registered and is being used in bad faith. The Policy describes several non-exhaustive circumstances demonstrating a respondent's bad faith use and registration. Under paragraph 4(b)(iv) of the Policy, a panel may find bad faith when a respondent "[uses] the domain name to intentionally attempt to attract, for commercial gain, Internet users to [the respondent'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 respondent's] website or location or a product or service on [the respondent's] website or location."

The Panel finds that the Respondent registered and is using the disputed domain name in bad faith pursuant to paragraph 4(b)(iv) of the Policy. Establishing a website to sell purportedly the Complainant's products without prominently and accurately disclosing lack of relationship between the Parties, using the disputed domain name that incorporates the Complainant's mark, is a clear example of bad faith registration and use under the Policy. Furthermore, as previously noted, the disputed domain name carries a risk of implied affiliation. *Id.*

The lack of response by the Respondent to the cease-and-desist letter sent by the Complainant supports a finding of bad faith. Past UDRP panels have held that failure to respond to a cease-and-desist letter may be considered a factor in finding bad faith registration and use of a domain name. See *Encyclopaedia Britannica, Inc. v. John Zuccarini and The Cupcake Patrol a/ka Country Walk a/k/a Cupcake Party*, WIPO Case No. [D2000-0330](#).

Accordingly, the Panel finds that the Complainant has established this third element under the Policy.

## **7. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <irosoldes.com> be transferred to the Complainant.

*/Evan D. Brown/*

**Evan D. Brown**

Sole Panelist

Date: May 31, 2022