

## **ADMINISTRATIVE PANEL DECISION**

Benda Bili v. Mariette Garreau

Case No. D2023-3216

### **1. The Parties**

The Complainant is Benda Bili, France, represented by Nameshield, France.

The Respondent is Mariette Garreau, France.

### **2. The Domain Name and Registrar**

The disputed domain name <sezaneonlinefr.com> is registered with DDD Technology Pte. Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 26, 2023. On July 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 8, 2023 and August 14, 2023, the Center transmitted by email to the Registrar reminders. On August 15, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Not Identified) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 15, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on August 16, 2023.

The Center verified that the Complaint together with the amended 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 August 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 6, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 8, 2023.

The Center appointed Vincent Denoyelle as the sole panelist in this matter on September 13, 2023. 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**

Given that no Response was filed, the following facts are based on the submissions in the Complaint and the Annexes to the Complaint.

The Complainant is a French company specialized in ready-to-wear collections and accessories for women.

The Complainant was established in 2011.

The Complainant is the owner of the following trade mark:

-International trade mark SÉZANE registered on June 3, 2013 under No. 1170876 in classes 14, 18 and 25.

The Complainant is also the owner of domain names reflecting its trade mark including <sezane.com>.

Apart from the details of the Respondent as disclosed by the Registrar in the verification response disclosing registrant and contact information for the disputed domain name, there is no other information available to the Panel.

The disputed domain name was registered on July 19, 2023.

The disputed domain name does not point to an active website and generates an error page.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to the SÉZANE trade mark in which the Complainant has rights as the disputed domain name incorporates the entire SÉZANE trade mark with the mere addition of the terms "online" and "fr" which does not prevent the likelihood of confusion between the disputed domain name and the Complainant's trade mark.

The Complainant submits that the Respondent is not identified in the Whois by the disputed domain name and the Respondent is thus not commonly known by the disputed domain name. The Complainant contends that the Respondent is not affiliated with or authorized by the Complainant in any way. The Complainant represents that it does not carry out any activity or any business with the Respondent. Finally, the Complainant points to the fact that the disputed domain name resolves to an error page which shows that the Respondent has not made any use or demonstrable plan to use the disputed domain name.

The Complainant contends that given the distinctiveness of the Complainant's SÉZANE trade mark and its reputation, it is reasonable to infer that the Respondent has registered and used the disputed domain name with full knowledge of the Complainant's trade mark. In terms of bad faith use, the Complainant points to the passive holding of the disputed domain name and concludes that the Respondent has not demonstrated any activity in respect of the disputed domain name, and that it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate.

## B. Respondent

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

## 6. Discussion and Findings

### A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trade mark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the SÉZANE trade mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms here "online" and "fr", may bear on the assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

### B. 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.

While 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 often impossible 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. 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.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Here there is no indication that the Respondent is known by the disputed domain name. In addition, the disputed domain name does not point to an active website and generates an error page and this cannot qualify as either use of the disputed domain name (or demonstrable plans for such use) with a *bona fide* offering or a legitimate noncommercial fair use.

Based on the available record, the Panel finds the second element of the Policy has been established.

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

In the present case, the Panel finds that the Respondent, at the time of registration of the disputed domain name, would have been aware of the Complainant's trade mark SÉZANE fully reproduced in the disputed domain name given (i) the reputation of the SÉZANE trade mark especially in France where the Respondent appears to be based, (ii) the fact that, as the Panel was able to verify, the first page results obtained when carrying out a Google search for the term "sezane" all relate to the Complainant and (iii) the choice of terms added to the SÉZANE trade mark in the disputed domain name.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding including (i) the significant online visibility of the Complainant's SÉZANE trade mark and (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use. [WIPO Overview 3.0](#), section 3.3.

Based on the available record, the Panel finds the third element of the Policy has been established.

### **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, <sezaneonlinefr.com>, be transferred to the Complainant.

*/Vincent Denoyelle/*

**Vincent Denoyelle**

Sole Panelist

Date: September 27, 2023