

ADMINISTRATIVE PANEL DECISION

Benda Bili v. 胡燕 (Yan Hu)

Case No. D2023-4021

1. The Parties

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

The Respondent is 胡燕 (Yan Hu), China.

2. The Domain Name and Registrar

The disputed domain name <fr-sezane.shop> is registered with Chengdu West Dimension Digital Technology Co., Ltd. (the "Registrar").

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the "Center") on September 26, 2023. On September 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 27, 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 September 27, 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 in English on September 27, 2023.

On September 27, 2023, the Center sent another email communication to the Parties in Chinese and English regarding the language of the proceeding. On September 27, 2023, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on October 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 6, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default in English and Chinese on November 9, 2023.

The Center appointed Francine Tan as the sole panelist in this matter on November 23, 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

The Complainant is a company specialized in ready-to-wear collections and accessories for women. It trades under its commercial name and trade mark, SEZANE. The Complainant states that its SEZANE trade mark is derived from a contraction of the first name and last name of the Complainant's founder and President, Morgane Sezalory, and that SEZANE-branded clothing and accessories are available only through the Complainant's online shop.

The Complainant states that it is the owner of numerous trade mark registrations for SEZANE including International trade mark registration No. 1170876 for SÉZANE, registered on June 3, 2013 (the "SEZANE trade mark"). The designated territories include Australia, China, Japan, Singapore, Switzerland, the European Union, and the United States of America.

The Complainant states that it is the owner of numerous domain names, including the domain name <sezane.com>, registered on April 3, 2003.

The Respondent registered the disputed domain name on September 21, 2023. At the time of filing the Complaint and amended Complaint, the disputed domain name resolved to an inactive website.

5. Parties' Contentions

A. Complainant

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

Notably, the Complainant contends that:

- I. The disputed domain name is confusingly similar to the Complainant's SEZANE trade mark in which it has rights. The disputed domain name incorporates the Complainant's SEZANE trade mark in its entirety. The addition of the prefix "fr-" to the disputed domain name and feature of the generic Top-Level Domain ".shop" do not prevent the likelihood of confusion with the Complainant's SEZANE trade mark.
- ii. The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent's identity is not reflected in the Whois database as the disputed domain name. The Complainant has never authorized or licensed the Respondent to use its SEZANE trade mark or to register the disputed domain name incorporating the said trade mark. The Respondent is not affiliated with the Complainant. Further, the Respondent is not utilizing the disputed domain name as it resolves to an inactive website. This shows a lack of a *bona fide* offering of goods and/or services.

- iii. The Respondent registered and is using the disputed domain name in bad faith. The Complainant's distinctive trade mark has no generic or descriptive meaning. An Internet search on the term "Sezane" would show results which relate to the Complainant. Given the distinctiveness of the SEZANE trade mark and reputation associated with the Complainant and its trade mark, the Respondent must have been aware of the Complainant's SEZANE trade mark when he/she registered the disputed domain name. Any contemplated or actual use of the disputed domain name by the Respondent would not be legitimate, as it would infringe the Complainant's trade mark rights or result in passing off.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue

A. Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint and amended Complaint were filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that:

- a) English is the most widely-used language in international relations, and one of the working languages of the Center;
- b) the disputed domain name consists of words in Latin characters and not in the Chinese script; and
- c) requiring the Complaint to be translated into Chinese would result in the Complainant having to incur substantial expenses for translation, which would be higher than the overall cost of the proceeding.

The Respondent did not make any submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

The Panel notes that the Respondent had been notified by the Center, in both Chinese and English, of the commencement of the proceeding, the language of the proceeding, and deadline for filing a Response in Chinese or English. The Respondent therefore had ample opportunity to object and/or propose to submit her Response in Chinese but did not do so. In the absence of any rebuttal argument or justification therefor by the Respondent, the Panel does not find it procedurally efficient to have the Complainant translate the Complaint into Chinese.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2 Substantive Issues

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 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. Additionally, the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here "fr-", may bear on assessment of the second and third elements, the Panel finds the addition of such term 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.

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.

Having reviewed the available 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.

The Respondent was not authorized by the Complainant to use the latter's SEZANE trade mark or to register a domain incorporating the trade mark. There is no evidence that the Respondent is commonly known by the disputed domain name. The Respondent does not appear to use the disputed domain name for a legitimate noncommercial or fair use, without intent for commercial gain, as the disputed domain name resolves to an inactive website.

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

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

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.

In the present case, the Panel notes that the Respondent registered the disputed domain name in 2023. The Complainant's SEZANE trade mark, by way of its International registration No. 1170876, was registered in 2013. The disputed domain name incorporates the entirety of the Complainant's SEZANE mark with the addition of the prefix, "fr-". The Panel finds this is clearly an attempt by the Respondent to confuse and/or mislead Internet users seeking or expecting the Complainant, especially since "fr" is a well-recognized abbreviation for "France" and the Complainant is French. UDRP panels have held that particular circumstances such as the nature of the domain name (e.g., a domain name incorporating the complainant's mark plus a geographic term, the chosen Top-Level Domain, a clear absence of rights or legitimate interests coupled with no credible explanation for the respondent's choice of the domain name) may be taken into account in assessing whether the respondent's domain name registration was in bad faith.

[WIPO Overview 3.0](#), section 3.2.1.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available 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. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's trade mark, and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

The Panel also draws an adverse inference from the Respondent's failure to file any Response or to rebut the Complainant's assertions and agrees that the circumstances constitute evidence of bad faith registration and use.

Based on the available record and the circumstances of this case, the Panel finds that the Complainant has established the third element of 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 <fr-sezane.shop> be transferred to the Complainant.

/Francine Tan/

Francine Tan

Sole Panelist

Date: November 30, 2023