

## **ADMINISTRATIVE PANEL DECISION**

### **Besson Chaussures SAS v. Raffaella Damore Case No. D2023-5237**

#### **1. The Parties**

The Complainant is Besson Chaussures SAS, France, represented by Darkanian & Pfirsch A.A.R.P.I, France.

The Respondent is Raffaella Damore, Afghanistan and France<sup>1</sup>.

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

The disputed domain names <bessonchaussuressale.com> and <bessonchaussuresshop.com> (the “Disputed Domain Names”) are registered with NameSilo, LLC (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 15, 2023. On December 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 18, 2023, the Registrar transmitted by email to the Center its verification disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 20, 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 December 21, 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”).

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<sup>1</sup> The Panel notes that upon the Registrar’s disclosure of the Respondent, it provided identical contact information for both disputed domain names except for the country, which was indicated as “Afghanistan” for <bessonchaussuresshop.com> and “France” for <bessonchaussuressale.com>. The Panel notes that the actual address details disclosed for the Respondent only exist in “France”, but will include “Afghanistan” for completeness and for purposes of the Registrar implementation of the decision. Given the identical disclosure, the Panel will treat the Respondent in singular.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on January 8, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 28, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 31, 2024.

The Center appointed Colin T. O'Brien as the sole panelist in this matter on February 8, 2024. 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 French company, incorporated on October 14, 1975, specializing in the sale of shoes, bags, and accessories, through its retail shops in France, Spain, and Belgium and online via its official website accessible at "www.besson-chaussures.com".

The Complainant owns the following registered trademarks:

French trademark BESSON CHAUSSURES n°4324842 registered on April 14, 2017, to cover (among other goods and services): handbags and footwear in classes 18 and 25, as well as "retail services (presentation of products by any means of communication, including the Internet) for sale and purchase by private individuals of (...) footwear (...) handbags" in class 35.

French trademark BESSON n°4780195 registered on October 15, 2021, to cover (among other goods and services): handbags and footwear in classes 18 and 25, as well as "retail services (presentation of products by any means of communication, including the Internet) for sale and purchase by private individuals of (...) footwear (...) handbags" in class 35.

International trademark BESSON n° 1614861 registered on July 1, 2021, to cover (among other goods and services): handbags and footwear in classes 18 and 25, as well as "retail services (presentation of products by any means of communication, including the Internet) for sale and purchase by private individuals of (...) footwear (...) handbags" in class 35. This international registration is protected for the above-mentioned goods and services in the European Union, Spain, Italy, Portugal, Benelux, United Kingdom, Switzerland, Algeria, Tunisia, Morocco.

The Complainant registered its <besson-chaussures.com> domain name on June 21, 2000.

The Disputed Domain Names <bessonchaussuresshop.com> and <bessonchaussuresale.com> were registered on November 30, 2023, and December 6, 2023 and resolved to websites that are similar to the Complainant's website at "www.besson-chaussures.com".

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

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

The Disputed Domain Names reproduce entirely the trademarks BESSON CHAUSSURES and BESSON which as itself (BESSON) has no particular meaning. Reproducing the Complainant's trademarks in their entirety is sufficient to create a likelihood of confusion, the addition of generic and descriptive terms like "shop" or "sale" do not lessen the likelihood of confusion.

The Respondent has no prior rights and/or legitimate interest to justify its use of BESSON and BESSON CHAUSSURES trademarks. The Complainant has never granted the Respondent any license or other authorization to use its trademarks in relation with the Disputed Domain Names. The Respondent has

clearly adopted the Complainant's trademarks within the Disputed Domain Names without the Complainant's authorization. The Respondent has not been commonly known by the Disputed Domain Names which have been registered on November 30, 2023, and December 6, 2023.

The Respondent has registered and is using in bad faith the Disputed Domain Names which are similar to the trademarks and domain name of the Complainant, for the purpose of attracting Internet users to the Respondent's website and making unfair benefit and commercial gain by creating a likelihood of confusion between the Complainant's official website (online shop accessible at "www.bessonchaussures.com") and the Respondent's fraudulent website.

The websites linked to the Disputed Domain Names reproduce the Complainant's trademarks, advertisement, pictures, and pretend to be the Complainant's official website. It is crystal clear that the Respondent has deliberately sought to create confusion by registering the Disputed Domain Names which reproduce the Complainant's trademarks to drive Internet users into thinking that the websites to which the Disputed Domain Names resolve are the official ones of the Complainant.

It is obvious that the Respondent has registered and is using the Disputed Domain Names for the specific purpose of impersonating the Complainant and to defraud Internet users.

The Complainant requests the transfer of the Disputed Domain Names.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar**

The Complainant has demonstrated it owns registered trademark rights in the BESSON CHAUSSURES mark in connection with good and services related footwear and fashion. The addition of the terms "sale" and "shop" do not prevent the Complainant's trademark from being recognizable in the Disputed Domain Names. The generic Top-Level Domain ("gTLD") ".com" is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.

See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), sections 1.7, 1.8, and 1.11.1, and *Hoffmann-La Roche AG v. Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org / Conan Corrigan*, WIPO Case No. [D2015-2316](#).

Accordingly, the Disputed Domain Names are confusingly similar to a mark in which the Complainant has rights.

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

The Complainant has presented a prima facie case that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names and has not been commonly known by the Disputed Domain Names. The fact that the Respondent registered the Disputed Domain Names almost 50 years after the Complainant began using its coined BESSON CHAUSSURES mark indicates that the Respondent sought to piggyback on the Complainant's mark for illegitimate reasons, particularly in light of the impersonating nature of the content hosted at the Disputed Domain Names.

After a complainant has made a prima facie case, the burden of production shifts to a respondent to present evidence demonstrating rights or legitimate interests in the domain name. See, e.g., *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

Here, the Respondent has provided no evidence of any rights or legitimate interests in the Disputed Domain Names. Moreover, the evidence provided by the Complainant shows that the Disputed Domain Names resolved to websites seemingly impersonating the Complainant by featuring the Complainant's trademark, logo, and copyrighted images of the Complainant's trademarked goods. While resellers and distributors may have limited rights to use a complainant's trademark for nominative purposes, the lack of any authorization by the Complainant and similarly, the lack of any information on the Disputed Domain Names as to the websites lack of authorization or relation to the Complainant, renders any fair use safe haven inapplicable in this instance. See section 2.8 of the [WIPO Overview 3.0](#).

Irrespective of the Disputed Domain Names satisfying the so-called *Oki Data* test, the nature of the Disputed Domain Names adding the terms "sale" or "shop" to the Complainant's trademark carries a risk of implied affiliation, especially when considering the impersonating nature of the content which was exhibited at the Disputed Domain Names, and as such cannot constitute fair use. See section 2.5.1 of the [WIPO Overview 3.0](#).

It is not necessary for the Panel to make any ultimate determination as to the nature of the goods, as the evidence clearly shows the Respondent has attempted to pass itself off as the Complainant. The Panel finds therefore that such use cannot be qualified as a bona fide offering of goods or services or legitimate noncommercial or fair use. See section 2.13 of the [WIPO Overview 3.0](#).

In the absence of any evidence rebutting the Complainant's prima facie case indicating the Respondent's lack of rights or legitimate interests in respect of the Disputed Domain Names, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

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

The Panel finds that the Complainant has satisfied its burden of proof in establishing the Respondent's bad faith in registration and use of the Disputed Domain Names. Paragraph 4(b)(iv) of the Policy states that evidence of bad faith may include a respondent's use of a domain name to intentionally attempt to attract Internet users, for commercial gain.

Due to the incorporation of the BESSON CHAUSSURES mark, it is inconceivable that the Respondent registered the Disputed Domain Name adding the words "shop" or "sale" without knowledge of the Complainant. The Disputed Domain Names were used for websites which allegedly claimed to sell products identical to those offered by the Complainant and bearing its trademarks, establishing that the Respondent knew of and targeted the Complainant with the intention of misleading unsuspecting Internet users for its presumed commercial gain.

The facts establish a deliberate effort by the Respondent to cause confusion with the Complainant for commercial gain. Such an impersonation of the Complainant is sufficient to establish the Respondent's bad faith (see section 3.1.4 of the [WIPO Overview 3.0](#)). Under these circumstances, the Panel finds no plausible good faith reason for the Respondent's conduct and concludes that the Disputed Domain Names were registered and used in bad faith.

## **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 Names <bessonchaussuresale.com> and <bessonchaussuresshop.com> be transferred to the Complainant.

/Colin T. O'Brien/

**Colin T. O'Brien**

Sole Panelist

Date: February 22, 2024