

## **ADMINISTRATIVE PANEL DECISION**

All Saints Retail Limited v. Tanja Lemann, Client Care, Web Commerce Communications Limited  
Case No. D2023-1403

### **1. The Parties**

The Complainant is All Saints Retail Limited, United Kingdom (“UK”), represented by Stobbs IP Limited, UK.

The Respondents are Tanja Lemann, Germany (Respondent 1), and Client Care, Web Commerce Communications Limited, Malaysia (Respondent 2).

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

The disputed domain names <allsaintsbelgium.com>, <allsaintschile.com>, <allsaintscolombia.com>, <allsaintsdubai.com>, <allsaintsfrance.com>, <allsaintsireland.com>, <allsaintsmalaysia.com>, <allsaintsmexicoshop.com>, <allsaintsoutletsale.com>, <allsaintsphilippines.com>, <allsaintspolska.com>, <allsaintsportugal.com>, <allsaintssingapore.com>, <allsaintssouthafrica.com>, <allsaintsturkiye.com>, <allsaintsuksale.com>, and <allsaints-usa.com> (the “Domain Names”) are registered with Alibaba.com Singapore E-Commerce Private Limited (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 31, 2023. On April 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On April 4, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Names which differed from the named Respondents (Alibaba Cloud Computing (Beijing) Co., Ltd) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 19, 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 April 24, 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 Respondents of the Complaint, and the proceedings commenced on April 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 18, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on May 19, 2023.

The Center appointed Wolter Wefers Bettink as the sole panelist in this matter on June 9, 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 British fashion retailer headquartered in London, UK. The company was founded in 1994 and incorporated in October 2000 and sells menswear, womenswear, apparel, footwear, and accessories in 281 stores across 27 countries including the UK, United Arab Emirates, United States of America, Canada, and Republic of Korea. Through its website "www.allsaints.com" the Complainant delivers its products to over 200 countries.

The Complainant owns trade mark rights worldwide, including *inter alia* (hereafter the "Trade Marks"):

- UK trade mark ALL SAINTS registered under no. UK00002307473 on March 21, 2003;
- China trade mark ALL SAINTS registered under no. 5697820 on January 28, 2011;
- China trade mark ALLSAINTS registered under no. 12788237 on October 7, 2015;
- European Union trade mark ALL SAINTS registered under no. 004610945 on November 10, 2009; and
- European Union trade mark ALLSAINTS registered under no. 011874633 on July 9, 2015.

The Domain Names have been registered at the following dates (between brackets the Respondent who registered the Domain Name):

<allsaints-usa.com>	December 1, 2022	(Respondent 1)
<allsaintsdubai.com>	December 2, 2022	(Respondent 2)
<allsaintsireland.com>	December 1, 2022	(Respondent 2)
<allsaintsoutletsale.com>	December 1, 2022	(Respondent 1)
<allsaintsphilippines.com>	December 2, 2022	(Respondent 2)
<allsaintspolska.com>	January 15, 2023	(Respondent 2)
<allsaintsukse.com>	December 1, 2022	(Respondent 1)
<allsaintsmalaysia.com>	January 31, 2023	(Respondent 2)
<allsaintsbelgium.com>	December 4, 2022	(Respondent 2)
<allsaintschile.com>	December 5, 2022	(Respondent 2)
<allsaintscolumbia.com>	December 5, 2022	(Respondent 2)
<allsaintsfrance.com>	February 4, 2023	(Respondent 2)
<allsaintsmexicoshop.com>	February 8, 2023	(Respondent 2)
<allsaintsportugal.com>	December 5, 2023	(Respondent 2)
<allsaintssingapore.com>	December 1, 2022	(Respondent 2)
<allsaintssouthafrica.com>	December 1, 2022	(Respondent 2)
<allsaintsturkiye.com>	December 5, 2022	(Respondent 2)

Each of the Domain Names <allsaintsdubai.com>, <allsaintsireland.com>, <allsaintsmalaysia.com>, <allsaintsmexicoshop.com>, <allsaintsoutletsale.com>, <allsaintsphilippines.com>, <allsaintspolska.com>, <allsaintssouthafrica.com>, <allsaintsuksale.com> and <allsaints-usa.com> resolves to a website purportedly offering the Complainant's products on which the Trade Marks are used.

Each of the Domain Names <allsaintsbelgium.com>, <allsaintschile.com>, <allsaintscolumbia.com>, <allsaintsfrance.com>, <allsaintsportugal.com>, <allsaintssingapore.com> and <allsaintsturkiye.com> prompts a warning that the URL is classified as hacking or phishing.

## 5. Parties' Contentions

### A. Complainant

The Complainant points out that the Domain Names all incorporate the Trade Marks in their entirety, alongside various geographical descriptors or, in case of the Domain Names <allsaintsoutletsale.com>, <allsaintsuksale.com> and <allsaintsmexicoshop.com> descriptors such as "sale", "shop" and "outlet". The Complainant submits that the additional geographical descriptors merely reinforce an association with the Complainant, whose products and services are offered to customers in those territories via its website at <allsaints.com>, while the use of descriptors such as "sale", "outlet" and "shop" are inherently associated with the industry in which the Complainant operates and do not differentiate the Domain Names from the Trade Marks. The Complainant contends that the generic Top-Level Domain ("gTLD") suffix ".com" is an integral technical part of each of the Domain Names and may be disregarded in the determination of confusing similarity under the UDRP. On these grounds, the Complainant concludes that the Domain Names are confusingly similar to the Trade Marks.

The Complainant submits that the Respondents do not have any rights or legitimate interests in the Domain Names under Policy, paragraph 4(c) as, bearing in mind the considerable reputation of the Complainant's business and brand worldwide, and keeping in mind the context in which the Domain Names are currently being used, there is no believable or realistic reason for the registration or use of the Domain Names other than to take advantage of the Complainant's reputation. Furthermore, the Complainant submits that to the best of their knowledge, the Respondents have never been known as "All Saints" at any point in time.

The Complainant states that the Domain Names were all acquired by the Respondents in 2022 and 2023, almost 20 years after the Complainant acquired its rights in the oldest of the Trade Marks. The Complainant points out that various Domain Names resolve to websites making unauthorised use of the Trade Marks, which, the Complainant submits, constitutes infringement of the Complainant's rights in the Trade Marks in the UK. The Complainant also contends that the use of the Domain Names would likely lead consumers to believe that the goods or services offered by the Respondents under the Domain Names would be authorized by, or somehow associated with the Complainant. The Complainant submits that this shows that the only reason that the Respondents registered the Domain Names was to take advantage of the Complainant's goodwill accrued in the Trade Marks and use its reputation for the Respondents' own commercial benefit. Therefore, the Complainant concludes, the Respondents are neither making a *bona fide* use of the Domain Names, nor a legitimate noncommercial or fair use, without intent for commercial gain to misleadingly divert consumers.

The Complainant submits that the Domain Names were registered and are being used in bad faith. The Complainant points out that their rights in the Trade Marks pre-date the registration of the Domain Names by almost 20 years and that, considering the activities carried out at the Domain Names, it is clear that the Respondents were aware of the Complainant and the Trade Marks at the time of the registration of the Domain Names. According to the Complainant, it is evident that the Domain Names were registered with the sole purpose of creating an association with the Complainant and falsely creating the impression of being "the" official network of websites operated by the Complainant. In addition, the Complainant contends that the Respondents' decision to not only register domain names comprising of the Trade Marks, but also, to proceed with the set-up of websites, connected to the Domain Names, which flagrantly imitate the services

of the Complainant through the use of the Complainant's branding assets, shows a clear intention on part of the Respondents to disrupt the Complainant's business by piggybacking off the reputation which the Complainant has accrued in the Trade Marks.

## **B. Respondents**

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

## **6. Discussion and Findings**

### **A. Consolidation of Multiple Respondents**

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 (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2). Procedural efficiency would also underpin panel consideration of such a consolidation scenario.

The Complainant submits that all the Domain Names are under the control of a common operator and are more likely than not part of the same infringement network. In support of the same the Complainant submits: (i) the proximity in the dates of registration of the Domain Names; (ii) evidence of similar website content hosted and targeting (further addressed below); and (iii) the similarity of the Domain Names' anatomy to one another (either, including the ALL SAINTS mark suffixed with a geographical descriptive, or, featuring the ALL SAINTS mark in addition to a retail or fashion related noun).

The Panel notes, first, that the names and the addresses of the two Respondents, disclosed by the Registrar, are different. However, this is not decisive, since registrars are not typically required (and often not able) to verify the identity of registrants. As to common control, it is noteworthy that both Respondent 1 and Respondent 2 each registered three of the Domain Names on December 1, 2022. In addition, the screen prints submitted by the Complainant (dated between December 2, 2022 and January 15, 2023) of the home pages of the websites to which 10 of the Domain Names resolve (three of Respondent 1 and seven of Respondent 2) show that the content and the lay out are (almost) identical. In particular, the web pages concerned contain identical photos of the same products of the Complainant apparently on offer at a discount (a crossed out price in black and a lower price in red). Finally, the Domain Names are similar in that one of the Domain Names of Respondent 1 and 12 Domain Names of Respondent 2 contain the name of a country in addition to the Trade Marks, while two Domain Names of Respondent 1 and one Domain Name of Respondent 2 include retail terms such as "sale", "outlet" or "shop".

On the basis of all of the above circumstances, taken together, the Panel concludes that it is more likely than not that the Domain Names are under common control, and that consolidation of the cases against the Respondents would be fair and equitable to all Parties.

### **B. Identical or Confusingly Similar**

The Complainant has shown that it has registered rights in the Trade Marks. The Domain Names are confusingly similar to the Trade Marks as they incorporate ALL SAINTS in its entirety. The addition of other terms, such as "sale", "outlet" or "shop" does not prevent a finding of confusing similarity between the Domain Names and the Trade Marks (see [WIPO Overview 3.0](#), section 1.8; see also, *inter alia*, *TPI Holdings, Inc. v. Carmen Armengol*, WIPO Case No. [D2009-0361](#), and *F. Hoffmann-La Roche AG v. John Mercier*, WIPO Case No. [D2018-0980](#)). The gTLD ".com" is typically disregarded under the confusing similarity test, since it is a technical registration requirement (see [WIPO Overview 3.0](#), section 1.11). Therefore, the Panel finds that the Domain Names are confusingly similar to the Trade Marks in which the Complainant has rights.

### C. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, the second element a complainant has to prove is that a respondent lacks rights or legitimate interests in a domain name. This 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. In order to satisfy the second element, the Complainant has to make out a *prima facie* case that the Respondents do not have rights or legitimate interests in the Domain Names. If the Complainant succeeds in doing so, the burden of production on this element shifts to the Respondents to come forward with relevant evidence demonstrating rights or legitimate interests in the Domain Names. If the Respondents fail to come forward with such relevant evidence, the Complainant is deemed to have satisfied the second element (see [WIPO Overview 3.0](#), section 2.1).

Based on the evidence and the undisputed submissions of the Complainant, the Panel concludes that the Respondents have no connection or affiliation with the Complainant, the Respondents have not received the Complainant’s consent to use the Trade Marks as part of the Domain Names, and the Respondents have not acquired any trade mark rights in the Domain Names. In assessing whether the Respondents have rights or legitimate interests in the Domain Names, it should also be taken into account that (i) since each of the Domain Names incorporates the Trade Marks in their entirety with additional terms related to a geographical location and/or the Complainant’s business, it carries a risk of implied affiliation ([WIPO Overview 3.0](#), section 2.5.1); and (ii) the Respondents have not provided any evidence, nor is there any indication in the record of this case, that the Respondents are commonly known by the Domain Names.

This leaves the question whether the Respondents’ use of the Domain Names prior to the notice of the dispute can be considered to be in connection with a *bona fide* offering of goods or services, in accordance with paragraph 4(c)(i) of the Policy. In this connection, the criteria of the *Ok! Data Americas, Inc., v. ASD Inc.*, WIPO Case No. [D2001-0903](#) may be applied to the present case (see [WIPO Overview 3.0](#), section 2.8.1).

In order to be making a *bona fide* offering of goods and services and thus have a legitimate interest in such domain name the following conditions must be satisfied: (1) the respondent must actually be offering the goods or services at issue; (2) the respondent must use the site to sell only the trademarked goods (otherwise, there is the possibility that the respondent is using the trade mark in a domain name to bait consumers and then switch them to other goods); (3) the site itself must accurately disclose the respondent’s relationship with the trade mark owner; and (4) the respondent must not try to “corner the market” in all relevant domain names, thus depriving the trade mark owner of the ability to reflect its own mark in a domain name.

Ten of the Domain Names (*i.e.*, <allsaintsdubai.com>, <allsaintsireland.com>, <allsaintsmalaysia.com>, <allsaintsmexicoshop.com>, <allsaintsoutletsale.com>, <allsaintsphilippines.com>, <allsaintspolska.com>, <allsaintssouthafrica.com>, <allsaintsuksale.com>, and <allsaints-usa.com>) resolve to (almost) identical websites purportedly offering products under the Trade Marks. The Respondents’ use of these Domain Names meets the first two *Ok! Data* criteria. The Respondents (purportedly) offer “All Saints” products on the website to which the Domain Names resolve and the website appears to relate only to these products and does not contain (offers for) products of other (fashion or clothing) companies.

The Respondents do not, however, meet the third requirement that they must accurately disclose its relationship with the Complainant. The websites at the 10 Domain Names do not contain a specific and prominent disclaimer in relation to the Complainant, nor do they specifically disclose the Respondents’ relationship with the Complainant. An Internet user who types in <allsaintsmalaysia.com> (or any of the other nine Domain Names that resolve to a website) arrives at a home page purportedly offering some of the Complainant’s products. There is no express mention on that home page that the Respondents are independent from, or not affiliated to, the Complainant. In the Panel’s view, the first impression for the Internet user who types in one of the 10 Domain Names and subsequently views the home page of the website to which it resolves will most likely be that the Respondents are in some way linked to the Complainant, whether through affiliation, approval, as an authorized reseller, or otherwise.

As the Respondents therefore have not demonstrated that they meet all the criteria of the *Oki Data* decision, the Respondents' use of the Domain Names prior to the notice of the dispute cannot be considered to be in connection with a *bona fide* offering of goods or services, in accordance with paragraph 4(c)(i) of the Policy.

Based on the evidence submitted, the other seven Domain Names (<allsaintsbelgium.com>, <allsaintschile.com>, <allsaintscolumbia.com>, <allsaintsfrance.com>, <allsaintsportugal.com>, <allsaintssingapore.com> and <allsaintsturkiye.com>) have prompted a warning that the URL is classified as hacking or phishing which clearly does not constitute *bona fide* or fair use of these Domain Names.

In view of all of the above, the Panel concludes that the Complainant has established that the Respondents have no rights or legitimate interests in the Domain Names.

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

Based on the undisputed information and the evidence provided by the Complainant, the Panel finds that there is bad faith registration. At the time of registration of the Domain Names, the Respondents were or should have been aware of the Complainant and the Trade Marks, since:

- the Respondents' registration of the Domain Names occurred some 20 years after the registration of the earliest of the Trade Marks;
- the Respondents have incorporated Trade Marks in their entirety, and "All Saints" is not a generic term, nor a name that it is likely that a registrant would spontaneously think of when registering a domain name;
- a simple trade mark register search, or even an Internet search, prior to registration of the Domain Names would have informed the Respondents of the existence of the Trade Marks; and
- the Respondents have used a number of the Domain Names to resolve to a website displaying the Complainant's Trade Marks and products.

With regard to bad faith use, the Panel finds that the following circumstances taken together warrant a finding of bad faith use of the Domain Names:

- the probability that the Respondents were aware or should have been aware of the Complainant's rights in the Trade Marks;
- the lack of a Response to the Complaint;
- the use of websites to which a number of the Domain Names resolve for purportedly offering the Complainant's products, without properly disclosing the (non-existence of a) relationship with the Complainant; and
- the use of websites to which the other Domain Names resolve for apparent hacking or phishing purposes.

In addition, the Panel notes that in registering a series of 17 domain names that wholly incorporate the Trade Marks, the Respondents have engaged in a pattern of conduct of preventing the Complainant from reflecting its mark in a domain name. In the Panel's view this conduct of the Respondents is also inconsistent with good faith use and further reinforces the Panel's conclusion that the Respondents have registered and used the Domain Names in bad faith in terms of paragraph 4(b)(ii) of the Policy.

Therefore, the Panel concludes on the basis of all of the above circumstances, taken together, that the Domain Names have been registered and are being 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 <allsaintsbelgium.com>, <allsaintschile.com>, <allsaintscolumbia.com>, <allsaintsdubai.com>, <allsaintsfrance.com>, <allsaintsireland.com>, <allsaintsmalaysia.com>, <allsaintsmexicoshop.com>, <allsaintsoutletsale.com>, <allsaintsphilippines.com>, <allsaintspolska.com>, <allsaintsportugal.com>, <allsaintssingapore.com>, <allsaintssouthafrica.com>, <allsaintsturkiye.com>, <allsaintsuksale.com>, and <allsaints-usa.com> be transferred to the Complainant.

*/Wolter Wefers Bettink/*

**Wolter Wefers Bettink**

Sole Panelist

Date: June 26, 2023