

ADMINISTRATIVE PANEL DECISION

Benda Bili v. Client Care, Web Commerce Communications Limited
Case No. D2023-4403

1. The Parties

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

The Respondent is Client Care, Web Commerce Communications Limited, Malaysia.

2. The Domain Name and Registrar

The disputed domain name <sezanestore-fr.com> (the “Disputed Domain Name”) is registered with Alibaba.com Singapore E-Commerce Private Limited (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on October 24, 2023. On October 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On October 25, 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 October 30, 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 October 30, 2023.

On October 30, 2023, the Center informed the parties in Chinese and English, that the language of the registration agreement for the Disputed Domain Name is Chinese. On October 30, 2023, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

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 November 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 1, 2023.

The Center appointed Peter J. Dernbach as the sole panelist in this matter on December 11, 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 an apparel company registered as a legal entity in France, specializing in ready-to-wear collections and accessories for women, which are only made available through its online shop. The Complainant is the proprietor of International Trademark Registration No. 1170876 for SÉZANE (word), registered on June 3, 2013, for goods in international class 14, 18, and 25.

The Complainant is also the owner of several domain names, including <sezane.com> (registered on April 3, 2003), <sezanesolde.shop> (transferred on December 22, 2022), <sezane-online.shop> (transferred on November 25, 2022), and <sezane-outlets.shop> (transferred on November 25, 2022).

The Registrar confirmed, in its email dated October 25, 2023, that the Registration Agreement for the Disputed Domain Name is in Chinese.

The Respondent is Client Care, Web Commerce Communications Limited, Malaysia.

The Disputed Domain Name was registered on October 17, 2023, and presently resolves to an active online store that sells clothes and accessories at discounted prices.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under Paragraph 4(a) of the Policy for the Disputed Domain Name's transfer, summarized as follows:

- (i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant asserts that it is the owner of the SÉZANE International trademark under the Madrid protocol, and that the Disputed Domain Name incorporates the Complainant's SÉZANE trademark in its entirety. The additional features to the Disputed Domain Name - including the generic Top-Level Domain ("gTLD") ".com", "store", and "fr" are only descriptive components, and cannot distinguish the Disputed Domain Name from the Complainant's trademark. The only distinctive part of the Disputed Domain Name is "sezane", which is identical to the Complainant's trademark. Therefore, the Disputed Domain Name is identical or confusingly similar to the Complainant's registered trademark.

- (ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and

The Complainant contends that the Respondent is not affiliated with the Complainant, and that the Complainant does not carry out any activities or conduct any business with the Respondent. In addition, the Respondent has not been granted license or authorization to make any use of the Complainant's SÉZANE trademark.

In addition, the Complainant argues that the Whois database does not identify the Respondent as being commonly known as the Disputed Domain Name. Furthermore, given that the active website to which the Disputed Domain Name resolves to is a for-profit online store, the Disputed Domain Name is not being used in connection with a *bona fide* offering of goods and services, and does not constitute a legitimate noncommercial or fair use. Therefore, the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

(iii) the Disputed Domain Name has been registered and is being used in bad faith.

The Complainant contends that the Respondent references the Complainant in the annexed “About Us” section, with the intention of attracting buyers to the website by impersonating the Complainant. In addition, the Complainant argues that the Disputed Domain Name is comprised of the distinctive trademark SÉZANE, which is a contraction of the name of the Complainant’s founder (Morgane Sézalory) and has no other generic or descriptive meaning. From these two points above, the Complainant infers that the Respondent has registered the Disputed Domain Name with full knowledge of the Complainant’s mark and in bad faith.

Furthermore, the Complainant states that the Disputed Domain Name resolves to an online store offering goods that directly compete with the Complainant’s product offerings. From this observation, the Complainant contends that the Respondent is using the Disputed Domain Name to “intentionally attempting to attract, for commercial gain, Internet users to its 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 of a product or service on the Respondent’s website or location”, as mentioned by paragraph 4(b)(iv) of the Policy. Therefore, the Complainant contends that the Respondent is also using the Disputed Domain Name in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1 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 was filed in English. The Complainant requested that the language of the proceeding be English as English is the most widely used language in international relations; the Disputed Domain Name includes the English word “store”; and retaining translation services to conduct the proceeding in Chinese would involve additional costs and pose undue burden on the Complainant.

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

Having considered the following factors, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English:

- (i) the Complainant requests that the language of the proceeding to be English;
- (ii) the Disputed Domain Name resolves to a website that contains English and French content, which indicates that the Respondent has some ability to understand English. The website to which the Disputed Domain Name resolves also provides prices in EUR, which suggests it is directed to an international audience of Internet users;

- (iii) the Respondent was given the opportunity but did not comment on the language of the proceeding and did not submit arguments on the merits of this case; and
- (iv) using Chinese as the language of the proceeding could lead to unwarranted delay and costs for the Complainant and unnecessary delays to the administrative proceeding.

6.2 Substantive Issues

In accordance with paragraph 4(a) of the Policy, in order to succeed in this administrative proceeding and obtain the requested remedy (in this case, transfer of the Disputed Domain Name), the Complainant must prove that each of the three following elements are present:

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has established that it is the proprietor of the SÉZANE International trademark (mentioned in section 4 above). Based on the available records, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.2.1.)

The Panel finds that the entirety of the SÉZANE trademark is reproduced within the Disputed Domain Name. The additional elements of the Disputed Domain Name are “store” and “fr”, are descriptive, and thus, do not prevent a finding of confusing similarity. The remaining gTLD suffix, “.com” is consistently viewed as a standard registration requirement is as such, also disregarded under the first element confusing similarity test ([WIPO Overview 3.0](#), section 1.11.1). Accordingly, the Panel finds that the Disputed Domain Name is confusingly similar to the trademark in which the Complainant has rights.

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

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy provides that “[a domain-name holder] is required to submit to a mandatory administrative proceeding in the event that [a complainant] asserts to the applicable [administrative-dispute-resolution service provider], in compliance with the Rules of Procedure, that [...] (ii) [the respondent has] no rights or legitimate interests in respect of the [disputed] domain name[.]”

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the Panel, shall demonstrate that the Respondent has rights to, or legitimate interests in, the Disputed Domain Name, for the purposes of paragraph 4(a)(ii) of the Policy:

- “(i) before any notice to [the respondent] of the dispute, [the respondent’s] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the respondent has] acquired no trademark or service mark rights; or

- (iii) [the respondent is] making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

Pursuant to paragraphs 4(a)(ii) and 4(c) of the Policy, the Complainant is required to first establish a *prima facie* case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The burden of production then shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name.

The Panel finds that the Complainant has adequately shown that the SÉZANE trademark is a fanciful trademark with no dictionary meaning in English or Chinese, and that the Disputed Domain Name resolves to a commercial website that offers products sold for profit, which is not noncommercial or fair use. Upon reviewing the data available on the Whois database, the Panel finds that there is no evidence indicating that the Respondent is commonly known by the Disputed Domain Name or the name “Sezane”, and the Panel has not received any evidence indicating otherwise. The Complainant also asserts that it has not authorized or licensed the Respondent to make any use of its SÉZANE trademark, including use in the Disputed Domain Name.

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 provided any arguments or evidence to establish that it has rights or legitimate interests in the Disputed Domain Name.

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

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that “[a domain-name holder] is required to submit to a mandatory administrative proceeding in the event that [a complainant] asserts to the applicable [administrative dispute resolution service providers], in compliance with the Rules of Procedure, that [...] (iii) [the respondent’s] domain name has been registered and is being used in bad faith”.

Paragraph 4(b) of the Policy explicitly states, in relevant part, that “the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (iv) by using the domain name, [the respondent has] intentionally attempted 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 of a product or service on [the respondent’s] website or location.”

In the present case, the Complainant registered its SÉZANE trademark as an International trademark in 2013, ten years prior to the registration of the Disputed Domain Name. The Respondent chose to register the Disputed Domain Name, in which the only distinctive element is the Complainant’s trademark in its entirety. Moreover, the Disputed Domain Name resolves to a website at which clothing is for sale and other elements suggest it is impersonating the Complainant’s brand and website. The Respondent has not submitted any allegation or evidence suggesting that the Respondent selected “sezane” string with other generic and descriptive words for any reason other than the reputation of the Complainant’s trademark. Therefore, the Panel finds that the Respondent has registered the Disputed Domain Name in bad faith.

The website to which the Disputed Domain Name resolves sells apparel and accessories at discounted prices, lower than the prices offered by the Complainant, under the SÉZANE trademark. There is no indication that accurately and prominently discloses the Respondent’s relationship with the Complainant. Moreover, in the screenshots of the “About Us” section in Annex 7 of the Complaint, the Respondent explicitly mentions the name of the Complainant’s founder, along with photographs and descriptive text written in French that resembles the Complainant’s founding story. As such, the Respondent appears to

have intentionally designed the website to which the Disputed Domain Name resolves to create an impression to Internet users that the website is affiliated, endorsed, or sponsored by the Complainant for selling its own products for profit. Accordingly, the Panel finds that the Respondent is using the Disputed Domain Name in bad faith.

Based on the available record, 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 <sezanestore-fr.com> be transferred to the Complainant.

/Peter J. Dernbach/

Peter J. Dernbach

Sole Panelist

Date: December 22, 2023