

ADMINISTRATIVE PANEL DECISION

Benda Bili v. zhu yong hua

Case No. D2023-4558

1. The Parties

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

Respondent is zhu yong hua, China.

2. The Domain Name and Registrar

The disputed domain names <sezanefrsale.top> and <sezanesalefr.top> are registered with Gname.com Pte. Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on November 2, 2023. On November 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On November 3, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to Complainant on November 3, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint in English on November 3, 2023.

On November 3, 2023, the Center informed the Parties in Chinese and English, that the language of the registration agreement for the disputed domain names is Chinese. On November 3, 2023, Complainant requested English to be the language of the proceeding. Respondent did not submit any comment on Complainant’s submission. The Center sent an email communication to Complainant on November 15, 2023, regarding the incorrect Registrar identified in the amended Complaint and Complainant filed another amended Complaint in English on November 15, 2023.

The Center verified that the Complaint together with the amended Complaints 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 Respondent in Chinese and English of the Complaint, and the proceedings commenced on November 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 6, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on December 11, 2023.

The Center appointed Yijun Tian as the sole panelist in this matter on December 14, 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

A. Complainant

Complainant, Benda Bili, is a company incorporated in France. It is a company specializing in ready-to-wear collections and accessories for women, operating under its commercial name and trademark, SEZANE. The term “Sezane” is derived from the first name and last name of Complainant’s founder and President, Morgane SEZALORY. Complainant’s clothing and accessories are exclusively available through its online shop (Annex 3 to the Complaint).

Complainant has rights in the SEZANE marks. Complainant is the owner of numerous SEZANE trademarks worldwide, including the International trademark registration for SEZANE, registered on June 3, 2013 (registration number: 1170876), which contains China as one of the designated countries.

B. Respondent

Respondent is zhu yong hua, China.

The disputed domain names <sezane fr sale.top> and <sezane sale fr.top> were registered (with Gname.com Pte. Ltd.) by Respondent on October 26, 2023 and October 22, 2023, respectively.

According to the Complaint and relevant evidence provided by Complainant, the disputed domain names were resolved to deceptive websites purporting to be authorised online stores for Complainant’s products, and the websites were in the French and English languages and contained the contents copied from the original website of Complainant (Annex 6 to the Complaint).

5. Parties’ Contentions

A. Complainant

Complainant contends that the disputed domain names are confusingly similar to both Complainant’s trademark and its associated domain names. The disputed domain names incorporate Complainant’s trademark in its entirety. The mere addition of terms such as “sale” and the country code “fr” does not provide adequate distinction to negate the conclusion that the disputed domain names are confusingly similar to the trademark SEZANE.

Complainant contends that Respondent lacks rights or legitimate interests in the disputed domain names.

Complainant contends that the disputed domain names were registered and are being used in bad faith.

Complainant requests that the disputed domain names be transferred to it.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

6.1. Language of the Proceeding

The language of the Registration Agreements for the disputed domain names <sezaneftsale.top> and <sezanesalefr.top> 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.

From the evidence presented on the record, no agreement appears to have been entered into between Complainant and Respondent to the effect that the language of the proceeding should be English. Complainant filed initially its Complaint and amended Complaints in English, and has requested that English be the language of the proceeding for the following reasons:

- (a) English is chosen due to its prominence in international relations and as a working language at the Center.
- (b) The disputed domain name contains the English word "sale".
- (c) Opting for Chinese proceedings would entail higher costs, outweighing the overall expenses of the case.
- (d) Despite the Complaint being in English, the Center communicated with Respondent in both English and Chinese.
- (e) The Complaint is written in English for a better understanding of the Parties.

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).

On the record, Respondent appears to be located in China and thus presumably not a native English speaker, but considering the following aspects, the Panel has decided that the language of the proceeding shall be English: (a) the disputed domain names are registered in Latin characters, particularly in English (e.g., English words "sale" and "top", rather than Chinese script; (b) the generic Top-Level Domain ("gTLD") of the disputed domain names are ".top", so the disputed domains names seem to be prepared for users worldwide, particularly English speaking countries; (c) the webpages which the disputed domain names resolve to are in the French and English languages, which contained English words, such as "E-SHOP", and "French Every *Body* Can Speak" (Annex 6 to the Complaint); (d) the Center has notified Respondent of the language of the proceeding in both Chinese and English, and Respondent has indicated no objection to Complainant's request that English be the language of the proceeding; (e) the Center also notified

Respondent in both Chinese and English of the Complaint, and informed Respondent that it would accept a response in either English or Chinese, but Respondent chose not to file any response.

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: Three Elements

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 Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

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

The Panel finds the entirety of the SEZANE mark is reproduced within the disputed domain names. More specifically, accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other characters "fr" and "sale", may bear on assessment of the second and third elements, the Panel finds the addition of such characters does not prevent a finding of confusing similarity between the disputed domain names 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 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 Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain names. Respondent has not rebutted Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

More specifically,

(i) there has been no evidence adduced to show that Respondent used the disputed domain names in connection with a *bona fide* offering of goods or services. Respondent has not provided evidence of reasons to justify the choice of the terms "Sezane", Complainant's SEZANE trademark, in the disputed domain names. There has been no evidence to show that Complainant has licensed or otherwise permitted Respondent to use the SEZANE or to apply for or use any domain name incorporating the SEZANE marks;

(ii) there has been no evidence adduced to show that Respondent has been commonly known by the disputed domain names. There has been no evidence adduced to show that Respondent has any registered trademark rights with respect to the disputed domain names. Respondent registered the disputed domain names in 2023, after the SEZANE marks became widely known. The disputed domain names are confusingly similar to Complainant's SEZANE marks; and

(iii) there has been no evidence adduced to show that Respondent was making a legitimate noncommercial or fair use of the disputed domain names. By contrast, the disputed domain names both resolved to websites purporting to be authorised online stores for Complainant's products, contained content copied from the original website of Complainant, and purport to offer Complainant's goods for sale. It seems likely that Respondent was making profits through the Internet traffic attracted to the websites under the disputed domain names. (See *BKS Bank AG v. Jianwei Guo*, WIPO Case No. [D2017-1041](#); and *Pet Plan Ltd. v. 权中俊 and 李金梁 (Li Jin Liang)*, WIPO Case No. [D2020-3358](#).)

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

In the present case, the Panel notes that Respondent has registered and used the disputed domain names 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.

UDRP panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent registrations and use of the disputed domain names constitute bad faith under the Policy.

Based on the information provided by Complainant, the Panel finds that Complainant has a widespread reputation in the SEZANE marks with regard to its products and services. It is not conceivable that Respondent would not have had Complainant's trademark in mind at the time of the registration of the disputed domain names (in 2023). This has been reinforced by the fact that each disputed domain name incorporates Complainant's SEZANE trademark.

Respondent has used the websites resolved by the disputed domain names for displaying the contents copied from the original website of Complainant, and purports to offer Complainant's goods for sale.

Thus, the Panel concludes that Respondent is using confusingly similar disputed domain names with the intention to attract, for commercial gain, Internet users to Respondent's websites by creating a likelihood of confusion with Complainant. Such use constitutes bad faith pursuant to paragraph 4(b)(iv) of the Policy.

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 names <sezanefrsale.top> and <sezanesalefr.top> be transferred to Complainant.

/Yijun Tian/

Yijun Tian

Sole Panelist

Date: January 16, 2024