

ADMINISTRATIVE PANEL DECISION

Oberalp Deutschland GmbH v. Client Care, Web Commerce Communications Limited

Case No. D2022-3282

1. The Parties

Complainant is Oberalp Deutschland GmbH, Germany, represented by Ruttensperger Lachnit Trossin Gomoll Patent- und Rechtsanwälte Partnerschaft mbB, Germany.

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

2. The Domain Names and Registrar

The disputed domain names <salewacanada.com>, <salewaboots.com>, <salewachile.com>, <salewagreece.com>, <salewa-polska.com>, <salewa-portugal.com>, <salewaromania.com>, <salewaschweiz.com>, and <salewauk.com> 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 September 2, 2022. On September 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On September 6, 2022, 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 and contact information in the Complaint. The Center sent an email communication to Complainant on September 7, 2022, 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 on September 8, 2022.

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 Respondent of the Complaint, and the proceedings commenced on September 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 4, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on October 6, 2022.

The Center appointed Lynda J. Zadra-Symes as the sole panelist in this matter on October 25, 2022. 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

Complainant and/or its parent company (collectively "Complainant") is the owner of the mark SALEWA used in connection with a wide variety of clothing and sporting goods. Complainant is a regular participant of the world's largest trade fair for sporting goods and sportswear, the ISPO-trade fair in Munich, which awarded Complainant the ISPO Gold Award for its SALEWA Winter Train 26 Back pack. Complainant's SALEWA brand products are found in stores in Austria, Canada, Chile, Germany, Japan, Poland, Romania, Switzerland, and the United Kingdom. Complainant and its related companies own trademark registrations covering the SALEWA mark in more than 90 countries, including the following:

- Malaysia Trademark Registration Nos. 2011002679, 2011002680, and 2011002681, all registered on February 14, 2011;

- Singapore Trademark Registration No. T1118179J, with an international registration date of September 29, 2010 and a subsequent designation date of February 14, 2011; and

- International Trademark Registration Nos. 775644, 928440, and 1065722, registered on February 13, 2002, February 23, 2007, and September 29, 2010, respectively.

The disputed domain names <salewaboots.com>, <salewacanada.com>, <salewachile.com>, <salewagreece.com>, <salewaromania.com>, <salewaschweiz.com>, and <salewauk.com> were registered on July 15, 2021; the disputed domain name <salewa-polska.com> was registered on April 2, 2022; and the disputed domain name <salewa-portugal.com> was registered on November 16, 2021, well after the registration of Complainant's trademark.

The website at the disputed domain name <salewaboots.com> is inactive or is not accessible for Complainant while all other disputed domain names resolve to websites in the language of the respective country added to them, offering purported Complainant's products.

5. Parties' Contentions

A. Complainant

Complainant contends that the disputed domain names are identical or confusingly similar to Complainant's trademark, that Respondent has no rights or legitimate interests in respect of the disputed domain names, and that the disputed domain names were registered and are being used in bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

In order to succeed in its claim, Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied:

- (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests with respect to the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

Paragraph 15(a) of the Rules instructs the Panel to decide a complaint “on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

A. Identical or Confusingly Similar

Complainant has demonstrated that it has rights in the trademark SALEWA in connection with clothing, sporting goods, and sportswear. The disputed domain names incorporate Complainant’s mark in its entirety, with the addition of country designations, such as “canada”, “chile”, “greece”, “romania”, “schweiz”, “uk”, “polska”, “portugal”, and the descriptive term “boots”. These added terms do not avoid a finding of confusing similarity.

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.

Accordingly, the Panel finds that the disputed domain names are confusingly similar to Complainant’s trademark.

B. Rights or Legitimate Interests

Complainant contends that Respondent is not affiliated with or connected to Complainant in any way. At no time have Complainant licensed or otherwise endorsed, sponsored, or authorized Respondent to use Complainant’s mark or to register the disputed domain names. The record is devoid of any facts that establish any rights or legitimate interests of Respondent in the disputed domain names. There is no evidence that Respondent has been commonly known by the disputed domain names or that it has any rights that might predate Complainant’s adoption and use of its SALEWA mark.

Respondent has not made, and is not making, a legitimate noncommercial or fair use of the disputed domain names. Respondent has not used the disputed domain names in connection with a *bona fide* offering of goods or services.

Instead, the record indicates that Respondent was well aware of Complainant’s marks and has used the disputed domain names (except for the disputed domain name <salewaboots.com>) to lead to websites in the language of the respective country added to the SALEWA trademark, through which outdoor clothing as well as shoes and boots for men, women, and children are offered alongside equipment for outdoor activities, like backpacks, tents, or sleeping bags. In addition, safety equipment for combing such as helmets, crampons, harnesses, or carabiners are available at the websites located at the disputed domain names.

On the websites located at the disputed domain names <salewacanada.com>, <salewachile.com>, <salewagreece.com>, <salewaromania.com>, <salewaschweiz.com>, <salewauk.com>, <salewa-portugal.com>, and <salewa-polska.com>, Respondent uses Complainant’s trademark and pictures of Complainant’s goods copied either directly from Complainant’s website or from websites of authorized resellers of Complainant. The websites do not contain any accurate and prominent disclaimer that Respondent has no relationship with Complainant. The website located at the disputed domain name <salewaboots.com> is inactive or is not accessible for Complainant. The record indicates that Respondent knowingly adopted Complainant’s mark in the disputed domain names in an effort to create the false impression that Respondent is associated with Complainant or is an authorized representative of

Complainant to defraud unsuspecting consumers into purchasing possible counterfeit goods from Respondent's websites, to provide their financial information, or provide payment to Respondent for Respondent's commercial gain.

Moreover, the nature of the disputed domain names is inherently confusing as it effectively impersonates or suggests sponsorship or endorsement by Complainant.

The Panel finds that Complainant has satisfied the requirement of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The record indicates that the disputed domain names (except for the disputed domain name <salewaboos.com>) are being used in connection with a fraudulent scam designed to lure consumers into believing that they are purchasing products from Complainant, in order to defraud consumers into purchasing possible counterfeit goods, provide personal financial information, or payment to Respondent. Such conduct of Respondent falls squarely into bad faith described under paragraph 4(b)(iv) of the Policy. The website located at the disputed domain name <salewaboos.com> is inactive or is not accessible for Complainant. However, the Panel finds that under the circumstances of this case, particularly considering Complainant's prior registered and widely-known trademark SALEWA, the non-use of the disputed domain name <salewaboos.com> would not prevent a finding of bad faith under the doctrine of passive holding.

The Panel finds that Complainant has satisfied the requirement of paragraph 4(a)(iii) 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 names <salewaboos.com>, <salewacanada.com>, <salewachile.com>, <salewagreece.com>, <salewa-polska.com>, <salewa-portugal.com>, <salewaromania.com>, <salewaschweiz.com>, and <salewauk.com> be transferred to Complainant.

/Lynda J. Zadra-Symes/

Lynda J. Zadra-Symes

Sole Panelist

Date: November 8, 2022