

ADMINISTRATIVE PANEL DECISION

ZAPA v. Tgwh Rfdghi
Case No. D2022-4682

1. The Parties

The Complainant is ZAPA, France, represented by SafeBrands, France.

The Respondent is Tgwh Rfdghi, Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <zapafemme.com> (the “Disputed Domain Name”) is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 7, 2022. On December 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On December 20, 2022, 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 (Whois Agent, Domain Protection Services, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 21, 2022, 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 23, 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 the Respondent of the Complaint, and the proceedings commenced on December 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 18, 2023.

The Center appointed Gabriela Kennedy as the sole panelist in this matter on February 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 French textile company incorporated in 1972 under the laws of France. It offers trendy and chic clothing, shoes and accessories, and caters to a fashionable and quality-conscious clientele.

The Complainant is the owner of a number of trademark registrations for ZAPA in various countries and classes, including, *inter alia*, International Trademark Registration No. 494843 in Classes 18 and 25 registered on July 10, 1985, designating Austria, Bosnia and Herzegovina, Bulgaria, Benelux, BelarusCroatia, Czech Republic, France, Germany, Hungary, Italy, Liechtenstein, Monaco, Montenegro, Morocco, North Macedonia, Portugal, Romania, Russian Federation, Serbia, Slovenia, Slovakia, Switzerland, and Ukraine, International Trademark Registration No. 533480 in Class 3 registered on January 13, 1989, designating France, European Union Trademark Registration No. 429951 in Classes 3, 9 and 14 registered on December 7, 1999, European Union Trademark Registration No. 003416047 in Class 25 registered on November 20, 2008, French Trademark Registration No. 1382883 in Class 25 registered on December 4, 1986, French Trademark Registration No. 1597967 in Classes 3, 9 and 18 registered on June 19, 1990, and French Trademark Registration No. 94531203 in Class 14 registered on August 1, 1994 (altogether, the “Complainant’s Trademark”). The Complainant’s Trademark is fully incorporated in its various domain names, including, *inter alia*, <zapa.fr> (the “Complainant’s Domain Name”).

The Disputed Domain Name was registered by the Respondent using the anonymous registration services on April 2, 2022, which is more than 35 years after the Complainant’s Trademark was first registered. The Disputed Domain Name resolves to a webpage “www.zapafemme.com” (the “Website”) offering purported ZAPA products at discounted prices.

5. Parties’ Contentions

A. Complainant

The Complainant’s primary contentions can be summarized as follows:

- (a) The Disputed Domain Name is confusingly similar to the Complainant’s Trademark. The Complainant’s Trademark is reproduced in its entirety in the Disputed Domain Name. Apart from the Complainant’s Trademark, the only element in the Disputed Domain Name is the suffix “femme”, which is a dictionary term in French meaning “woman”.
- (b) The Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent has not obtained any authorization from the Complainant to use the Complainant’s Trademark as part of a domain name or otherwise. Furthermore, the Complainant believes that the products offered on the Website are not genuine ZAPA products since they are offered at discounted prices. Further, there is nothing on the Website to accurately disclose the (lack of) relationship between the Respondent and the Complainant. Such use of the Disputed Domain Name cannot be considered as legitimate noncommercial or fair use without the intent for commercial gain.
- (c) Both the Respondent’s registration of and its use of the Disputed Domain Name establish the Respondent’s bad faith. Given the goodwill and reputation that the Complainant has acquired in the Complainant’s Trademark, the Respondent must have been fully aware of the existence of the Complainant’s rights in the Complainant’s Trademark when the Respondent registered and used the Disputed Domain Name. Moreover, the Respondent uses the Disputed Domain Name to attract

Internet users to the Website and to disrupt the Complainant's business by virtue of the association between the Disputed Domain Name and the Complainant's Trademark. Therefore, given these factors, the Respondent has registered and is using the Disputed Domain Name in bad faith.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements:

- (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 by the Respondent in bad faith.

A. Identical or Confusingly Similar

The Panel accepts that the Complainant has rights in the Complainant's Trademark based on various trademark registrations listed above in Section 4.

It is well established that in making an enquiry as to whether a trademark is identical or confusingly similar to a domain name, the generic Top-Level Domain (gTLD), ".com" in this case, may be disregarded. See section 1.11 of the [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition \("WIPO Overview 3.0"\)](#).

The Disputed Domain Name incorporates the Complainant's Trademark in its entirety with the addition of the term "femme", which is the translation of "woman" in French, at the end of the Complainant's Trademark. UDRP panels have consistently found that the addition of other terms to a mark (whether descriptive, geographical, pejorative, meaningless or otherwise) will not alter the fact that the domain name at issue is confusingly similar to the mark in question. See section 1.8 of the [WIPO Overview 3.0](#). The Panel therefore finds that the mere addition of the term "femme" is not sufficient to prevent a finding of confusing similarity between the Disputed Domain Name and the Complainant's Trademark.

As such, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's Trademark, and accordingly, paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Once a complainant establishes a *prima facie* case in respect of the lack of rights or legitimate interests of a respondent in a disputed domain name, the respondent then carries the burden of demonstrating that it has rights or legitimate interests in the disputed domain name. Where the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. See section 2.1 of the [WIPO Overview 3.0](#).

The Panel accepts that the Complainant has not authorized the Respondent to use the Complainant's Trademark. There is no relationship between the Complainant and the Respondent which would otherwise entitle the Respondent to use the Complainant's Trademark. Accordingly, the Panel is of the view that a *prima facie* case has been established by the Complainant and it is for the Respondent to show rights or legitimate interests in the Disputed Domain Name.

The Respondent did not submit a Response. The fact that the Respondent did not submit a Response does not automatically result in a decision in favor of the Complainant. However, the Respondent's failure to file a Response may result in the Panel drawing appropriate inferences from such default. The Panel may also accept all reasonable and supported allegations and inferences flowing from the Complainant as true (see *Entertainment Shopping AG v. Nischal Soni, Sonik Technologies*, WIPO Case No. [D2009-1437](#); and *Charles Jourdan Holding AG v. AAIM*, WIPO Case No. [D2000-0403](#)).

Pursuant to paragraph 4(b) of the Policy, the Respondent may establish rights or legitimate interests in the Disputed Domain Name by demonstrating any of the following:

- (i) Before any notice to him 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 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.

The Panel agrees with the Complainant that there is no evidence to show that the Respondent has trademark rights corresponding to the Disputed Domain Name, or that the Respondent has become commonly known by the Disputed Domain Name.

There is no evidence to suggest that the Respondent's use of, or demonstrable preparations to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name, is in connection with a *bona fide* offering of goods or services. The goods offered for sale on the Website, while clearly unauthorized by the Complainant, are suspected to be counterfeit products of the Complainant's genuine ZAPA products, and seek to take unfair advantage of the Complainant's Trademark and reputation (see *Prada S.A. v. Chen Mingjie*, WIPO Case No. [D2015-1466](#); *Valentino S.p.A. v. Qiu Yufeng, Li Lianye*, WIPO Case No. [D2016-1747](#)). Even if the goods were genuine ZAPA products, the Website does not display any disclaimer of a lack of relationship between the Complainant and the Respondent. Noting the above considerations, 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. Accordingly, the Panel agrees with the Complainant that the Respondent's use of the Disputed Domain Name cannot constitute a *bona fide* offering of goods, or be regarded as legitimate noncommercial or fair use. In particular, the Respondent would likely not have adopted the Complainant's Trademark, if not for the purpose of creating an impression that the Website and the goods offered on the Website are associated with the Complainant, or otherwise taking advantage of the goodwill and reputation in the Complainant's Trademark. In this regard, the Panel also notes the nature of the Disputed Domain Name, which incorporates the Complainant's Trademark in its entirety with the addition of the term "femme", within the Complainant's field of commerce and descriptive of the Complainant's sale of women's clothing, shoes and accessories under the Complainant's Trademark, carries a risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name and the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar to a widely-known trademark by an unaffiliated entity can already by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

After reviewing the supporting evidence submitted by the Complainant, the Panel agrees with the Complainant that the Complainant's Trademark appears to be well known. A quick Internet search conducted by the Panel shows that the top search results returned for the keyword "ZAPA" are the Complainant's websites and third-party websites providing information about the Complainant and/or its products. Therefore, the Panel agrees that the Respondent must have been aware of the Complainant and its rights in the Complainant's Trademark when registering and using the Disputed Domain Name.

The Panel also agrees with the Complainant that the following factors support a finding that the Disputed Domain Name was registered and has been used by the Respondent in bad faith:

- (i) The Respondent registered and has been using the Disputed Domain Name to mislead and divert Internet users to the Website for commercial gain by creating a likelihood of confusion with the Complainant's Trademark as to the source, the Complainant's sponsorship, affiliation, or endorsement of the Website. See section 3.1 of the [WIPO Overview 3.0](#).
- (ii) The Disputed Domain Name is confusingly similar to the Complainant's Trademark and the Complainant has established that the Website has been used to sell the alleged Complainant's ZAPA products. Such impersonation of the Complainant is sufficient to establish the Respondent's bad faith (see section 3.1.4 of the [WIPO Overview 3.0](#)).

In addition, the Respondent's use of a privacy shield to conceal his identity when registering the Disputed Domain Name supports a finding of the Respondent's bad faith registration and use of the Disputed Domain Name (see *Primonial v. Domain Administrator, PrivacyGuardian.org / Parla Turkmenoglu*, WIPO Case No. [D2019-0193](#)).

The Panel also notes that the Respondent failed to respond to the Complainant's contentions. This further supports a finding of bad faith registration and use of the Disputed Domain Name.

In the circumstances, the Panel finds that the Respondent registered and has been using the Disputed Domain Name in bad faith, and paragraph 4(a)(iii) of the Policy has been satisfied.

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, <zapafemme.com>, be transferred to the Complainant.

/Gabriela Kennedy/

Gabriela Kennedy

Sole Panelist

Date: February 16, 2023