

## **ADMINISTRATIVE PANEL DECISION**

Agnona S.r.l. v. yan li  
Case No. D2022-5027

### **1. The Parties**

The Complainant is Agnona S.r.l., Italy, represented by Studio Barbero S.p.A., Italy.

The Respondent is yan li, China.

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

The disputed domain name <agnonasales.com> 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 29, 2022. On January 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 6, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 January 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 31, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 1, 2023.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on February 10, 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 describes itself as one of Italy's top wool mills, supplying the world's biggest design houses, such as Ralph Lauren, Calvin Klein, Chanel, Yves Saint Laurent, Gianni Versace, Hugo Boss, Dior, Hermès, Valentino. It was founded in Borgosesia, Italy, in 1953. The Complainant inaugurated its sixth boutique in 2014 in China where the Respondent is located.

It results from the Complainant's documented allegations that it is the owner of several national and international trademark registrations worldwide for AGNONA, including International Trademark Registration No. 703193 for AGNONA (word mark), registered on June 5, 1998 in classes 3, 16, 18, 22, 24, 25, and 28, designating, amongst others, China.

The disputed domain name was registered on September 7, 2022. The language of the Registration agreement is English.

The Complainant has provided evidence demonstrating that the disputed domain name resolves to a website that uses the AGNONA mark together with images taken from the Complainant's official website without the Complainant's authorization. In addition, that website purports to offer AGNONA products for allegedly highly discounted prices.

Finally, on November 29, 2022, the Complainant's representative sent a Cease & Desist letter to the Respondent – via the Registrar online contact form and to the e-mail address displayed on the website to which the disputed domain name resolves and reminders on December 5 and 12, 2022. However, the Respondent did not answer.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant asserts that the disputed domain name is confusingly similar to its trademark AGNONA since it combines said mark with the non-distinctive word "sales", which does not change the significance of the AGNONA mark.

Secondly, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. In particular, the disputed domain name resolves to an online store that is dedicated to being deceptively and confusingly similar to the Complainant's genuine online retail store and seeks to hold itself out as a retailer of genuine AGNONA-branded goods. This is no use, or demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services before any notice of the dispute. Moreover, there is no evidence that the Respondent might have used the disputed domain name in connection with a legitimate noncommercial or fair use. The Complainant has not authorized nor licensed the Respondent to use its registered AGNONA trademarks. Finally, there is no evidence demonstrating that the Respondent, whose name is yan li, might be commonly known by the disputed domain name; in particular, his family name does not correspond to AGNONA or to the disputed domain name.

Thirdly, the Complainant finds that the Respondent's registration and use of the disputed domain name constitutes bad faith. According to the Complainant, the AGNONA trademark is well-known and thus the Respondent could not have been unaware of its existence when it registered the disputed domain name. Moreover, the fact that purported AGNONA products are offered for sale and the Complainant's trademarks and official images are published on the website to which the disputed domain name resolves, indicates that the Respondent was fully aware of the Complainant and its trademarks. The use of the disputed domain name in connection with the commercial website described above, clearly indicates that the Respondent's purpose in registering and using the disputed domain name was to intentionally attempt to attract Internet users seeking the Complainant's branded products to its own website for commercial gain, by creating a

likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of its website.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs this 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".

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements in order to obtain an order that the disputed domain name should be transferred or cancelled:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainants have 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.

The Panel is satisfied that the registrant of record for the disputed domain name is the Respondent and will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

### **A. Identical or Confusingly Similar**

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must first of all establish rights in a trademark or service mark and secondly establish that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

The Complainant is the owner of several trademark registrations consisting of AGNONA, *e.g.*, in particular International Trademark Registration No. 703193, registered on June 5, 1998 in classes 3, 16, 18, 22, 24, 25, and 28, designating, amongst others, China, where the Respondent is located.

The Panel notes that the Complainant's registered trademark AGNONA is fully included in the disputed domain name and merely followed by the term "sales" at the end of the trademark. It is the view of this Panel that the combination of the trademark AGNONA with the term "sales" placed after the mark does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademarks. In fact, in accordance with the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8, where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element.

The Top-Level Domain ".com", which is a technical requirement, is generally disregarded for the purpose of the analysis of confusing similarity.

In the light of the above, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

## **B. Rights or Legitimate Interests**

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests in a disputed domain name. In the Panel's view, based on the undisputed allegations stated above, the Complainant has made a *prima facie* case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

First, it results from the Complainant's uncontested evidence that the disputed domain name resolves to a website that uses the AGNONA mark together with images taken from the Complainant's official website without the Complainant's authorization. In addition, that website purports to offer AGNONA products for allegedly highly discounted prices. In this Panel's view, such use cannot be qualified as a *bona fide* offering of goods or services in accordance with paragraph 4(c)(i) of the Policy, since such use is likely to mislead Internet users. In addition, the Respondent did not submit any evidence of *bona fide* pre-Complaint preparations to use the disputed domain name. In particular, the Complainant's uncontested allegations demonstrate that it has not authorized or licensed the Respondent's use of the AGNONA trademarks for registering the disputed domain name which is confusingly similar to the Complainant's trademark.

Furthermore, the Panel notes that there is no evidence in the record or Whois information showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

Finally, the Panel notes that there is no evidence in the record either showing that the Respondent might be making a noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue pursuant to paragraph 4(c)(iii) of the Policy. In particular, the Panel considers it obvious that the Respondent wanted to mimic the Complainant's original website under the disputed domain name which entirely incorporates the trademark AGNONA. Noting the absence of any disclaimer, the disputed domain name's content exacerbates the confusion caused by the incorporation of the Complainant's trademark in the construction of the disputed domain name by further impersonating the Complainant. Accordingly, further to section 2.8 of the [WIPO Overview 3.0](#), the Respondent's use of the disputed domain name to host an impersonating webstore excludes any *bona fide* offering, noncommercial, or fair use of the disputed domain name from the outset. In addition, the Panel finds that the disputed domain name carries a risk of implied affiliation with the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

It is acknowledged that once the Panel finds a *prima facie* case has been established, the burden of production shifts to the Respondent to come forward with relevant and concrete evidence demonstrating rights or legitimate interests in the disputed domain name. Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

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

According to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith. One of these circumstances that the Panel finds applicable to the present dispute is that the Respondent by using the disputed domain name, has intentionally attempted 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 its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

It is the view of this Panel that these circumstances are met in the case at hand:

It results from the documented and undisputed evidence provided by the Complainant that the disputed domain name resolves to a website that uses the AGNONA mark together with images taken from the Complainant's official website. In addition, that website purports to offer AGNONA products for allegedly highly discounted prices. However, the Complainant has not given any authorization for such use and is not linked to the Respondent or its website. For the Panel, it is therefore evident that the Respondent positively knew the Complainant's trademarks and products. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain name included the Complainant's trademarks AGNONA entirely when it registered the disputed domain name. Registration of a domain name which contains a third party's trademark, in awareness of said trademark and in the absence of rights or legitimate interests is suggestive of registration in bad faith (see *e.g. Vorwerk International AG v. ayoub Iagnadi, Lagnadi LTD*, WIPO Case No. [D2022-1592](#) with further references). While the ability to purchase the goods is not known to the Panel, the alleged commercial offering and impersonation of the Complainant is sufficient to establish the Respondent's bad faith intent to mislead Internet users.

In addition, the finding of bad faith registration and use is supported by the following further circumstances resulting from the case at hand:

- (i) the trademark AGNONA is fully and identically incorporated in the disputed domain name. At the date the Respondent registered the disputed domain name, said mark existed and had been used for more than 60 years;
- (ii) the Respondent's failure to reply to the Cease-and-Desist letter and reminders sent by the Complainant and failure to submit a formal response to the Complaint;
- (iii) the Respondent's failure to provide any evidence of actual or contemplated good-faith use;
- (iv) the fact that the details disclosed for the Respondent by the Registrar are incomplete and inaccurate, noting the courier's inability to deliver the Center's Written Notice.

## 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, <agnonasales.com>, be transferred to the Complainant.

*/Tobias Malte Müller/*

**Tobias Malte Müller**

Sole Panelist

Date: February 24, 2023