

ADMINISTRATIVE PANEL DECISION

Gina Tricot AB v. GongWenDe GongWenDe
Case No. D2022-5034

1. The Parties

The Complainant is Gina Tricot AB, Sweden, represented by Otmore Limited, Malta.

The Respondent is GongWenDe GongWenDe, China.

2. The Domain Name and Registrar

The disputed domain name <ginasoldes.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 30, 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 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 3, 2023.

The Center appointed Kiyoshi Tsuru 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 Swedish company in the apparel business.

The Complainant is the owner of several trademark registrations, among others, the following:

Trademark	Registration No.	Jurisdiction	Date of Registration
GINA	017881690	European Union	December 5, 2019
GINATRICOT	004769329	European Union	March 19, 2018
GINATRICOT ginatricot	017961665	European Union	January 11, 2019
GINATRICOT ginatricot	1465304	International Registration	February 22, 2019

The Complainant owns the domain name <ginatricot.com>, which resolves to its official website, *i.e.*, an online apparel store.

The disputed domain name was registered on January 13, 2022, and currently resolves to a website that copies the look and feel of the Complainant's website and offers purportedly apparel products that are similar to those of the Complainant.

5. Parties' Contentions

A. Complainant

I. Identical or Confusingly Similar

That the disputed domain name is identical or confusingly similar to the Complainant's trademark GINA, since it incorporates said trademark in its entirety.

That the disputed domain name incorporates the word "soldes" which means "sale" in French, which should be disregarded when assessing the likelihood of confusion.

That the Complainant's trademarks protect several goods, including clothes. That, therefore, Internet consumers are led to believe that the disputed domain name corresponds to a sub-brand of the Complainant or to a website offering the Complainant's clothes on sale.

That the logotype on the website to which the disputed domain name resolves is identical to the one covered by the Complainant's prior rights.

That consumers are likely to believe that the Respondent's disputed domain name and the goods sold on the website to which it resolves come from the same commercial undertaking as that of the Complainant's, thus creating a likelihood of confusion among consumers.

II. Rights or Legitimate Interests

That the Complainant has not been able to match the Respondent to any existing trademark or company registration connected to "ginasoldes", "ginatricot", or "gina", nor has it found any evidence of the Respondent being commonly known as "ginasoldes".

That there is no evidence that the Respondent is using the disputed domain name in a noncommercial or otherwise fair way.

That the Respondent is using the disputed domain name commercially with the intent to mislead and divert consumers seeking the Complainant's products.

That there is no *bona fide* offering of goods and services; that, on the contrary, the Respondent has no known affiliation with the Complainant.

That the website to which the disputed domain name resolves displays a French address, but that in reality, said address appears to correspond to a rehabilitation center, which makes it clear that this is not the real address of the Respondent.

That there is no real information about the company or individual behind the website, only a reference to a non-existing LLC company in the privacy policy.

That the Respondent is using the disputed domain name to market and sell goods that are identical to those of the Complainant by using the Complainant's registered trademark (name and design) without the Complainant's approval.

That the Complainant sent a cease-and-desist letter to the Respondent, but that, by the time when the complaint was filed, the Complainant had not received a response.

III. Registered and Used in Bad Faith

That the Respondent is using the Complainant's trademark to sell products that are identical to those of the Complainant. That, therefore, it is clear that the Respondent has registered and is using the disputed domain name in bad faith for commercial gain, by attempting to attract Internet users to the Respondent's website.

That the website to which the disputed domain name resolves is active and is clearly using the Complainant's registered trademarks.

That, when comparing the website to which the disputed domain name resolves to the Complainant's official website, it is evident that the Respondent is aware of the Complainant and is purposely trying to mimic the Complainant for commercial gain and/or to mislead consumers seeking the Complainant's goods.

B. Respondent

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

6. Discussion and Findings

In accordance with paragraph 4(a) of the Policy, the Complainant is required to prove that each of the three following elements is satisfied:

- (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 was registered and is being used in bad faith.

Given the Respondent's failure to submit a response, the Panel may decide this proceeding based on the Complainant's undisputed factual allegations, in accordance with paragraphs 5(f), 14(a), and 15(a) of the Rules (see *Joseph Phelps Vineyards LLC v. NOLDC, Inc., Alternative Identity, Inc., and Kentech*, WIPO Case No. [D2006-0292](#)).

A. Identical or Confusingly Similar

The disputed domain name is confusingly similar to the trademark GINA, as it entirely incorporates the said trademark, with the addition of the term "soldes", which means "sale" in French. The incorporation of said term does not prevent a finding of confusing similarity under the first element (see sections 1.7 and 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The addition of the generic Top-Level Domain ("gTLD") ".com" to the disputed domain name constitutes a technical requirement of the Domain Name System ("DNS") and therefore may be disregarded under the first element confusing similarity test (see *CARACOLITO S SAS v. Nelson Brown, OXM.CO*, WIPO Case No. [D2020-0268](#); *SAP SE v. Mohammed Aziz Sheikh, Sapteq Global Consulting Services*, WIPO Case No. [D2015-0565](#); and *Bentley Motors Limited v. Domain Admin / Kyle Rocheleau, Privacy Hero Inc.*, WIPO Case No. [D2014-1919](#)).

Therefore, the first element of the Policy has been met.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets forth the following examples as circumstances where a respondent may have rights to or legitimate interests in the domain name:

- (i) before any notice to the respondent of the dispute, the use by the respondent of, or demonstrable preparations to use, the domain name or a name corresponding to the 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 domain name, even if it did not acquire trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant has asserted that it has no affiliation with the Respondent, and that the Respondent has not been commonly known by the disputed domain name (see *Beyoncé Knowles v. Sonny Ahuja*, WIPO Case No. [D2010-1431](#); and *Six Continents Hotels, Inc. v. IQ Management Corporation*, WIPO Case No. [D2004-0272](#)). The Respondent did not contest these allegations.

The Complainant has proven that the website to which the disputed domain name resolves predominantly displays the Complainant's GINA and GINATRICOT trademarks, and offers products that are similar to those of the Complainant. This shows that the Respondent has attempted to impersonate the Complainant, since Internet users looking for the Complainant who came across the website to which the disputed domain name resolves might have thought that the said website was affiliated to or sponsored by the Complainant, which cannot be deemed as a *bona fide* offering of goods and services.

The consensus view among panels appointed under the Policy is that the use of a domain name for illegal activity, such as impersonation, or passing off, cannot confer rights or legitimate interests to a respondent (see section 2.13.1 of the [WIPO Overview 3.0](#); see also *Self-Portrait IP Limited v. Franklin Kelly*, WIPO Case No. [D2019-0283](#): "The consensus view of prior panels is that impersonation of the complainant is neither a use in connection with a *bona fide* offering of products or services under Policy paragraph 4(c)(i) nor a fair or legitimate noncommercial use without intent for commercial gain misleadingly to divert

consumers, pursuant to Policy paragraph 4(c)(iii).”; *SVB Financial Group v. WhoisGuard Protected, WhoisGuard, Inc. / Citizen Global Cargo*, WIPO Case No. [D2018-0398](#); and *Haas Food Equipment GmbH v. Usman ABD, Usmandel*, WIPO Case No. [D2015-0285](#)).

In sum, the Complainant made out a *prima facie* case that the Respondent lacks rights to or legitimate interests in the disputed domain name. The Respondent did not submit any evidence or arguments to challenge the Complainant’s assertions.

In light of the above, the second element of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

Bad faith under the Policy is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark. According to paragraph 4(b) of the Policy, the following circumstances, in particular but without limitation, shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent 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 the respondent’s website or location or of a product or service on its website or location.

The fact that the Respondent chose to register the disputed domain name, which resolves to a website that displays the Complainant’s trademarks and that appears to sell products that are similar to those of the Complainant, suggests that the Respondent knew the Complainant, its trademarks, and its business when registering the disputed domain name. Therefore, the Panel finds that the Respondent has targeted the Complainant, which constitutes opportunistic bad faith (see section 3.2.1 of the [WIPO Overview 3.0](#); see also *L’Oréal v. Contact Privacy Inc. Customer 0149511181 / Jerry Peter*, WIPO Case No. [D2018-1937](#); and *Gilead Sciences Ireland UC / Gilead Sciences, Inc. v. Domain Maybe For Sale c/o Dynadot*, WIPO Case No. [D2019-0980](#)).

These facts also show that the Respondent has intentionally used the disputed domain name to attract, for commercial gain, Internet users to the website to which the disputed domain name resolves, by creating the impression among Internet users that the said website is related to, associated with, or endorsed by the Complainant, which constitutes bad faith under paragraph 4(b)(iv) of the Policy (see section 3.1.4 of the [WIPO Overview 3.0](#); see also *trivago GmbH v. Whois Agent, Whois Privacy Protection Service, Inc. / Alberto Lopez Fernandez, Alberto Lopez*, WIPO Case No. [D2014-0365](#); and *Jupiter Investment Management Group Limited v. N/A, Robert Johnson*, WIPO Case No. [D2010-0260](#)).

According to the evidence submitted by the Complainant and not contested by the Respondent, the Respondent has used the disputed domain name in an attempt to impersonate the Complainant for commercial gain, which also constitutes bad faith under the Policy (see also *SwissCare Europe v. michael click, Active OutDoors LLC*, WIPO Case No. [D2022-1496](#): “This Panel considers that, in appropriate

circumstances, a failure to pass the impersonation test may properly lead to a finding of registration and use in bad faith because of the fact that, at its heart, such a domain name has been selected and used with the intention of unfairly deceiving Internet users, notably those who are (actual or potential) consumers of the trademark owner.”; *Philip Morris Products S.A. v. Domain Administrator, Registrant of iqosatismaganiz.com (apiname com) / Anl Girgin, Teknoloji Sarayi*, WIPO Case No. [D2019-0466](#); *Self-Portrait IP Limited v. Franklin Kelly, supra*; and *Friedman and Soliman Enterprises, LLC v. Gary Selesko, M&B Relocation and Referral, LLC*, WIPO Case No. [D2016-0800](#)).

Therefore, the third element of the Policy has been met.

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

/Kiyoshi Tsuru/

Kiyoshi Tsuru

Sole Panelist

Date: March 14, 2023