

ADMINISTRATIVE PANEL DECISION

Benda Bili v. 胡燕 (Yan Hu)
Case No. D2023-3076

1. The Parties

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

The Respondent is 胡燕 (Yan Hu), China.

2. The Domain Names and Registrar

The disputed domain names <sezaneefr.shop>, <sezaneeonline.shop>, and <sezaneshop.online> (the “Domain Names”) are registered with Chengdu West Dimension Digital Technology Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on July 18, 2023. On July 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On July 24, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Names which differed from the named Respondent (Not Identified) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 26, 2023, 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 in English on July 27, 2023.

On July 26, 2023, the Center informed the parties in Chinese and English, that the language of the registration agreement for the Domain Name is Chinese. On July 27, 2023, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

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 August 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 22, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 23, 2023.

The Center appointed Karen Fong as the sole panelist in this matter on September 12, 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 company headquartered in France specializing in ready to wear clothing and accessories. It trades under the name and brand Sezane. The name is a contraction of the name of its founder and president Morgane Sezalory. The Complainant has a portfolio of SÉZANE trade mark registrations including International Trade Mark Registration No 1170876 registered on June 3, 2013 (the "Trade Mark"). The Complainant also owns various domain names comprising the Trade Mark including <sezane.com> registered on April 3, 2003.

The Respondent who appears to be based in China registered all three Domain Names on July 12, 2023.

Two of the Domain Names <sezaneefr.shop> and <sezaneeonline.shop> are connected to websites which bear the Trade Mark in the form of the Complainant's logo, mimics the Complainant's own website and purportedly offers for sale merchandise that bears the Trade Mark at discounted prices and purports to be the Complainant's products. The Domain Name <sezaneshop.online> is inactive (the websites collectively to be referred to as the "Websites").

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Names are confusingly similar to the Trade Mark, that the Respondent has no rights or legitimate interests with respect to the Domain Names, and that the Domain Names were registered and are being used in bad faith. The Complainant requests transfer of the Domain Names.

B. Respondent

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

6. Discussion and Findings

A. General

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the Domain Names, the Complainant must prove each of the following, namely that:

- (i) The Domain Names are identical or confusingly similar to the trade marks or service marks in which the Complainant has rights; and
- (ii) The Respondent has no rights or legitimate interests in respect of the Domain Names; and
- (iii) The Domain Names were registered and are being used in bad faith.

B. Language of the Proceeding

The Rules, paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement, the language of the proceeding shall be the language of the registration agreement, subject to the authority of the panel to determine otherwise, having regard to the circumstances of the administrative proceeding. According to the information received from the Registrar, the language of the Registration Agreement for the Domain Names is Chinese.

The Complainant submits that the language of the proceeding should be English for the following reasons:

- English is the language of international relations and one of the working languages of the Center;
- the Domain Names comprise Roman rather than Chinese script;
- the costs of translation into Chinese if Chinese is adopted as the language of the proceeding would require there to be a significantly higher costs to the Complainant which is not proportional to the costs of UDRP proceedings.

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.

The Panel notes that the Domain Names and the Websites are not in Chinese script. Although the Center has sent the "Language of Proceedings" email and notified the Parties the commencement of administrative proceeding in both Chinese and English, the Respondent has not challenged the Complainant's language request and in fact has failed to file a response in either English or Chinese. The Panel is also mindful of the need to ensure the proceeding conducted in a timely and cost effective manner. In this case, the Complainant may be unduly disadvantaged by having to conduct the proceeding in Chinese. In all the circumstances, the Panel determines that English be the language of the proceeding.

C. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has established that it has rights to the Trade Mark.

The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the trade mark and the domain name to determine whether the domain name is confusingly similar to the trade mark. The test involves a side-by-side comparison of the domain name and the textual components of the relevant trade mark to assess whether the mark is recognizable within the domain name.

In this case, the three Domain Names contain the Complainant's Trade Mark in its entirety with the addition of the letter "e" and the term "fr" as a suffix to the Trade Mark in relation to one Domain Name, the addition of the letter "e" and the word "online" as a suffix to the Trade Mark in relation to the second and the addition of the word "shop" after the Trade Mark of the third Domain Name.

It is well established that domain names which consist of a common, obvious, or intentional misspelling of a trade mark are considered to be confusingly similar to the relevant mark for the purposes of the first element. This stems from the fact that the domain name contains sufficiently recognizable aspects of the relevant mark (see section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). This is a typical typosquatting case as the Trade Mark is clearly recognizable within the Domain Names and despite the misspelling or the addition of the letter "e" after two of the Domain Names and addition of terms or words "fr", "online" and "shop" after the Trade Mark in all the Domain Names, it does not prevent a finding of confusing similarity ([WIPO Overview 3.0](#), section 1.8).

For the purposes of assessing identity or confusing similarity under paragraph 4(a)(i) of the Policy, it is permissible for the Panel to ignore the generic Top-Level Domain (“gTLD”) which in this case is “.shop” and “.online”. It is viewed as a standard registration requirement (section 1.11.1 of the [WIPO Overview 3.0](#)). The Panel finds that the Domain Name is confusingly similar to trade marks in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy therefore are fulfilled.

D. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights or legitimate interests in the domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, the respondent’s use 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 has been commonly known by the domain name, even if it has acquired no trade mark 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 trade mark or service mark at issue.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a domain name, it is well established that, as it is put in section 2.1 of the [WIPO Overview 3.0](#), a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. Once such *prima facie* case is made out, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent does come forward with relevant evidence of rights or legitimate interests, the panel weighs all the evidence, with the burden of proof always remaining on the complainant.

The Complainant contends that the Respondent has not been licensed or authorised to use the Trade Mark as a domain name or in any other way. Neither has the Complainant endorsed or sponsored the Respondent or the Websites. There is no evidence that the Respondent is commonly known by the Domain Names or owns any Trade marks for the Domain Names. The offer for sale of discounted goods, which appear to bear the Trade Mark on two of the Websites, suggests a connection, sponsorship, or endorsement by the Complainant, when this is not the case, and as such cannot be considered legitimate noncommercial use or fair use. Moreover, the fact that the Respondent was impersonating the Complainant further reinforces the Panel’s finding that such use cannot constitute a *bona fide* offering of goods. See section 2.8 of the [WIPO Overview 3.0](#). One of the Domain Name is being passively held and therefore does not amount to *bona fide* offering of goods or services or a legitimate noncommercial or fair use under the Policy.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the Domain Names.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Names. The requirements of paragraph 4(a)(ii) of the Policy therefore are fulfilled.

E. Registered and Used in Bad Faith

To succeed under the Policy, the Complainant must show that the Domain Names have been registered and are being used in bad faith.

The Panel is satisfied that the Respondent was aware of the Trade Mark when he registered the Domain Names given the reputation of the Trade Mark and the fact that it was registered prior to the registration of the Domain Names. The very incorporation of the Trade Mark in the Domain Names, use of the Complainant's logo and Trade Mark on two of the Websites, the impersonation of the Complainant's website and the offer for sale of products bearing the Trade Mark on two of the Website at discounted prices, confirm the Respondent's awareness of the Trade Mark. It is therefore implausible that the Respondent was unaware of the Complainant when he registered the Domain Names.

The section 3.2.2 of the [WIPO Overview 3.0](#) states as follows:

"Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant's mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant's mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent's claim not to have been aware of the complainant's mark."

The above together with the fact that there is a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent's choice of the Domain Names are also significant factors to consider. The Panel finds that the Respondent's registration is in bad faith. The addition of the geographical term "fr" for "France", where the Complainant is established, to one of the Domain Names and the relevant terms "online" and "shop" to all the Domain Names further reflects that the Respondent had the Complainant in mind when registering the Domain Names.

The Panel also finds that the use of the Domain Names is in bad faith. The products offered for sale on two of the Websites are likely to be unauthorised and heavily discounted SÉZANE products considering the difference in prices and the fact that there is no relationship between the Parties. The use by a respondent of a domain name which includes a well-known trade mark to resolve to a website which offers and sells possible counterfeit products under that trade mark is evidence of bad faith registration and use. (See *Burberry Limited v. Jonathan Schefren*, WIPO Case No. [D2008-1546](#); and *Prada S.A. v. Domains for Life*, WIPO Case No. [D2004-1019](#)).

The content of these two Websites are calculated to give the impression that they have been authorized by or connected to the Complainant when this is not the case. The Websites were set up to deliberately mislead Internet users that they are connected to, authorised by or affiliated with the Complainant. From the above, the Panel concludes that the Respondent has intentionally attempted to attract, for commercial gain, by misleading Internet users into believing that the Respondent's Websites are and the products sold on them are those of or authorised or endorsed by the Complainant.

The fact that one of the Domain Name directs to an inactive page also amounts to use in bad faith. Section 3.3 of the [WIPO Overview 3.0](#) states that:

"[f]rom the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or 'coming soon' page) would not prevent a finding of bad faith under the doctrine of passive holding.

While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put."

In this case, the Trade Mark is a well-known trade mark. It is implausible in the Panel's view that there is any good faith use to which the Domain Name may be put especially since the other two Domain Names are directed to websites which are likely to sell counterfeit products. Further, the Respondent has failed to file a response. This is also a situation where in the absence of any arguments to the contrary, given the fame of the Trade Mark and the area of activity where it operates, it is implausible that there can be any good faith use to which the Domain Name may be put. Considering the circumstances, the Panel considers that the Domain Name <sezaneshop.online> is also being used in bad faith. Accordingly, the Complaint has satisfied the third element of the UDRP, *i.e.*, the Domain Name was registered and is being used in bad faith.

The Panel therefore concludes that the Domain Names were registered and have been used in bad faith under paragraph 4(b)(iv) of the Policy, and 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 Domain Names, <sezaneefr.shop>, <sezaneeonline.shop> and <sezaneshop.online> be transferred to the Complainant.

/Karen Fong/

Karen Fong

Sole Panelist

Date: October 1, 2023