

ADMINISTRATIVE PANEL DECISION

L'Impertinente SAS v. Hghfd Hbfdg, Yahui Mo
Case No. D2023-3420

1. The Parties

The Complainant is L'Impertinente SAS, France, represented by Domgate, France.

The Respondents are Hghfd Hbfdg, China (the "Respondent 1") and Yahui Mo, China (the "Respondent 2").

2. The Domain Names and Registrar

The disputed domain names <boutiqueyse.com>, <ysefr.com>, and <yseoldes.com> (the "Domain Names") are registered with Name.com, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 10, 2023. On August 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On the same day, the Registrar transmitted by email to the Center its verification response confirming that the Respondents are listed as the registrants 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 Respondents of the Complaint, and the proceedings commenced on August 29, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 18, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on September 19, 2023.

The Center appointed Piotr Nowaczyk as the sole panelist in this matter on September 21, 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 lingerie, swimwear, and homewear manufacturer and retailer. It was registered in 2011. Currently, the Complainant manufactures its products under the Ysé brand.

The Complainant is the owner of several YSÉ trademark registrations, including the International Trademark Registration for YSÉ, No. 1162251 registered on March 29, 2013.

The Complainant is also the owner of the domain names incorporating its YSÉ trademark, including <yse-paris.com>.

The Domain Names <boutiqueyse.com> and <yseoldes.com> were registered on November 19, 2021, while the Domain Name <ysefr.com> was registered on December 21, 2021.

In December 2021 and March 2022, the Complainant sent cease-and-desist letters to the Respondents. However, the Complainant has not received any response to date.

According to the screenshots attached to the Complaint, all the Domain Names resolved previously to online shops purportedly offering the products bearing the Complainant's YSÉ trademark and displaying this trademark together with the Complainant's official marketing materials (the "Websites").

As of the date of this decision, the Domain Names <boutiqueyse.com> and <yseoldes.com> resolve to inactive websites. The Domain Name <ysefr.com> still resolves to the Website.

5. Parties' Contentions

A. Complainant

According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the Domain Names are almost identical to the YSÉ trademark in which the Complainant has rights.

Second, the Complainant argues that the Respondents have neither rights nor legitimate interests in the Domain Names.

Third, the Complainant contends that the Domain Names were registered and are being used in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Matters – Consolidation of the Multiple Domain Names

Paragraph 3(c) of the Rules provides that the complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder. Moreover, pursuant to section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of

such a consolidation scenario.

In the present case, the Panel finds that various commonalities between the Domain Names provide sufficient evidence that they are most likely subject to a common control.

First, all the Domain Names follow similar naming patterns. They are composed of the Complainant's YSÉ trademark together with additional terms in French and Top-Level Domain ("TLD") ".com".

Second, the Domain Names were registered either on November 19, 2021, or on December 21, 2021.

Third, all the Domain Names are registered with the same Registrar.

Fourth, all the Domain Names resolved previously to the Websites which featured online shops purportedly offering the products under the Complainant's YSÉ trademark and displaying this trademark together with the Complainant's official marketing materials.

Lastly, the Respondents have not denied that the Domain Names are under a common control.

Accordingly, the Panel finds that the Domain Names are most likely subject to a common control for the purposes of these proceedings. Thus, the Panel permits the consolidation of the proceedings.

6.2. Substantive Matters – Three Elements

Paragraph 4(a) of the Policy places a burden on the Complainant to prove the presence of three separate elements, which can be summarized as follows:

- (i) the Domain Names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondents have no rights or legitimate interests in the Domain Names; and
- (iii) the Domain Names have been registered and are being used in bad faith.

The requested remedy may only be granted if the above criteria are met.

At the outset, the Panel notes that the applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence". See section 4.2 of the [WIPO Overview 3.0](#).

A. Identical or Confusingly Similar

Under the first requirement, the Complainant must establish that the Domain Names are identical or confusingly similar to the trademark in which the Complainant has rights.

The Complainant holds valid YSÉ trademarks registrations.

All the Domain Names incorporate the YSÉ trademark with the exception of the acute accent on the "e". This omission is due to a technical reason. As numerous UDRP panels have held, incorporating a trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to a registered trademark (see *PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS COMPUTER INDUSTRY (a/k/a EMS)*, WIPO Case No. [D2003-0696](#)).

The addition of the terms "boutique", "fr", and "soldes" in the Domain Names does not prevent a finding of confusing similarity between the Domain Names and the Complainant's trademark. As numerous UDRP panels have held, where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not

prevent a finding of confusing similarity under the first element. See section 1.8, [WIPO Overview 3.0](#).

The TLD “.com” in the Domain Names is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See section 1.11.1, [WIPO Overview 3.0](#).

Given the above, the Panel finds that the Domain Names are confusingly similar to the YSÉ trademark in which the Complainant has rights. Thus, the Complainant has proved the requirements under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under the second requirement, the Complainant must prove that the Respondents have no rights or legitimate interests in the Domain Names.

The respondent may establish a right or legitimate interest in the domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- (i) that it has used or made 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 prior to the dispute; or
- (ii) that it is commonly known by the domain name, even if it has not acquired any trademark rights; or
- (iii) that it 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.

Although given the opportunity, the Respondents have not submitted any evidence indicating that any of the circumstances foreseen in paragraph 4(c) of the Policy are present in this case.

On the contrary, it results from the evidence on record that the Complainant's YSÉ trademark registrations predate the Respondents' registration of the Domain Names. There is no evidence in the case record that the Complainant has licensed or otherwise permitted the Respondents to use the YSÉ trademark or to register the Domain Names incorporating this trademark. There is also no evidence to suggest that the Respondents have been commonly known by the Domain Names.

Moreover, it results from the evidence on record that the Respondents do not make use of the Domain Names in connection with a *bona fide* offering of goods or services, nor do it make a legitimate noncommercial or fair use of the Domain Names. On the contrary, the Domain Names resolved previously to the Websites which featured the online shops purportedly offering the products bearing the Complainant's YSÉ trademark and displaying this trademark together with the Complainant's official marketing materials. The Domain Names also shared the same look and feel as the Complainant's official website. Such use of the Domain Names does not confer rights or legitimate interests on the Respondents.

The Respondents could make a *bona fide* offering of goods and services as a reseller or distributor of the Complainant's products, and thus have a legitimate interest in the Domain Names, if this use meets certain requirements as set out in *Ok! Data Americas, Inc. v ASD, Inc.*, WIPO Case No. [D2001-0903](#). These requirements are that: (1) the Respondents must actually be offering the goods or services at issue; (2) the Respondents must use the website to sell only the trademarked goods, otherwise, it could be using the trademark to bait Internet users and then switch them to other goods; (3) the Websites must accurately disclose the Respondents' relationship with the trademark owner; and (4) the Respondents must not try to corner the market in all Domain Names, thus depriving the trademark owner of reflecting its own mark in the Domain Names.

In the present case, the above referred requirements are not met.

The Domain Names and the Websites suggest at least an affiliation with the Complainant and its YSE trademark. The Panel believes that the use of the Complainant's YSE trademark in the Domain Names and on the Websites misleads consumers regarding the relationship between the Respondents and the Complainant, as Internet users may falsely believe that the Respondents are an official/endorsed distributor of the Complainant's products. At the same time, the relationship between the Respondents and the Complainant (or a lack thereof) is not disclosed on the Websites. This further perpetuates the false impression of a relationship between the Respondents and the Complainant.

Given the above, the Respondents have failed to invoke any circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in respect of the Domain Names. Thus, there is no evidence in the case file that refutes the Complainant's *prima facie* case. The Panel concludes that the Complainant has also proved the requirement under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Under the third element, the Complainant must prove that the Domain Names have been registered and are being used in bad faith.

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. See section 3.1, [WIPO Overview 3.0](#).

Under paragraph 4(b) of the Policy, evidence of bad faith registration and use includes without limitation:

- (i) circumstances indicating the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of a trademark or to a competitor of the trademark owner, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the domain name was registered in order to prevent the owner of a trademark from reflecting the mark in a corresponding domain name, provided it is a pattern of such conduct; or
- (iii) circumstances indicating that the domain name was registered primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the domain name has intentionally been used in an attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with a trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on a website or location.

As indicated above, the Complainant's rights in the YSE trademark predate the registration of the Domain Names. This Panel finds that the Respondents were or should have been aware of the Complainant's trademark at the time of registration of the Domain Names. This finding is supported by the content of the Websites allegedly offering the Complainant's products, as well as displaying the Complainant's YSE trademark and the Complainant's official product images. Moreover, it has been proven to the Panel's satisfaction that the Complainant's YSE trademark is well known and unique to the Complainant. Thus, the Respondents could not likely reasonably ignore the reputation of products under this trademark. In sum, the Respondents in all likelihood registered the Domain Names with the expectation of taking advantage of the reputation of the Complainant's YSE trademark.

Furthermore, the Domain Names were being used in bad faith by the Respondents to allegedly offer for sale the Complainant's products. By reproducing the Complainant's registered YSE trademark in the Domain Names and on the Websites, together with the Complainant's official marketing materials, the Respondents

suggest to be an official online retailer of the Complainant's products. There is thus little doubt that the Respondents intended to earn profit from the confusion created with Internet users. In consequence, the Panel finds that the Respondents registered and used the Domain Names deliberately in order to take advantage of the Complainant's reputation and to give credibility to their operations. While two of the Domain Names no longer resolve to active website, given the totality of the circumstances here, such non-use does not prevent a finding of bad faith. [WIPO Overview 3.0](#), section 3.3.

Moreover, the Complainant has proved that the Respondent 2 has engaged in the pattern of bad faith conduct. UDRP Panel has found the abusive domain name registration on the part of the Respondent 2 in the case *BA&SH v. Whois Agent, Domain Protection Services, Inc. / Yahui Mo, Kang Cao*, WIPO Case No. [D2022-0236](#).

Finally, the Respondents failed to respond to the cease-and-desist letters sent by the Complainant. This circumstance constitutes further evidence of the Respondents' bad faith.

For the reasons discussed above, the Panel finds that the Complainant has proved the requirements under 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 <boutiqueyse.com>, <ysefr.com>, and <ysefdes.com> be transferred to the Complainant.

/Piotr Nowaczyk/

Piotr Nowaczyk

Sole Panelist

Date: October 5, 2023