

ADMINISTRATIVE PANEL DECISION

Benda Bili v. 施孤岚 (zongqin zhang)

Case No. D2024-1118

1. The Parties

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

The Respondent is 施孤岚 (zongqin zhang), located in China or United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <sezanne-fr.com> is registered with West263 International Limited (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on March 14, 2024. On March 14, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 15, 2024, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 18, 2024 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 March 19, 2024.

On March 18, 2024 the Center informed the Parties in Chinese and English, that the language of the registration agreement for the disputed domain name is Chinese. On March 19, 2024, 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 in Chinese and English of the Complaint, and the proceedings commenced on March 27, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 16, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 17, 2024.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on April 23, 2024. 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 incorporated in France. It is a company specializing in ready-to-wear collections and accessories for women, operating under its trademark SÉZANE. This mark is derived from the first name and last name of the Complainant's founder and President, Morgane Sézalory. The Complainant's clothing and accessories are available through its online shop provided at the domain name <sezane.com> registered by the Complainant on April 3, 2003.

The Complainant provides evidence that it owns an international trademark portfolio for the mark SÉZANE, including, but not limited to, the International Trademark Registration number 1170876 for SÉZANE, registered on June 3, 2013, designating inter alia, the China and the United States where the Respondent appears to be located..

The disputed domain name was registered on March 9, 2024 and is therefore of a later date than the Complainant's abovementioned trademark registration. The Complainant provides evidence that the disputed domain name directed to an online store impersonating the Complainant and selling clothes and accessories at discounted prices. However, the Panel notes that on the date of this Decision, the disputed domain name points to an inactive website.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that it is the owner of registered trademarks consisting of SÉZANE and that it has a strong reputation for the products under this trademark. The Complainant asserts that the disputed domain name is confusingly similar to the abovementioned trademarks since it incorporates such mark in its entirety, adding only the letter "n" and the geographical term "-fr". The Complainant essentially contends that the Respondent is not affiliated with nor authorized by the Complainant in any way and that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant also contends that the Respondent uses the disputed domain name to disrupt the Complainant's business and to attract Internet users by impersonating the Complainant, particularly as the Respondent identified itself as "Sézane" in the "About us" section of the website. The Complainant alleges that such use made of the disputed domain name does not confer any rights or legitimate interests and that it proves that the Respondent has registered and used the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that the English language is the language most widely used in international relations and is one of the working languages of the Center; the fact that the disputed domain name is formed by words in Roman characters (ASCII) and not in Chinese script; the fact that the Respondent is located in the United States and is therefore familiar with English and the fact that in order to proceed in Chinese, the Complainant would have had to retain specialized translation services at a cost very likely to be higher than the overall cost of these proceedings.

The Respondent did not make any specific submissions with respect to the language of the proceeding.

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 (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2 Substantive Issues

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds that the Complainant's mark SÉZANE is clearly recognizable within the disputed domain name, since the disputed domain name fully incorporates this mark (be it with the addition of an extra letter "n", which however does not cause an overall altered perception of the disputed domain name in terms of pronunciation, concept or otherwise). Accordingly, the disputed domain name is confusingly similar to the Complainant's mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of another term, here the letter "n" and the geographical abbreviation "-fr", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in domain names may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Moreover, upon review of the facts and evidence, the Panel notes that the Respondent has not provided any evidence of the use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services. Instead, upon review of the facts and the evidence submitted in this proceeding, the Panel notes that the disputed domain name directed to an active website selling products at discounted prices and which showed a clear intent on the part of the Respondent to impersonate the Complainant, for commercial gain. In fact, on said website, the Respondent particularly identified itself as “Sézane” in the “About us” section of the website. The Panel also finds that there are no other circumstances apparently conferring any rights or legitimate interests on the Respondent. Given the abovementioned elements, the Panel concludes that the Respondent’s use does not constitute a bona fide offering of goods or services, nor a legitimate noncommercial or fair use of the disputed domain name.

However, the Panel notes that on the date of this Decision, the disputed domain name directs to an inactive or blank webpage. In this regard, the Panel finds that holding a domain name passively, without making any use of it, also does not confer any rights or legitimate interests in the disputed domain name on the Respondent in this case (see in this regard earlier UDRP decisions such as *Bollore SE v. 赵竹飞 (Zhao Zhu Fei)*, WIPO Case No. [D2020-0691](#); and *Vente-Privee.Com and Vente-Privee.com IP S.à.r.l. v. 崔郡 (jun cui)*, WIPO Case No. [D2021-1685](#)).

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent has registered a domain name which is confusingly similar to the Complainant’s intensely used and distinctive trademarks, see in this regard also previous decisions under the Policy which have recognized the Complainant’s rights in its marks, such as *Benda Bili v. 黄海玲 (Hai Ling Huang)*, WIPO Case No. [D2024-0306](#). The Panel deducts from this fact that by registering the disputed domain name, the Respondent deliberately and consciously targeted the Complainant’s prior trademarks for SÉZANE. The Panel finds that this creates a presumption of bad faith. The Panel also notes that the Complainant’s trademarks in this case predate the registration date of the disputed domain name by several years, and that the Respondent could not have been reasonably unaware of them. This finding is

confirmed by the fact that the Respondent attempted to misrepresent itself as “Sézane” in the “About us” section of the website which was previously linked to the disputed domain name. Furthermore, the Panel notes that even a cursory Internet search at the time of registration of the disputed domain name would have made it clear to the Respondent that the Complainant owned prior rights in its trademarks for SÉZANE. In the Panel’s view, the above elements clearly indicate bad faith on the part of the Respondent, and the Panel therefore finds that it has been demonstrated that the Respondent registered the disputed domain name in bad faith.

As to use of the disputed domain name in bad faith, the Complainant provides evidence that the disputed domain name directed to an active website offering for sale competing and discounted clothing products, and which showed a clear intent on the part of the Respondent to misleadingly pass it off as the Complainant’s website. The Panel concludes from these facts that the Respondent is intentionally attracting Internet users for commercial gain to such website, by creating consumer confusion between the website associated with the disputed domain name and the Complainant’s trademarks. This constitutes direct evidence of the Respondent’s bad faith under paragraph 4(b)(iv) of the Policy. The Panel therefore finds that it has been demonstrated that the Respondent has used and is using the disputed domain name in bad faith.

The Panel notes that on the date of this Decision, the disputed domain name directs to an inactive or blank website. Panels 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. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although 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, and (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness and longstanding use of the Complainant’s trademarks, the composition of the disputed domain name, the fact that the Respondent has not replied or cooperated in this procedure and the unlikelihood of any good faith use of the disputed domain name by the Respondent and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

The Panel finds that the Complainant has established the third element 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 disputed domain name <sezanne-fr.com> be transferred to the Complainant.

/Deanna Wong Wai Man/

Deanna Wong Wai Man

Sole Panelist

Date: May 7, 2024