

ADMINISTRATIVE PANEL DECISION

SHOE, S.L. v. Gabriele Freud, Zhang Fei, na
Case No. D2024-2980

1. The Parties

The Complainant is SHOE, S.L., Spain, represented by Abril Abogados, Spain.

The Respondents are Gabriele Freud, Germany, and Zhang Fei, na, China.

2. The Domain Names and Registrars

The disputed domain name <lottusseespana.com> is registered with Key-Systems GmbH, and the disputed domain name <lottusse-outlet.com> is registered with Alibaba.com Singapore E-Commerce Private Limited (the “Registrars”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 23, 2024. On July 23, 2024, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On July 24 and 26, 2024, the Registrars transmitted by email to the Center the verification responses disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Unknown) and contact information in the Complaint.

The Center sent an email communication to the Complainant on July 26, 2024, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrars, requesting the Complainant to either file separate complaints for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity and/or that all domain names are under common control. The Complainant filed an amended Complaint on August 6, 2024.

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 Respondents of the Complaint, and the proceedings commenced on August 8, 2024. In accordance with the Rules, paragraph 5,

the due date for Response was August 28, 2024. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on August 29, 2024.

The Center appointed Mihaela Maravela as the sole panelist in this matter on September 2, 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

According to information in the Complaint, the Complainant was founded in Mallorca, Spain in 1877 as an artisan shoe workshop and specializes in the manufacture of leather products, such as shoes, bags, suitcases, backpacks, wallets, briefcases, jackets, coats, etc. The Complainant has more than 50 shops around the globe.

The Complainant is the holder of a number of trademarks for or including LOTTUSSE, including the European Union trademark No. 15960925 for LOTTUSSE registered on March 23, 2017 for classes 18, 25 and 35, the International trademark No. 1461261 for LOTTUSSE registered on March 13, 2018 for classes 18, 25 and 35, and the International trademark no. 827658 for LOTTUSSE 1877 registered on November 19, 2003 for classes 18, 25, 35 and 39. The Complainant is also the owner of the domain name <lottusse.com>, registered on February 10, 1997, which it uses as its official website.

The disputed domain name <lottusseespana.com> was registered on April 18, 2023 and the disputed domain name <lottusse-outlet.com> was registered on July 10, 2023. The disputed domain names do not resolve to active websites. According to evidence with the Complaint, the disputed domain name <lottusse-outlet.com> redirected to another website which displayed the Complainant's trademark, year of foundation (1877) and products.

There is no available information concerning the Respondents except for the information made available by the Registrars.

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 names.

Notably, the Complainant contends that the disputed domain names wholly reproduce the LOTTUSSE trademarks of the Complainant alongside a descriptive and generic term, namely "outlet", which is descriptive of the services which are meant to be provided, respectively "espana", which clearly refers to the Complainant's country of origin, España/Spain. Therefore, the Complainant concludes that the disputed domain names are identical or confusingly similar to the trademark LOTTUSSE owned by the Complainant.

As regards the second element, the Complainant argues that the Respondents have no rights over the LOTTUSSE trademark nor any kind of authorization or relationship with the Complainant that could justify the use of the LOTTUSSE trademarks as a domain name. The Complainant argues that given the well-known character of the LOTTUSSE trademarks and the construction of the disputed domain names, the Respondent's interest was to mislead consumers into thinking that the disputed domain names belonged to the Complainant, being an official webpage where they could buy their products. The webpage to which the disputed domain name <lottusse-outlet.com> redirects (i.e., "www.grizzlyoutlets.com") most likely offers counterfeit LOTTUSSE products and uses the LOTTUSSE trademarks on the webpage without authorization from the Complainant.

In what concerns the third element, the Complainant argues that its trademarks are actively being used by the Complainant and also, they have acquired a well-known character among consumers in the field of shoes, not only in Spain but also in other countries. The disputed domain names were registered and are being used in bad faith since the Respondents obviously know about the existence of the Complainant's activity and of its prior LOTTUSSE trademarks and domain name <lottusse.com>, and they were aware of the fact that, by creating domain names which include the generic terms "outlet" and "espana", they would attract commercial gain since "outlets" are commonly known for having products at cheaper prices, and the term "espana" would be seen as a reference to the country of origin of the Complainant. The Complainant submits that Internet users would access the webpages at the disputed domain names being misled by the false claim that the products were being officially marketed by the LOTTUSSE trademark owners.

B. Respondents

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

6. Discussion and Findings

6.1. Consolidation: Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The disputed domain name registrants did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.11.2.

As regards the common control, the Panel notes that: (i) the disputed domain names are similar in construction in that they both include the LOTTUSSE trademark of the Complainant together with a generic term, "outlet", respectively "espana", (ii) both disputed domain names were updated in July 2024, couple of days apart (i.e., on July 24, and July 26 respectively), (iii) in the Google search page for "lottusse outlet" both disputed domain names appear to describe in Spanish, the language of the Complainant, an offer of similar products with those of the Complainant, and (iv) according to information with the Complaint, the registrants provided address and contact details for both disputed domain names which seemed to be fictitious.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as "the Respondent") in a single proceeding.

6.2. Substantive issues

Although properly notified, no response has been received from the Respondent in this case. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules. The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", and the Panel can draw

certain inferences in light of the particular facts and circumstances of the case. [WIPO Overview 3.0](#), section 4.2.

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights, (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names, and (iii) the disputed domain names have been registered and are being used in bad faith.

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 names. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of the trademark LOTTUSSE for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, "espana", respectively "outlet" and a hyphen) 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 names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel agrees that the Top-Level Domain ("TLD") ".com" is disregarded in the confusing similarity test, as it does not form part of the comparison as it is a standard registration requirement for technical reasons ([WIPO Overview 3.0](#), section 1.11.1).

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 a domain name 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 names. 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 names such as those enumerated in the Policy or otherwise.

There is no evidence showing that the Respondent holds any right for LOTTUSSE trademarks. The Panel also notes that there is no evidence showing that the Respondent is authorized or licensed to use the trademark LOTTUSSE.

As of the date of this decision, the disputed domain names resolve to inactive websites. According to the unrebutted evidence with the Complaint, the disputed domain name <lottusse-outlet.com> redirected Internet users to a third-party webpage (i.e., “www.grizzlyoutlets.com”) where LOTTUSSE products were offered and the Complainant’s LOTTUSSE trademark was displayed without authorization from the Complainant. A respondent’s use of a complainant’s mark to redirect users (e.g., to a competing site) would not support a claim to rights or legitimate interests ([WIPO Overview 3.0](#), section 2.5.3). The Panel finds that such use of the disputed domain name cannot amount to a bona fide offering of goods and services or a legitimate noncommercial or fair use.

On the date of this Decision, the disputed domain names do not resolve to active websites. The Panel finds that holding domain names passively, without making any use of them, also does not confer any rights or legitimate interests in the disputed domain names on the Respondent, under the circumstances of the case.

Furthermore, the disputed domain names incorporate the Complainant’s mark in its entirety with the additional terms “espana” respectively “outlet”, which are descriptive of goods and services associated with the Complainant’s industry, or with the Complainant’s country of origin. Such composition carries a risk of implied affiliation and cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See [WIPO Overview 3.0](#), section 2.5.1.

Also, there is no evidence indicating that the Respondent is commonly known by the disputed domain names.

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

According to the unrebutted assertions of the Complainant, its LOTTUSSE trademarks were widely used in commerce well before the registration of the disputed domain names and are well-known. The disputed domain names are confusingly similar with the Complainant’s trademarks and contain terms pertaining to the Complainant’s industry (the addition of “outlet” shows a clear intention of the Respondent to attract consumers to the disputed domain name <lottusse-outlet.com> in the expectation that they will find better prices than usual) or its country of origin (for the disputed domain name <lottusseespana.com>). The website to which one of the disputed domain names redirected displayed the Complainant’s LOTTUSSE trademark and year of foundation. In the Google search page for “lottusse outlet” both disputed domain names appear to describe in Spanish, the language of the Complainant, an offer of similar products with those of the Complainant. Under these circumstances, the Panel considers that the Respondent knew or should have known that the disputed domain names consisted of the Complainant’s trademark when registering the disputed domain names. Registration of the disputed domain names in awareness of the reputed LOTTUSSE mark and in the absence of rights or legitimate interests in this case amounts to registration in bad faith.

As regards the use of the disputed domain names, from the evidence on file and not rebutted by the Respondent, it results that the disputed domain name <lottusse-outlet.com> was redirecting Internet users to

a third-party webpage (i.e., “www.grizzlyoutlets.com”) where LOTTUSSE products were purportedly offered and the Complainant’s LOTTUSSE trademark was prominently displayed without authorization from the Complainant. Such use creates a false impression of an association with the Complainant. As the Respondent is not authorised by the Complainant to use the Complainant’s trademarks and is not associated with the Complainant in any way, such use is in bad faith. Accordingly, the Panel finds that the Respondent has registered the disputed domain name with the intention of taking advantage of the fame and reputation of the Complainant’s trademark for the commercial benefit of the Respondent.

Moreover, the Respondent has not formally participated in these proceedings and has failed to rebut the Complainant’s contentions or provide any evidence of actual or contemplated good-faith use, and indeed none would seem plausible. The Respondent has provided incomplete or false contact details when registering the disputed domain names (the courier service was not able to deliver the Written Notice to the Respondent due to bad addresses). Although at the time of filing of the Complaint, the disputed domain names were inactive, considering the circumstances of this case, the Panel finds that such non-use of the disputed domain names does not prevent a finding of bad faith under the doctrine of passive holding (see section 3.3 of the [WIPO Overview 3.0](#)).

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 names <lottusseespana.com> and <lottusse-outlet.com> be transferred to the Complainant.

/Mihaela Maravela/

Mihaela Maravela

Sole Panelist

Date: September 16, 2024