

## **ADMINISTRATIVE PANEL DECISION**

Benda Bili v. 何容 (Rong He)

Case No. D2023-4198

### **1. The Parties**

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

The Respondent is 何容 (Rong He), China.

### **2. The Domain Name and Registrar**

The disputed domain name <sezanesale.shop> is 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 October 10, 2023. On October 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 11, 2023, 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 (NOT IDENTIFIED) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 13, 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 October 16, 2023.

On October 13, 2023, the Center informed the parties in Chinese and English, that the language of the registration agreement for the disputed domain name is Chinese. On October 16, 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 in Chinese and English of the Complaint, and the proceedings commenced on October 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 8, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 9, 2023.

The Center appointed Douglas Clark as the sole panelist in this matter on November 23, 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 specialized in ready-to-wear collections and accessories for women under its commercial name "sezane". The term "sezane" is a contraction of the first name and last name of the Complainant's founder and president Morgane Sezalory.

The Complainant is also the owner of several trade mark registrations for SEZANE or SÉZANE, including the following:

Trade Mark	Registration Number	Registration Date	Jurisdiction
SÉZANE	1170876	June 3, 2013	International, including China

The Complainant owns and operates domain names comprising the mark SEZANE in its entirety, such as <sezane.com>, registered on April 3, 2003.

The disputed domain name <sezanesale.shop> was registered on October 4, 2023. At the date the Complaint was filed, the disputed domain name resolved to an online shop purportedly selling clothes and accessories at discounted prices under the Complainant's SEZANE mark.

The Respondent is an individual based in China.

#### 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:

(a) The disputed domain name is confusingly similar to its trade mark. The domain name includes the Complainant's trade mark in its entirety followed by the word "sale". The addition of the generic Top-Level Domain ("gTLD") ".shop" does not prevent the confusing similarity between the disputed domain name and the Complainant's trade mark.

(b) The Respondent is not affiliated with the Complainant in any way. The Respondent has no rights or legitimate interests in the disputed domain name. The Complainant never granted any license nor authorization to the Respondent to use the Complainant's trade mark. The Complainant does not carry out any activity for, nor has any business with the Respondent. The Respondent is using the disputed domain name to disrupt the Complainant's business and attract Internet users by impersonating the Complainant.

(c) The disputed domain name comprises the Complainant's trade mark SEZANE and the Respondent makes references to the Complainant and its CEO on the website along with the display of the Complainant's trade mark. Thus, it is reasonable to infer that the Respondent had registered and used the disputed domain name with full knowledge of the Complainant's trade mark. Further, the disputed domain name resolves to an online store sells products competing with the products offered by the Complainant. The Respondent has intentionally attempted to attract Internet users to its website or other on-line location by creating a likelihood of confusion with the Complainant's trade mark as to the source for commercial gain.

The Complainant requests the transfer of the disputed domain name.

## **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.

Based on the given evidence, there is no agreement between the Complainant and the Respondent regarding the language of the proceeding. The Complaint was filed in English. The Respondent did not respond. The Complainant requested that the language of the proceeding be English on the following grounds:

- (a) English is the language most widely used in international relations and is one of the languages of the Center;
- (b) the disputed domain name is formed by words in Roman characters (ASCII) and not in Chinese script; and
- (c) the Complainant would have had to retain specialized translation services at a cost very likely to be higher than the cost of the proceeding, and would impose a burden on the Complainant.

In accordance with paragraph 11(a) of the Rules, the Panel hereby determines that the language of the proceeding shall be in English after considering the following circumstances:

- (a) the Complainant filed the Complaint in English;
- (b) the Center has notified the Respondent in both English and Chinese of the language of the proceeding and the Complaint;
- (c) the Respondent has not commented on the language of the proceeding;
- (d) an order for the translation of the Complaint and other supporting documents will result in expenses for the Complainant and a delay in the proceeding; and
- (e) The Panel considers the merits strongly in favour of the Complainant.

The Panel therefore accepts the Complaint filed in English and will render its decision in 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 trade mark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

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

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is 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, "sale", 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.

The disputed domain name incorporates the Complainant's SEZANE trade mark in full followed by ".shop". The use of the .gTLD ".shop" generally does not preclude a finding of confusing similarity. [WIPO Overview 3.0](#), section 1.11.1.

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 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 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.

The Panel also notes that the disputed domain name resolves to a page that prominently displays the Complainant's trade mark and advertises fashion products at discounted prices. In principle, it is not objectionable to resell or promote for resale genuine trademarked goods by reference to the mark. Further as long as certain conditions are met, a seller can make use of a trade mark in a domain name to sell genuine products. In *Okidata Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), the panel held that to be "*bona fide*" within the meaning of paragraph 4(c)(i) of the Policy, the offering should meet the following requirements:

- the Respondent must actually be offering the goods or services at issue;
- the Respondent must use the site to sell only the trademarked goods; otherwise, it could be using the trade mark to bait Internet users and then switch them to other goods;
- the site must accurately disclose the registrant's relationship with the trade mark owners; it may not, for example, falsely suggest that it is the trade mark owner, or that the website is the official site; and
- the Respondent must not try to corner the market in all domain names, thus depriving the trade mark owner of reflecting its own mark in a domain name.

In this case, the Respondent does not meet, at least, the third requirement set out above. The website above does not prominently and accurately disclose the Respondent's relationship with the Complainant, and it appears to suggest that it is the trade mark owner by using the "About Us" page.

Furthermore, the Panel finds that the disputed domain name, which incorporates the Complainant's trade mark with the term "shop" relevant to the Complainant, carries a risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

Considering the absence of response by the Respondent and the fact that the Respondent was granted neither a license nor an authorization to make use of the Complainant's trade mark, the Panel finds the Respondent has failed to demonstrate any rights or legitimate interests in the disputed domain name.

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 the disputed domain name to attract Internet users to the website for commercial gain in accordance with paragraph 4(b)(iv) of the Policy. The disputed domain name directs Internet users to the website featuring products identical to the Complainant's products. The Respondent is intentionally attracting Internet users to the website at the disputed domain name by misleading them into believing they are transacting on the Complainant's official website.

For the above reasons, the Panel finds that the disputed domain name was registered and is being used in bad faith.

Based on the available record, 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 <sezanesale.shop> be transferred to the Complainant.

*/Douglas Clark/*

**Douglas Clark**

Sole Panelist

Date: December 7, 2023