



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1300478
Complainant:	Nine West Development Corporation
Respondent :	Mike Willer

1. The Parties and Contested Domain Name

The Complainant is Nine West Development Corporation, of 1007 Orange Street, Suite 225, Wilmington, Delaware 19801, USA

The Respondent is Mike Willer.

The domain name at issue is www.ninewestshop.com, registered by Respondent with Name.com LLC, 2500 East Second Avenue, 2nd floor, Denver, Colorado 80206, USA.

2. Procedural History

The Complaint was filed with the Hong Kong International Arbitration Center (the "Center") on 11 January 2013. On that day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On 12 January 2013, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name. On 21 January 2013, the Center informed the Complainant's representatives of the identity of the Respondent, in accordance with the Registrar's information. The Complainant filed with the Center an amended complaint on 22 January 2013.

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(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on 30 January 2013. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on 21 February 2013.

The Center appointed Adam Samuel as the sole panelist in this matter on 1 March 2013. 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.

3. Factual background

The Complainant manufactures and sells women's footwear and accessories. It is the legal owner of United States trademark registrations for NINE WEST. The relevant registration numbers are 1685412, 1775652 and 1829417 and the dates of registration, 5 May 1992, 8 June 1993 and 5 April 1994. The Complainant also owns other trademark registrations for same name in Hong Kong and China. It registered <ninewest.com> on 6 January 1996.

The disputed domain name was registered on 7 February 2012.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

The disputed domain name consists of two parts, the Complainant's trademark, NINE WEST and the generic word "shop". The inclusion of generic or descriptive terms does not alter the conclusion as to the similarity between the disputed domain name and the Complainant's trademark. This is particularly the case here as "shop" describes a mercantile establishment for retail sales. The NINE WEST trademark consists primarily of two words which appear very rarely together except in the Complainant's trademark. The suffix ".com" merely indicates the existence of a domain name and is irrelevant for this purpose.

The Complainant has never authorized the Respondent to use its trademarks. The Respondent's name is not NINE WEST or anything similar.

The Respondent makes prominent unauthorized use of the Complainant's trademarks and has also made extensive use of images taken from the Complainant's website and promotional materials over which the Complainant has exclusive rights.

The Respondent's website sells an extensive range of shoes which are direct copies of the Complainant's shoes. These are knock-off fakes. This behaviour confuses consumers and damage the Complainant's goodwill and reputation.

B. Respondent

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

5. Findings

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent's domain name must be identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent's domain name has been registered and is being used in bad faith.

A) Identical / Confusingly Similar

The disputed domain name consists of three elements: the Complainant's trademark, NINE WEST which consists of two commonly used words which do not commonly appear together, the common English word "shop" and the standard ".com" suffix. The ".com" suffix which is necessary to indicate the existence of a domain name is irrelevant for the purposes of this analysis. The addition of generic words (such as "shop") and the gTLD suffix ".com" to a trademark does not prevent the resulting domain name from being confusingly similar to the trademark concerned. This is particularly the case here where the trademark is an invented combination of words and the generic word added to it is naturally associated with the Complainant's marketing of its product using the trademark concerned.

For these reasons, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademark.

B) Rights and Legitimate Interests

The Respondent is not called "Nine West" or anything similar and does not appear to trade under that or any related name. There is no evidence that the Complainant has ever authorized the Respondent to use its trademarks. The Respondent has never asserted any rights or legitimate interests in the Complainant's trademark. For these reasons, and in the absence of any response, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C) Bad Faith

The Respondent's website to which the disputed domain name resolves is clearly being used to sell the Complainant's products. It is apparent from this that the Respondent registered the disputed domain name knowing of the Complainants' trademark rights and has been using those trademarks to sell products to Internet users without the Complainants' permission.

It is impossible, at least without a Response to the Complaint, to identify a reason why the Respondent registered the disputed domain names other than to attract business or Internet users to its site who were looking for a site connected to the Complainant's trademark or business.

The only explanation of what has happened seems to be that the Respondent's motive in registering the disputed domain names is either to attempt to attract Internet users for potential gain, disrupt the Complainant's relationship with its customers or potential customers, or persuade the Complainant to buy each of the disputed domain names for an amount in excess of the Respondent's out-of-pocket expenses. These all constitute evidence of registration and use in bad faith. The domain name is being used to sell shoes

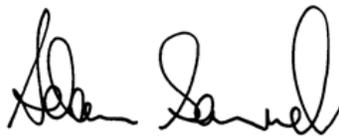
using the Complainant's trademark. The Respondent is clearly aware that this is a breach of that trademark.

For these reasons, the Panel concludes that the disputed domain names was registered and is being used in bad faith. As a result, it is unnecessary to deal with the Complainant's other contentions, particularly those relating to counterfeiting.

For all these reasons, the Panel concludes that the Respondent registered and is using the dispute domain name in bad faith.

6. 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 name, <ninewestshop.com.> be transferred to the Complainant.

A handwritten signature in black ink, appearing to read 'Adam Samuel', written in a cursive style.

Adam Samuel
Panelist

Dated: 4 March 2013