Panel Decision for dispute CAC-ADREU-006374

Case number	CAC-ADREU-006374
Time of filing	2013-02-24 12:47:36
Domain names	sarenzalando.eu

Case administrator

Lada Válková (Case admin)

Complainant

Organization	Zalando GmbH

Respondent

Name	Mickael LAGIER

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

The Panel is not aware of any other legal proceedings, either pending or decided, which relate to the disputed domain name.

FACTUAL BACKGROUND

As it appears in Annex 1 to the Complaint, and as confirmed by the Complainant itself, the Complainant was founded in October 2008 in Germany. The Complainant has quickly grown to become Europe's leading online retailer for shoes and clothes and accessories. The Complainant sells the aforementioned products via several online-shops in: Germany, France, the United Kingdom of Great Britain, Switzerland, Austria, the Netherlands, Italy, Sweden, Belgium, Spain, Denmark and Finland. The Complainant regularly advertises for each of its online-shops in all media (Annex 2 to the Complaint includes examples of TV-advertising campaigns in the United Kingdom of Great Britain, Germany and France).

According to the Complainant, several studies of the YouGov Research Institut, Zalando brand awareness reached:

- 94% in Germany (per 01.05.2012);

- 82% in Austria (per 01.04.2012);

- 81% in Switzerland (per 01.04.2012);

- 91% in the Netherlands (per 01.05.2012);

- 89% in France (per 01.05.2012).

The Complainant recorded sales of more than 500 million Euros in 2011 and won the European E-commerce Award for Best Cross-Border Webshop at the 2012 European E-commerce Awards in Barcelona (Annex 3 to the Complaint).

According to the WhoIs database, the domain name Sarenzalando.eu has been registered by Mr. Mickael Lagier, 10 Avenue Victor Hugo, Apartment 610 6e, 89200 Avallon, FRANCE, on August 17, 2012. The disputed domain name is connected to a French website http://www.sarenzalando.eu/ (Annex 5), where shoes, clothes and accessories are being sold.

For the sake of completeness, the Complainant points out that several similar domain names (<sarenzalando.fr>, <sarenzazalando.fr> and <sarenzalando.com>) have been registered between October 2011 and March 2012:

- <sarenzalando.fr> and <sarenzazalando.fr> have been registered by Domain Directors SARL, 10, rue des Carmes, 17000 La Rochelle, France (Annex 6) on March, 1st 2012. Domain Directors SARL is a French limited company registered with the Commercial Court Registry of La Rochelle, under Nr. 491778171.

- <sarenzalando.com> has been registered on October 2nd, 2011 by Sarenza Zalando, 15 rue Pierre Guignois, 94200 Ivry -sur-Seine, France. (Annex 7).

Two dispute resolutions with regard to the cancellation of <sarenzazalando.fr> and <sarenzalando.fr> have been introduced by the Complainant before the AFNIC on August, 9th 2012.

Domain Directors SARL registered on August 17, 2012 a new domain name: <Sarenza-lando.fr> (Annex 8). On the very same day, <sarenzalando.eu> and <Sarenza-lando.com> were also registered respectively via http:// godaddy.com by Mr. Mickael Lagier and via http://www.instra.com/ by an entity called Group Ponda XX (Annex 9).

The AFNIC found on October, 1st 2012 that the domain names <sarenzazalando.fr> and <sarenzalando.fr> are confusingly similar with the trademark Zalando and decided that the domain names <sarenzazalando.fr> and <sarenzalando.fr> had to be cancelled (Annex 10 and 11).

A. COMPLAINANT

A. The domain name(s) is(are) identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

The Complainant affirms to have registered its trademark in many countries in connection with a variety of goods and services, including the retail of shoes, clothes and accessories via the Internet. Examples of the Complainant's trade mark registrations are:

1) International Mark Registration No. 1073670 “ZALANDO“ registered on February 24, 2011, for goods in Nice Classes: 18; 25; 35 (Annex 12).

2) International Mark Registration No. 1075131 “ZALANDO“ (Figurative) registered on December,1st,2010, for goods in Nice Classes: 03; 09; 14; 18; 21; 24; 25; 26; 28; 35 and Vienna Classes: 26.03.06, 27.05.01, 29.01.12 (Annex 13).

3) Community Mark Registration (European Union) No. 9483694 “ZALANDO“ (Figurative) registered on April 19, 2011, for goods and services of the following Nice Classes: 3; 9; 14; 18; 21; 24; 25; 26; 28; 35 and Vienna Classes: 26.03.01, 26.03.06, 29.01.98 (Annex 14).

4) Community Mark Registration (European Union) No. 9376609 “ZALANDO“ registered on February 2nd, 2011, for goods and services of the following Nice Classes: 3; 9; 14; 18; 20; 21; 24; 25; 26; 28; 35 (Annex 15).

5) International Mark Registration No. 1037150 “ZALANDO“ registered on April 8, 2010, for goods in Nice Classes: 18; 25, 35 (Annex 16).

6) Community Mark Registration (European Union) No. 8686008 “ZALANDO“ registered on December 10, 2010, for goods and services of the following Nice Classes: 18; 25; 35 (Annex 17).

The Complainant contends that for assessing identity or confusing similarity, the <eu> suffix has to be disregarded (Bayer AG v. Zheng Qingying, CAC 4661 <bayergarden.eu>). The disputed domain name consists of the combination of two registered trademarks: SARENZA and ZALANDO. Sarenza is another well-known French online-retailer for shoes and accessories. Sarenza is a direct competitor of the Complainant and sells shoes and accessories in over 20 European Countries. Sarenza is the regular owner of the Community Mark (European Union) No. 004933867 “SARENZA“ registered on March 6, 2010, for goods and services of the following Nice Classes: 18; 25; 35 (Annex 18).

According to the Complainant, being a combination of two registered trademarks, the domain name subject to complaint is not identical to the Complainant's well known registered trademark Zalando, but nevertheless incorporates in full the Zalando trademark. In the past, WIPO arbitration panels have found confusing similarity in cases where the disputed domain name is a combination of marks (Vivendi .S.A., The Seagram Company Ltd., Joseph E. Seagram & Sons, Inc., Universal Studios, Inc., and Universal City Studios, Inc. v. Yu Fu Zhao (aka Tyou Star) (“Zhao") Case No. D2000-0717; Bayerische Motoren Werke AG and Williams Grand Prix Engineering Limited v. Neil Malkhandi; case No. D2000-1172 Chevron Corporation v.Young Wook Kim Case No.D2001-1142 (Annex 19)).

The Complainant maintains that the domain name is confusingly similar because "Zalando" and "Sarenza" are both so well-known in the European online-shopping oüeld that buyers would be likely to think that any commercial site connected with the domain name

<sarenzalando.eu>, especially a site selling the same types of products that the companies Zalando and Sarenza (ie. shoes, clothes and accessories), originates with the Complainant and/or Sarenza.

The Complainant states that according to several panel decisions, the content of the website and the goods sold must be taken into account to identify a confusing similarity (Bernadette Selim Abou Zakhm v. Josef Bano, CAC 4678, UK Domain Developers Ltd- Wen Master, Web Master v. Sanofi-Aventis, CAC 4819, Zheng Qingying v. DDR Museum Berlin GmbH, CAC 5094.). In the Complainant's opinion, the fact that shoes, clothes and fashion accessories are sold on www.sarenzalando.eu is an additional evidence for the confusing similarity between the Complainant's registered trademark Zalando and the disputed domain name <Sarenzalando.eu>.

Finally, the Complainant points out that the AFNIC decided on October, 1st 2012 that similar domain names <sarenzazalando.fr> and <sarenzalando.fr> are confusingly similar and thus had to be cancelled (Annexes 10 and 11).

B. The Respondent has no rights or legitimate interests in respect of the domain name(s)

In the Complainant's view, the Respondent has no rights or legitimate interests in the Domain Name as the Respondent, who recently registered the Domain Name, is not generally known by the Domain Name, nor has acquired any trade mark or service mark rights in the Zalando mark.

The word <sarenzalando> is a combination of <sarenza> and <zalando>, which are both invented words. As such, <sarenzalando> is not a term which would be legitimately chosen unless seeking to create a misleading impression of an association with the Complainant and/ or its competitor Sarenza.

The Complainant has not authorized, licensed or otherwise consented to the Respondent's use of its trademark Zalando by incorporation into the Domain Name. The Complainant has not authorized, licensed or otherwise consented to the Respondent's use of its trade mark Zalando by incorporation into the Domain Name, so that no actual or contemplated bona fide or legitimate use of the domain name can be claimed by the Respondent.

The Complainant contends that the Respondent is not making a legitimate non-commercial or fair use of the domain name. As a matter of fact, the Respondent does not use of the Domain Name in connection with a bona oüde offering of goods or services. The Domain Name resolves to a website (www.sarenzalando.eu) which is most likely retailing fake products marketed under protected trademarks. For instance, all jackets of luxury brands like Armani, Ralph Lauren or Burberry are sold at 58,40 € (Annex 20). For instance, a jacket of the Ralph Lauren trademark costs 58,40 € (instead of 73 €) on www.sarenzalando.eu (Annex 21), but currently 295,00$ on the official website www.ralphlauren.com (Annex 22). The Complainant points out that the website www.sarenzalando.eu does not make any mention of retailing second hand, outlet or refurbished products. All fashion articles are described as new. In this respect, there are no reasonable explanations for the prices of the products retailed by www.sarenzalando.eu being so cheap.

The Complainant maintains that several features of the aforementioned website support the evidence that this website is a scam and/or retails fake products marketed under protected trademarks:

- Some products are clearly described as being an imitation (Annex 23 “Spot fake Gucci LV“; “Fake Gucci LV“);

- There are frequent misspellings (Annex 24 “Chausuers“ instead of “Chaussures“ [Shoes]),

- Products descriptions are misleading. For instance, a jacket of the Armani trademark is sold under the category Ralph Lauren (Annex 25); Boots of the trademark Louis Vuitton are described as “Gucci LV chaussures [shoes] for men, femme [women] (…)“(Annex 26),

- The website does not contain any legal information about the identity of the owner of the website nor any legal information about the shipping, delivery, payments or returns conditions; which shows that www.sarenzalando.eu is not a legitimate, trustworthy seller.

The Complainant concludes that by using a domain name consisting of the combination of the registered trademarks of the two European market leaders in online fashion retailing, and by establishing a website deliberately retailing - like the Complainant and its competitor Sarenza - fashion products (but fake), the Respondent has not undertaken a bona fide or good faith offering of goods and services. The Respondent offers to sell goods under a domain name confusingly similar to the Complainant's and Sarenza's marks, thereby unlawfully trying to divert Internet users searching for the Complainant's Zalando or Sarenza's website. This constitutes not only a misleading use of a trademark, but also a form of unfair competition and an infringement to the consumer protection rules.

C. The domain name was registered and is being used in bad faith.

In the Complainant's view, given the fame and success of the Zalando and Sarenza trademarks, it is difficult to envisage how the domain name could be registered in good faith and used by the Respondent without knowledge that consumers would be likely to consider it to be associated in some way with the Respondent's trademark. It is also obvious that it is the fame of the trademarks that has motivated the Respondent to register the Domain Name.

- Registration in Bad Faith

The Complainant asserts that the Respondent knew or should have known about the Complainant and its use of its trademark because:

The Respondent has registered the disputed domain name on August 17, 2012, long after the registration of the Complainant's and Sarenza's. As the Respondent registered the domain name, he was necessarily aware of the existence of the Complainant and its use of the trademark because the Complainant and Sarenza both make a broad use of their trademarks and invest considerable amounts in advertisement campaigns on the Internet, TV and Radio (Annex 2).

The fact that the Respondent uses systematic domain registration (domain grabbing) must be regarded as an evidence of registration in bad faith. Several similar domain names have been registered between October 2011 and August 2012:

<sarenzalando.fr>,
<sarenzazalando.fr>,
<sarenzalando.com>,
<sarenza-lando.fr>,
<sarenzalando.eu> and
<sarenza-lando.com>.

In the opinion of the Complainant, at a first glance, the aforementioned domain names have been registered by different registrants:

- <Sarenzalando.fr> and <sarenzazalando.fr> have been registered by Domain Directors SARL, 10, rue des Carmes, 17000 La Rochelle, France (Annex 6) on March, 1st 2012. Domain Directors SARL is a French limited company registered by the Commercial Court Registry of La Rochelle, under Nr. 491778171.

- <Sarenzalando.com> has been registered on October 2nd, 2011 by Sarenza Zalando, 15 rue Pierre Guignois, 94200 Ivry -sur-Seine, France. (Annex 7).

- Domain Directors SARL registered on August 17, 2012 a new domain name: <Sarenza-lando.fr> (Annex 8). On the very same day, <sarenzalando.eu> and <Sarenza-lando.com> were also registered respectively via http:// godaddy.com by Mr. Mickael Lagier (Annex 4) and via http://www.instra.com/ by an entity called Group Ponda (Annex 9).

In reality, several evidence show that Domain Directors SARL, Sarenza Zalando, Mickael Lagier and Group Ponda are the same and unique registrant:

- neither Sarenza Zalando nor Group Ponda have been lawfully incorporated and registered in France. According to the French database Infogreffe, which contains all French registered companies by every French Commercial Court Registry, there is no company incorporated under such name in France. Copies of the printout of the Infogreffe database search conducted on October, 16th 2012 are provided as Annex 27 to the Complaint. The Respondent has provided false address information for the purposes of its domain name registration.

- The domain name Grouponda.fr has been registered by Domain Directors SARL on November, 10, 2011 (Annex 28).

- All websites relating to the domains <sarenzalando.fr>, <sarenza-lando.fr>, <sarenzalando.com>, <sarenzalando.eu> are similar and always contain the same disclaimer:

- www.sarenzalando.fr: “Sarenza Lando, CKgucci, Chile62, Nike TN 2012, Requin pas Cher Nike TN 2012, Chaussures Nike TN Pas Cher Homme 2012 Basket Nike Requin TN pas cher Air Max Pas Cher 2012 ckgucci.vestescuir.com“ (Annex 29);

- www.sarenzalando.com, “Nike TN Requin Pas Cher Nike TN 2012 Chaussure Nike Homme Pas cher 2012 Chaussure Nike Femme Pas Cher 2012 ckgucci.vestescuir.com “ (Annex 30) ;

- www.sarenza-lando.fr: “Sarenza Lando, CKgucci, Chile62, Nike TN 2012, Requin pas Cher Nike TN 2012, Chaussures Nike TN Pas Cher Homme 2012 Basket Nike Requin TN pas cher Air Max Pas Cher 2012 ckgucci.vestescuir.com“ (Annex 31) ;

- www.sarenzalando.eu : “CKgucci, sarenzalando, Nike TN, Nike pas Cher, Nike Requin, Chaussure Nike, CKgucci, vestescuir, Air Max 90, Nike Air Max, Air Max France“ (Annex 32).

In the Complainant's opinion, even if the Respondent was not aware of the existence of the Complainant and its use of the Complainant's trademark, there is an affirmative obligation on registrants to make reasonable good faith efforts to avoid registering and using a domain name that is identical or confusingly similar to a mark held by others, for example, through an Internet search on the domain name through Google or Yahoo. (Formula One Licensing BV v. RoostiT, CAC 2955, New York University in France v. Vinitsia, CAC 4925, Sony Ericsson Mobile Communications AB v. BDS, CAC 4423). The Respondent's apparent lack of any good faith attempt to ascertain whether or not the disputed domain name was infringing someone else's trademark is wilful blindness and evidences the registration in bad faith.

- Use in Bad Faith

The Complainant contends that the fact that the Respondent used the domain name for offering counterfeited fashion products (see above, Ô B) evidence its bad faith (see for instance ADR Case nr. 100419, alaiashoes.com and Case nr. 100331 eccoshoesoutlet.org).

The use of a domain name consisting of the combination of two famous trademarks in online retailing of fashion products, clearly demonstrates the bad faith of the Respondent, who intentionally attempted to attract, for commercial gain, Internet users to the Respondent's web site by creating a likelihood of confusion with the Complainant's mark and/or its competitor Sarenza. The use of the domain name can only lead to confusion, divert customers, and dilute the Complainants' goodwill in “Zalando“.

The Complainant requests that the disputed domain name be cancelled.

B. RESPONDENT

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

DISCUSSION AND FINDINGS

A. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights

The Panel finds that the domain name SARENZALANDO is confusingly similar to the Complainant's trademark ZALANDO. The domain name at issue is the result of the contraction of two trademarks belonging to the Complainant and to one of its competitors.
The disputed domain name is not identical to the Complainant's trademark. However, it is confusingly similar thereto, in that it fully includes the trademark ZALANDO, which enjoys reputation and is therefore recognizable by the internet users who are familiar with the Complainant's trademark.
In seeing the disputed domain name, the internet user is likely to think that it originates from the Complainant, and by noticing that the trademark ZALANDO is used in conjunction with the trademark SARENZA, the Internet user might think that between the two companies there is a commercial relationship, or a partnership. Therefore, the disputed domain name is likely to give rise to a likelihood of confusion. In the circumstances of this proceeding, the fact that the third party's trademark SARENZA precedes the Complainant's trademark and the addition of ".eu" does not serve to alleviate potential Internet user confusion between the disputed domain name and Complainant's mark.

Other previous UDRP decisions have established that there is confusing similarity between a domain name reproducing the Complainant's trademark, coupled with a third party's sign (see in this respect, Case No. D2001-1142, referring to the domain name <chevron-texaco.com>; Case No: D2002-0793, for the domain name <viagra-nascar.com>; Case D2002-0028, for the domain name <airfrance-delta.com>; AFNIC cases of October, 1st 2012 for the domain names <sarenzazalando.fr> and <sarenzalando.fr> (Annexes 10 and 11 to the Complaint).

Based on the overall visual impression and expected Internet user association, the Panel determines that the disputed domain name is confusingly similar to Complainant's ZALANDO trademark.

B. The Respondent has no rights or legitimate interests in respect of the domain name

In the Panel's view, the Respondent has no rights or legitimate interests in the disputed domain name.
In its Complaint, the Complainant states that the Respondent is not generally known by the disputed domain name, nor has acquired any trade mark or service mark rights in the Zalando mark. In the absence of any contrary statement by the Respondent, the Panel takes the view that the Complainant's assertions are well-grounded.

The domain name <sarenzalando> is a combination of two fanciful, distinctive and well-known trademarks, SARENZA and ZALANDO.

As such, and unless the Respondent has been authorized to include the two renown trademarks in a domain name, <sarenzalando> is not a term which would be legitimately chosen unless seeking to take advantage from the reputation of the two trademarks.

The Complainant contends not to have ever authorized, licensed or otherwise consented to the Respondent's use of its trademark ZALANDO by registering a domain name containing this trademark. The Respondent failed to reply to this assertion and therefore in the absence of any argument to the contrary the Panel accepts the Complainant's assertion.

The Panel finds that the Respondent is not making a legitimate non-commercial or fair use of the domain name at issue. As a matter of fact, the Respondent does not use the domain name in connection with a bona oüde offering of goods or services. The Complainant has proved that the domain name resolves to a website offering for sale clothing allegedly originating from luxury brands like Armani, Ralph Lauren or Burberry. The Complainant further assumes that most of these goods are fake, due to their limited costs, and frequent misspellings contained in the website. Moreover, some of the goods are clearly described as being an imitation (Annex 23 “Spot fake Gucci LV“; “Fake Gucci LV“).

The registration and use of a domain name corresponding to two well-known trademarks, without authorization to sell goods identical and similar to those identified by the Complainant's trademark, some of which are also described as imitation goods, is certainly not a legitimate and non-commercial or fair use of the domain name, without intent to mislead consumers or harm the reputation of a name on which a right is recognised or established by national and/or Community law.

Based on all arguments above, the Panel determines that the Complainant has successfully proved that the Respondent lacks rights and legitimate interests in the <sarenzalando> domain name.

C. The domain name was registered and is being used in bad faith

As the Panel has already established that the Respondent has no right or legitimate interest in the disputed domain name there is no need to make a finding as to bad faith for the purposes of Article 21(1) of the Policy. However, since the Complainant has extensively addressed this point, the Panel believes it is appropriate to express her view.

The Complainant's first contention is that given the fame and success of the Zalando and Sarenza trademarks, at the time of the registration of the disputed domain name, the Respondent knew or should have known the Complainant's trademark.

In the Panel's view, the Complainant has successfully proved the reputation of the ZALANDO trademark. Other previous Panels' decisions have also recognized that the trademark ZALANDO enjoys such a reputation. Accordingly, it is extremely unlikely that the Respondent registered the domain name at stake without being aware of the Complainant's trademark. This is even more so, considering that the domain name <sarenzalando> is the contraction of two well-known and fanciful trademarks belonging to two different competitors. Thus, that the Respondent registered the disputed domain name without knowledge of the Complainant's trademark and of its activity is highly improbable.

Moreover, as the Complainant has pointed out, the Respondent has engaged in a pattern of registering domain names corresponding to the Complainant's and its competitor's trademark. More specifically, the following domain names were registered between October 2011 and August 2012: <sarenzalando.fr>, <sarenzazalando.fr>, <sarenzalando.com>, <sarenza-lando.fr>, <sarenzalando.eu> and <sarenza-lando.com>.

The Complainant asserts that although at a first glance the aforementioned domain names have been registered by different registrants:

- <Sarenzalando.fr>, <sarenzazalando.fr> and <Sarenza-lando.fr> have been registered by Domain Directors SARL. Domain Directors SARL is a French limited company registered by the Commercial Court Registry of La Rochelle, under Nr. 491778171;

- <Sarenzalando.com> has been registered by Sarenza Zalando, 15 rue Pierre Guignois, 94200 Ivry-sur-Seine, France;

- On the very same day of the registration of the domain name <sarenza-lando> by Domain Directors SARL, the Respondent registered the domain name <sarenzalando.eu> and an entity called Group Ponda registered <sarenza-lando.com>;

in reality, several evidence show that Domain Directors SARL, Sarenza Zalando, Mickael Lagier and Group Ponda are the same and unique registrant:

First, the Complainant has provided evidence that neither Sarenza Zalando nor Group Ponda have been lawfully incorporated and registered in France. According to the French database Infogreffe, which contains all French registered companies by every French Commercial Court Registry, there is no company incorporated under said names in France.

Second, the domain name Grouponda.fr has been registered by Domain Directors SARL on November, 10, 2011.

Third, all websites relating to the domains <sarenzalando.fr>, <sarenza-lando.fr>, <sarenzalando.com>, <sarenzalando.eu> are similar and always contain closely similar disclaimers.

Recently, the domain names <sarenzalando.fr> and <sarenzazalando.fr> have been the subject of two ADR proceedings, and the Panels have concluded for their cancellation.

In the Panel's view, absent any contrary statement by the Respondent, the Complainant's assertions are well-grounded and the domain name <sarenzalando.com> should be considered as having being registered in bad faith.

- Use in Bad Faith

The Complainant has proved evidence that the domain name <sarenzalando.com> leads to a webpage were apparel goods apparently originating from well-known fashion brands are offered for sale. The Complainant further contends that these goods are counterfeit, and some goods offered for sale on the www.sarenzalando.eu website are effectively defined as being an "imitation".

In the Panel's view, the use of a domain name consisting of the combination of two famous trademarks in online retailing of fashion products, clearly demonstrates that the Respondent is using the domain name to attract Internet users for commercial gain, to the Respondent's web site by creating a likelihood of confusion with the Complainant's mark and its competitor Sarenza. The use of the domain name can only lead to confusion, divert customers, and dilute the Complainant's goodwill in the trademark ZALANDO. The way the goods are displayed and offered for sale on the website corresponding to the disputed domain name, the fact that these goods are sold for very low prices compared to their current value, the fact that some of these goods are qualified as being and imitation, the typos, and other errors contained in the website, are such as to dilute the value and goodwill of the Complainant's trademark (see also ADR Case nr. 100419, alaiashoes.com and Case nr. 100331 eccoshoesoutlet.org, which established that the Respondent used the domain name for offering counterfeited fashion products is evidence of its bad faith).

The Panel therefore concludes that the domain name <sarenzalando.eu> is registered and is being used in bad faith.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that

the domain name SARENZALANDO.EU be revoked.

PANELISTS

Name	**Angelica Lodigiani**

DATE OF PANEL DECISION 2013-02-20

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: [sarenzalando.eu]

II. Country of the Complainant: [Germany], country of the Respondent: [France]

III. Date of registration of the domain name: 17 August 2012

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:

1. word trademark, International Registration designating many worldwide countries, reg. No. 1073670, for the term ZALANDO, registered on 24 February 2011 in respect of goods and services in classes 18, 25, 35
2. combined trademark, International Registration designating Switzerland, China and Russia, reg. No. 1075131, for the term ZALANDO, registered on 1 December 2010 for goods and services in classes 03; 09; 14; 18; 21; 24; 25; 26; 28; 35;
3. combined CTM, reg. No. 9483694, for the term ZALANDO, filed on 29 October 2010, registered on 19 April 2011 in respect of goods and services in classes 3; 9; 14; 18; 21; 24; 25; 26; 28; 35;
4. word CTM, reg. No. 9376609, for the term ZALANDO, filed on 15 September 2010, registered on 2 February 2011, in respect of goods and services in classes 3; 9; 14; 18; 20; 21; 24; 25; 26; 28; 35 ;
5. word International reg. No. 1037150 for the term ZALANDO, designating several worldwide countries, registered on April 8, 2010, for goods and services in classes 18, 25, 35;
6. word CTM, reg. No. 8686008 for the term ZALANDO, filed on 13 November 2009, registered on 10 December, 2010, for goods and services in classes 18; 25; 35.

V. Response submitted: No

VI. Domain name is confusingly similar to the protected right/s of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No
2. Why: the Respondent is not generally known by the disputed domain name, nor has acquired any trade mark or service mark rights in the Zalando mark; the Respondent is using without authorization a domain name consisting of the combination of two fanciful competitors' trademarks for retail services of similar / identical goods, some of which are qualified as "imitations". Thus, the Respondent is not making a legitimate and non-commercial or fair use of the domain name, without intent to mislead consumers or harm the reputation of a name on which a right is recognised or established by national and/or Community law.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: The Respondent knew or should have known the existence of prior trademark rights belonging to third parties at the time of the registration of the domain name. The Respondent engaged in a pattern of registering domain name including the Complainant's trademarks. Previous Panels have already decided for the abusive registration of these domain names.
The Respondent is using the domain name to attract Internet users for commercial gain, to the Respondent's web site by creating a likelihood of confusion with the Complainant's mark and/or its competitor Sarenza.

IX. Other substantial facts the Panel considers relevant: None

X. Dispute Result: Revocation of the disputed domain name

XI. Procedural factors the Panel considers relevant: None

XII. [If transfer to Complainant] Is Complainant eligible? [Yes/No]: N/A