Decision for dispute CAC-UDRP-101472

Case number	CAC-UDRP-101472
Time of filing	2017-03-28 09:25:02
Domain names	ilsejacobsenoslo.com

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	IJH A/S

Complainant representative

Organization	Lundgrens law firm

Respondent

Name	Liu Xuemei

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that relate to the Disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of a family of globally registered trademarks, which all contain the word element ILSE JACOBSEN. This family of trademarks inter alia includes the following trademarks:

- International trademark registration No. 995603, registered on 15.12.2008, ILSE JACOBSEN Hornbaek (figurative), which, inter alia, designates China and Norway;

- International trademark registration No. 1130145, registered on 28.6.2012, Ilse – By ILSE JACOBSEN (figurative), which designates Norway;

- EUTM No. 010831956, registered on 24.4.2012, Ilse – By Ilse Jacobsen (figurative), which designates the EU;

- Danish trademark registration No. VR 2012 01253, registered on 16.5.2012, BUTIKKEN BY ILSE JACOBSEN (figurative), which designates Denmark.

The Complainant claims to have also acquired rights to the unregistered trademark ILSE JACOBSEN through use, in

accordance with Article 3(1)(ii) of the Danish Trademarks Act.

The Disputed domain name was registered by the Respondent on 25.8.2016.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant argues that the Disputed domain name, <ilsejacobsenoslo.com>, is identical to the Complainant's Danish word mark acquired through use, ILSE JACOBSEN and, in any event, confusingly similar to the Complainant's trademarks containing the word element ILSE JACOBSEN.

The Complainant underlines the fact that the name ILSE JACOBSEN is fully contained in the Disputed domain name, while the term "Oslo" is generic, being the capital of Norway. Accordingly, the Complainant contends that the Disputed domain name is phonetically, visually and conceptually similar to the Complainant's trademarks.

The Complainant asserts that the Respondent has no legitimate interests in the Disputed domain name. The Complainant observes that it has never delivered any goods to the Respondent. The Complainant adds that the Respondent has not responded to the Complainant's cease and desist letter.

The Complainant points out that the website operated under the Disputed domain name looks like the Complainant's website, operated under the domain name <ilsejacobsen.com>. The Complainant argues that this similarity shows that the Disputed domain name has been registered in bad faith and is being used in bad faith.

The Complainant observes that in the website operated under the Disputed domain name:

- The “Facebook” and “LinkedIn” links merely link to the general websites of Facebook and LinkedIn and not to any particular Facebook or LinkedIn pages;

- There is no contact information;

- Parts of the text are in Norwegian, whereas other parts are in poor English;

- The prices are significantly lower than the normal prices applied to original items.

The Complainant alleges that these elements indicate that an unlawful activity might take place using the Disputed domain name, like for example selling counterfeit goods.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the Disputed domain name (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

In accordance with paragraph 4(a) of the Policy, in order to obtain the transfer of the Disputed domain name, the Complainant has to demonstrate that:

(i) The Disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) The Respondent has no rights or legitimate interests in respect of the Disputed domain name; and

(iii) The Disputed domain name has been registered and is being used in bad faith.

IDENTICAL OR CONFUSINGLY SIMILAR

The Disputed domain name, <ilsejacobsenoslo.com>, includes the name ILSE JACOBSEN and the name OSLO, as well as the TLD ".com".

The Panel agrees with the Complainant's argument that the addition of a geographic term, in this case the name OSLO, which is the capital of Norway, is not sufficient to avoid confusion (see WIPO Case No. D2004-0986).

Furthermore, it is well established that the top-level suffix, in this case ".com", should be normally disregarded under the confusing similarity test.

The Complainant claims to have acquired rights under the Danish Law on the unregistered trademark "ILSE JACOBSEN". An allegation of unregistered rights in accordance with national law is acceptable in principle. However, that allegation should be supported by appropriate evidence, which demonstrates length and amount of sales under the mark, nature and extent of advertising, and consumer surveys and media recognition (see WIPO Case No. D2008-1036). No evidence in relation to the claimed unregistered trademark has been provided by the Complainant. Therefore, the Danish unregistered trademark "ILSE JACOBSEN" could not be accepted as right under paragraph 4(a)(i) of the Policy.

The Complainant is the owner of the international trademark registration No. 995603, "ILSE JACOBSEN Hornbaek", registered as figurative trademark on 15 December 2008 in class 25 (clothing, footwear, headgear). The Panel notes that the word "Hornbaek", which is a geographic term, appears in the trademark in smaller characters compared to the name "ILSE JACOBSEN". The Panel agrees that the dominant component of the Complainant's figurative trademark "ILSE JACOBSEN Hornbaek" lies in the terms "ILSE JACOBSEN". The Panel considers that the difference given by the fact that in the trademark and in the Disputed domain name different geographic terms are used is not apt to influence the overall impression left by the Disputed domain name (see WIPO Case No. D2000-0036).

Therefore, the Panel holds that the Disputed domain name is confusingly similar for the purposes of the Policy with a trademark in which the Complainant has rights.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

RIGHTS OR LEGITIMATE INTERESTS

The Complainant asserts that it has no commercial relations with the Respondent.

Based on exhibits accompanying the Complaint, the Respondent's website appears to be used for selling ILSE JACOBSEN

items at discounted price. In the absence of any commercial relations with the Respondent, the Complainant suspects that the Respondent is using the website for selling counterfeit goods or for phishing scams.

The Complainant adds that the Respondent has not responded to the Complainant's cease and desist letter.

The Panel finds that the Complainant has established its prima facie case and without any evidence from Respondent to the contrary, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

REGISTRATION AND USE IN BAD FAITH

The Panel, on the basis of the evidence presented, agrees with the Complainant's contentions that the Disputed domain name was registered in bad faith and that it has been used in bad faith.

In particular, the Panel accepts the Complainant's unchallenged assertions that the Respondent is using the Disputed domain name with the aim of intentionally attracting, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation or endorsement of its website.

Indeed, it is difficult to conceive that the Respondent choose to register the Disputed domain name by accident. If the Respondent had legitimate purposes in registering and using the Disputed domain name it would have responded to the Complainant's cease and desist letter, or filed a Response in this proceeding.

Accordingly, the Panel finds that the Disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **ILSEJACOBSENOSLO.COM**: Transferred

PANELLISTS

Name	**Michele Antonini**

DATE OF PANEL DECISION 2017-05-02

Publish the Decision