Decision for dispute CAC-UDRP-102243

Case number	CAC-UDRP-102243
Time of filing	2018-12-12 10:22:40
Domain names	kilouetout.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	KILOUTOU S.A.S.

Complainant representative

Organization	Cabinet Beau de Loménie

Respondent

Name	Nancy Rosa WEN

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings pending or decided between the same parties and relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of European trademark registration n° 003332814 “KILOUTOU”, registered on 18 November 2005, covering goods and services in classes 2, 3, 7, 8, 9, 11, 12, 16, 21, 35, 37, 38, 39, 40, 41, 42, 43, 44 and 45.

FACTUAL BACKGROUND

The Complainant is KILOUTOU S.A.S. It results from the Complainant’s undisputed allegations that it was established in 1980 in France and is one of the European leaders in equipment’s rental services for the industry, for the construction and public works sector as well as for the particular, employing over 4,500 people through a network of 487 branches. The Complainant is the owner of and uses the domains <kiloutou.com> and <kiloutou.fr>.

The Complainant contends that its KILOUTOU mark is a fancyfull sign deriving from the phonetic transliteration of the French sentence “qui loue tout”, which may be translated as “who rents all”. In addition it contends that this trademark enjoys a strong reputation. The KILOUTOU is a distinctive registered trademark. This has been established in a previous UDRP Panelists (Kiloutou v. Domain Drop SA WIPO CASE No. D2006-1105 and Kiloutou v. Marylin Martin WIPO CASE No. D2006-1104).

The Complainant contends that its trademark attorney sent a cease and desist letter to the Respondent requesting the disputed domain name transfer. The Respondent did not reply to the cease and desist letter.

The disputed domain name was registered on 1 January 2018 and resolved to a website describing competitor's rental services for the industry, for the construction and public works sector as well as for the particular. This website also provided hyperlinks to competitor's websites. This website did not show any legal mention.

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.

The language of the Registration Agreement is Dutch. However, according to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0") at point 4.5.1 "(..) Panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios include (i) evidence showing that the respondent can understand the language of the complaint (..)". In the case at hand, the circumstances justify that the language of the proceedings is changed into English. In particular, the Registrar's website is only available in English and also its "Terms and conditions" are only available in English. Therefore, in order to conclude the Registration Agreement, the Respondent has necessarily used the English language and agreed to those Terms and Conditions. Finally, the Respondent has been given a fair chance to object but has not done so. Therefore, the Panel determines in accordance with paragraph 11(a) of the UDRP Rules that the language of the proceeding be English.

PRINCIPAL REASONS FOR THE DECISION

1. The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark. In the case at issue the Complainant's registered trademark "KILOUTOU" is fully included in the disputed domain name.

On this regard, it is the view of this Panel that the addition of the vocal "e" between the letters "u" and "t" and the addition of the consonant "t" at the end of the entire word result to be common, obvious or intentional misspellings when typing the trademark "KILOUTOU". Thus, the disputed domain name contains sufficiently recognizable aspects of the relevant mark (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0") at point 1.9.

2. In the absence of any Response, or any other information from the Respondent indicating the contrary, the Panel further holds that the Complainant successfully presented its prima facie case and that the Respondent has no rights or legitimate

interests in respect of the disputed domain name.

In particular, the Respondent is not affiliated with nor authorized by the Complainant in any way, and he is not related in any way to the Complainant's business. In addition, the Respondent is not commonly known by the disputed domain name.

Finally, the disputed domain name resolved to a website describing competitors' services and displaying hyperlinks to competitors' websites. Such use can neither be considered as bona fide offering of goods or services nor a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

3. Finally, the Panel finds that the disputed domain name has been registered and is being used in bad faith.

It is the view of this Panel that the Respondent has intentionally registered the disputed domain name which employs a misspelling of the trademark KILOUTOU of the Complainant, that has been established almost forty years ago. By the time the disputed domain name was registered, it is unlikely that the Respondent did not have knowledge of the Complainant's rights on its trademark KILOUTOU. The Complainant also proved that the Respondent was using the disputed domain name to lead to a website describing competitors' services and displaying hyperlinks to competitors' websites, so that the Panel is satisfied that the disputed domain name is used to intentionally attempt to attract, for commercial gain, Internet users to the Respondent's web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location, or of a product or service on the Respondent's web site or location. The finding of bad faith is confirmed by the fact that the Respondent failed to submit a response and that the domain name consists of a common, obvious, or intentional misspelling of the trademark KILOUTOU, on this regard this Panel shares the view mentioned in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0") at point 1.9: "(..) panels will normally find that employing a misspelling in this way signals an intention on the part of the Respondent (typically corroborated by infringing website content) to confuse users seeking or expecting the Complainant".

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **KILOUETOUT.COM**: Transferred

PANELLISTS

Name	**Dr. Federica Togo**

DATE OF PANEL DECISION 2019-01-23

Publish the Decision