Decision for dispute CAC-UDRP-102427

Case number	CAC-UDRP-102427
Time of filing	2019-04-04 15:40:03
Domain names	hkscangroup.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	HKScan Oyj

Complainant representative

Organization	Berggren Oy

Respondent

Name	Sergey Druzhchenko

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, inter alia, a registered owner of the following trademark containing a word element "HKScan”:

(i) HKScan (word), EU Trademark, priority date 02 March 2016, registration date 14 June 2016, trademark application no. 015171457, registered for goods in class 32;
(i) HKScan (word), International registration (WIPO), priority date 17 November 2006, trademark registration no. 908520, registered for goods classes 29, 30 and 35.

besides other trademarks consisting of the " HKScan" denominations.
(collectively referred to as "Complainant's trademarks").

The word element "HKScan" is also a part of Complainant's registered company name of HKScan Oyj (Company ID 0111425-3) and various other companies affiliated with the Complainant.

The Complainant has also registered a number of domain names under generic Top-Level Domains ("gTLD") and country-code Top-Level Domains ("ccTLD") containing the term “HKScan”.

FACTUAL BACKGROUND

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

This Complaint is based on the following Factual and Legal Grounds:

The Complainant, HKScan Oyj is a Finnish food manufacturer. It is the leading Nordic food company with over a hundred years' experience in meat production and processing of raw materials. HKScan Oyj is based in Turku, Finland, and it has subsidiary companies in Finland, Sweden, Denmark, Estonia, Latvia and Lithuania. HKScan Oyj has 7200 employees and it exports products to almost 50 countries. In addition to meat and food products, the Complainant´s product range includes also ready meals.

The disputed domain name <hkscangroup.com> was registered on 20 February 2019 and is held by the Respondent.

The domain name website (i.e. website available under internet address containing the disputed domain name) is currently not used and has no content available to public (i.e. the disputed domain name is not currently associated with any active website).

The Complainant seeks transfer of the disputed domain name to Complainant.

PARTIES CONTENTIONS

COMPLAINANT:

CONFUSING SIMILARITY

The Complainant states that:

- The disputed domain name contains the distinctive “HKSCAN” word element, and it is thus almost identical (i.e. confusingly similar) to Complainant’s trademarks.

- The addition of the term “GROUP” (for “group of companies”) is not sufficient to escape the finding that the disputed domain name is confusingly similar to Complainant's trademarks as it does not prevent the likelihood of confusion between the disputed domain name and the Complainant, Complainant's trademarks and its business.

- The disputed domain is also identical to the name used by the HKScan corporate group.
Thus, according to the Complainant the confusing similarity between Complainant’s trademarks and the disputed domain name is clearly established.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant states that:

- The Respondent has not been commonly known by the disputed domain name.

- The Complainant has not authorized, permitted or licensed the Respondent to use Complainant’s trademarks in any manner. The Respondent has no connection or affiliation with the Complainant whatsoever. On this record, Respondent has not been commonly known by the disputed domain name.

- The Respondent has used e-mail account hkscangroup.com to contact other food companies with Complainant’s HKSCAN logo in order to purchase meat products. This makes it clear that the Respondent was intentionally trying to gain commercial profit from the use and registration of the disputed domain name.

- Furthermore, the domain name website has been during since Complainant's notification about Respondent's fraudulent activities (see above) inactive, which implies that there is no Respondent’s intention to use the disputed domain name for legitimate purposes.

BAD FAITH REGISTRATION AND USE

The Complainant states that:

- The disputed domain name has been registered and used in bad faith. The purpose of the use and registration of the domain name has clearly been, inter alia, to use it for e-mails purchasing meat products from Europe, and to cause disruption to the Complainant’s business.

- The purpose of the use and registration of the disputed domain has been, inter alia, an intentional attempt to attract, for commercial gain, companies by creating a likelihood of confusion with the Complainant’s trademarks and its company name.

- As the Respondent seems to be doing business in the meat product industry, it is thus a competitor of the Complainant. The Respondent seems to be well aware of the Complainant’s business in general as well as the existing company name, trademark rights and domain names as they have used Complainant’s contact information, business information and company HKSCAN logo in their fake e-mails.

The Complainant presents the following evidence which has been assessed by the Panel:

- Information about the Complainant and its business;
- Copies of the correspondence made by Respondent;
- Excerpt from WHOIS database regarding disputed domain name;
- Screenshots of relevant websites;
- Excerpts from trademark databases and companies registers.

RESPONDENT:

The Respondent has not provided any response to the complaint.

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

RIGHTS

Since the disputed domain name and the Complainant's trademarks are not identical, the key element investigated and considered by the Panel is whether the disputed domain name consisting of a term "HKSCANGROUP" is confusingly similar to the Complainant's trademarks.

The threshold test for confusing similarity under the UDRP involves a comparison between the trademark and the disputed domain name itself to determine likelihood of Internet user confusion. In order to satisfy this test, the relevant trademark would generally need to be recognizable as such within the disputed domain name. An addition of common, dictionary, generic, or other descriptive terms is typically insufficient to prevent threshold Internet user confusion. Confusing similarity test under the UDRP typically involves a straightforward visual and aural comparison of the trademark with the domain name in question.

Applying the principles described above, the Panel contends that incorporation of a dominant "HKSCAN" element of Complainant's trademarks (which standalone enjoys high level of distinctiveness) into the disputed domain name constitutes confusing similarity between Complainant's trademark and the disputed domain name. Addition of a non-distinctive element - suffix "GROUP" that stands for "group of companies" - cannot prevent the association in the eyes of internet consumers between the disputed domain name and the Complainant's trademarks and thus the likelihood of confusion still exists.

For sake of completeness, the Panel asserts that the top-level suffix in the disputed domain name (i.e. the ".com") must be disregarded under the identity and confusing similarity tests as it is a necessary technical requirement of registration.

Therefore, the Panel has decided that there is identity in this case, it also concludes that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant's assertions that the Respondent is not commonly known by the disputed domain name and is not affiliated with nor authorised by the Complainant are sufficient to constitute a prima facie showing of absence of rights or legitimate interest in the disputed domain name on the part of the Respondent.

In addition, given the fact that (i) the disputed domain name has not been genuinely used and (ii) in the absence of the Respondent's response, the Panel concludes that there is no indication that the disputed domain name was intended to be used in connection with a bona fide offering of goods or services as required by UDRP.

Consequently, the evidentiary burden shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in that name. However, the Respondent failed to provide any information and evidence that it has relevant rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a) (ii) of Policy).

BAD FAITH

The Panel finds it grounded that the Respondent registered and used the disputed domain name in bad faith. Namely by using the disputed domain name for purposes of sending business correspondence to the Respondent's business partners the Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant, its business and trademarks.

As described above, the Complainant has proven that the Respondent has used (at least for some time) the disputed domain

name (i) likely with intention to free-ride on reputation and goodwill of such trademarks and Complainant's business and, even more importantly, (ii) in a manner that was detrimental both to the customers as well the Complainant and his business since information provided about such services were false and misleading.
Such unfair use of the disputed domain name for promotion of Respondent's services cannot be considered as a use thereof in good faith and in compliance with fair business practices.

Thus, the Panel has taken a view that 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.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **HKSCANGROUP.COM**: Transferred

PANELLISTS

Name	**JUDr. Jiří Čermák**

DATE OF PANEL DECISION 2019-05-13

Publish the Decision