Decision for dispute CAC-UDRP-102970

Case number	**CAC-UDRP-102970**
Time of filing	**2020-03-24 10:30:50**
Domain names	**popincookin.com**

Case administrator

Name	**Šárka Glasslová (Case admin)**

Complainant

Organization	**Kracie Holdings, Ltd.**

Complainant representative

Organization	**RODENBAUGH LAW**

Respondent

Name	**Kelly Franznick**

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of trademark registrations across various jurisdictions, inter alia Japanese trademark registration no. 4843917 POPIN' COOKIN' / , registered on March 4, 2005 and US trademark registration no. 5130847 POPIN' COOKIN' (illustration), registered on January 31, 2017 with a priority date from June 26, 2015. The trademarks are registered for goods in class 30 (hereinafter referred to as the "Trademark").

FACTUAL BACKGROUND

The Complainant is a global company with headquarters in Japan that operates in the fields of toiletries & cosmetics, pharmaceuticals, and foods. Its corporate history goes back to 1887.

The disputed domain name was registered on February 8, 2011, and redirects to a parking page with pay-per-click links some related to the Complainant and its activities.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT

The Complainant contends that the disputed domain name fully incorporates the Trademark and is confusingly similar to the Trademark.

Furthermore, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. In this regard, the Complainant states that the Respondent has no relationship with the Complainant's business and is not authorized or licensed to use its trademarks. In addition, the Complainant contends that the Respondent is not commonly known by the disputed domain name and that the Respondent's use of the disputed domain name to forward Internet users to a parking page with commercial links to third parties' websites is no bona fide offering of goods or services or legitimate noncommercial or fair use under the Policy.

Finally, the Complainant states that the disputed domain name was registered and is being used in bad faith. In this regard, the Complainant contends that the Trademark is known and that the Respondent was fully aware of the Complainant when registering the disputed domain name. It argues that the disputed domain name has previously been used to sell the Complainant's products and that such use demonstrates that the Respondent was aware of the Trademark, and that Respondent registered the disputed domain name with the bad faith intent to confuse consumers as to the source and/or sponsorship of the disputed domain name. The Complainant also states that the Respondent has provided no evidence of any actual or contemplated good faith use by it of the disputed domain name and is using the disputed domain name to attract, for commercial gain Internet users to its websites or other on-line locations by creating a likelihood of confusion with the Trademark as to the source, sponsorship, affiliation or endorsement of Respondent’s websites or location or of a product or service on Respondent’s websites or location.

RESPONDENT

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 failed to show 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).

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

Under paragraph 4(a) of the Policy, the Complainant must prove that each of the following three elements is present:

(i) the disputed domain name is identical or confusingly similar to the Complainant's trademark; 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.

1. The Panel accepts that the disputed domain name is confusingly similar to the Trademark as it fully incorporates the Trademark and differs from it only in the lack of apostrophes, which cannot be reproduced in a domain name anyway. Further, it is well established that the specific top-level domain name generally is not an element of distinctiveness that can be taken into consideration when evaluating the identity or confusing similarity between the complainant's trademark and the disputed domain name.

2. The Complainant has substantiated that the Respondent has no rights or legitimate interests in the disputed domain name. The Panel finds that the Complainant has fulfilled its obligations under paragraph 4(a)(ii) of the Policy. The Respondent did not deny these assertions in any way and therefore failed to prove any rights or legitimate interests in the disputed domain name.

Based on the evidence before the Panel, the Panel cannot find any rights or legitimate interests of the Respondent either. In particular, the Respondent’s use of the disputed domain name to forward Internet users to a pay-per-click parking page does not constitute a bona fide offering of goods and services under paragraph 4(c)(i) of the Policy.

3. With regard to the bad faith registration element, having carefully considered the facts contained in the case file, the Panel finds that the Complainant has not provided sufficient evidence with regard to the Respondent’s actual knowledge of the Complainant’s trademark rights at the moment of time the Respondent registered the disputed domain name and that, therefore, the Complainant failed to meet its burden of proof in this regard.

The disputed domain name includes the words "pop in" and "cooking", which are terms of the English language. Furthermore, the omission of the letter "g" at the end of the word "cooking" corresponds to colloquial English. As a result, the Panel considers that the term "pop in cookin" is not inherently highly distinctive but rather a generic and descriptive term.

Based on the facts and the evidence provided by the Complainant, the Respondent must not necessarily have been aware of the Complainant when registering the disputed domain name. The disputed domain name was registered on February 8, 2011, and the Complainant had just one registered trademark in Japan at that time. The Complainant has not provided any evidence with regard to the use of its trademark in 2011, neither in relation to Japan, where its trademark was registered back then nor to the USA, where the Respondent is located. In particular, the Complainant has not provided any turnover figures or advertising expenditure which would evidence any use of the Trademark in the USA or even in Japan in 2011. The fact that the Complainant's trademark is now used in the USA and can be found in search engines does not allow conclusions to be drawn as to what the situation was like in 2011. Such evidence is not sufficient for a finding that the Respondent was probably aware of the Complainant’s trademark at the time of the registration of the disputed domain name.

Consequently, the Panel concludes that the third element of the Policy has not been met on the present record in these Policy proceedings and that the Complaint must be denied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **POPINCOOKIN.COM**: Remaining with the Respondent

PANELLISTS

Name	**Peter Müller**

DATE OF PANEL DECISION 2020-05-18