Decision for dispute CAC-UDRP-103025

Case number	**CAC-UDRP-103025**
Time of filing	**2020-04-27 09:51:57**
Domain names	**kaufmanbroad.site**

Case administrator

Name	**Šárka Glasslová (Case admin)**

Complainant

Organization	**KAUFMAN & BROAD EUROPE**

Complainant representative

Organization	**Nameshield (Enora Millocheau)**

Respondent

Organization	**Maie Poirier**

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

In this proceeding, the Complainant states that it “owns several trademarks including the distinctive wordings "KAUFMAN" and "BROAD” and specifically refers to the international trademark "KAUFMAN BROAD" (word and device) No.736440 registered since March 24, 2000 and the EU trademark "KAUFMAN BROAD" (word and device) No. 001505916 registered since May 23, 2001.

FACTUAL BACKGROUND

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

THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS

The Complainant states that created in 1968, KAUFMAN & BROAD is a real estate development and construction company headquartered in Neuilly-sur-Seine, France. The Complainant has designed, developed, built and sold residential apartments, individual houses, managed residences, shops, business premises and office buildings.

KAUFMAN & BROAD is one of the first French Developer-Builders by the combination of its size, its profitability and the power of its brand.

In addition to trademarks the Complainant also owns many domain names that include the distinctive words "KAUFMAN" and "BROAD", such as <kaufmanbroad.com> and <kaufmanbroad.fr>.

The disputed domain name has been registered on April 8th, 2020 and points to a parking page.

The Complainant states that the disputed domain name is identical to its trademark “KAUFMAN BROAD”.

The disputed domain name contains the Complainant’s registered trademark in its entirety and without any additions.
The addition of the gTLD does not avoid the likelihood of confusion, because it does not change the overall impression of the designation as being connected to the trademark KAUFMAN BROAD.

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant alleges that the Respondent is not identified in the Whois database as the disputed domain name and thus the Respondent is not known as the disputed domain name.
The Complainant contends that the Respondent is not related in any way with the Complainant.
The Complainant does not carry out any activity for, nor has any business with the Respondent.
Neither license nor authorization has been granted to the Respondent to make any use of the Complainant’s trademark or apply for registration of the disputed domain name.
The disputed domain name resolves to a parking page.

Therefore, the Complainant contends that the Respondent did not make any use of disputed domain name since its registration, and it confirms that the Respondent has no demonstrable plan to use the disputed domain name. It demonstrates a lack of legitimate interests in respect of the disputed domain name.

THE DISPUTED DOMAIN NAME WAS REGISTERED AND BEING USED IN BAD FAITH

The Complainant claims that a Google search on the expression “KAUFMAN BROAD” displays several results, all of them being related to the Complainant and its related entity KAUFMAN & BROAD S.A.

Given the distinctiveness of the Complainant's trademark, the Complainant believes that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark, and therefore could not ignore the Complainant.
The disputed domain name resolves to a parking page and MX servers are configured.

The Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain name, and it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant’s rights under trademark law.

By registering the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his web site by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his web site and is therefore using the disputed domain name in bad faith.

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

A. Identical or confusingly similar with Complainant's trademark

The Complainant owns "KAUFMAN BROAD" trademark registrations effective in various jurisdictions.

As confirmed by WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition("WIPO Overview 3.0"), see paragraph 1.2.1: "Where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case".

The disputed domain name entirely incorporates the word elements of the Complainant's trademark.

The Complainant's trademark is clearly recognizable in the disputed domain name and the disputed domain name is identical to the "KAUFMAN BROAD" word elements of the Complainant mark.

The .site domain zone shall be disregarded under the identity or the confusing similarity test as it does not add anything to the distinctiveness of the disputed domain names.

Therefore, the Panel finds that the first requirement of the Policy has been satisfied.

B. Rights or Legitimate Interests

The general rule is the following:
(i) a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests; and
(ii) once such prima facie case is made, the burden shifts to the respondent who has to demonstrate his rights or legitimate interests in respect of the domain name under paragraph 4 (c) of the Policy.
If the respondent fails to do so, the second element of the Policy is satisfied (see Julian Barnes v. Old Barn Studios, WIPO Case No. D2001-0121; Belupo d.d. v. WACHEM d.o.o., WIPO Case No. D2004-0110; Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455 and CAC Case No. 101284).
The Respondent did not respond.

While failure to respond does not per se demonstrate that the Respondent does not have rights or legitimate interests, it allows all reasonable inferences of fact in the allegations of the complaint to be deemed true (see paragraph 14(b) of the Rules and FORUM Case No. FA0006000095095, Vertical Solutions Management, Inc. v. webnet-marketing, inc.).

The Complainant has made a prima facie case in respect of Respondent's lack of rights or legitimate interests, in particular the Respondent is not known under the disputed domain name, is not related in any way with the Complainant and there are no business relationships between the parties as well as no authorization has been granted to the Respondent.

The disputed domain name resolves to a parking page with links to a third party web site offering services relating to domain names.

Such use does not create rights or legitimate interests of the Respondent. Under a general rule use of a domain name for parking can be legitimate where the domain name consists of an actual dictionary word(s) or phrase and is used to host PPC links genuinely related to the dictionary meaning of the word(s) or phrase comprising the domain name (see par. 2.9 of WIPO Overview 3.0). This is not the case in this dispute.

Therefore, the Panel finds that the Complainant has satisfied the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists non-exhaustive circumstances indicating registration and use in bad faith.
These circumstances are non-exhaustive and other factors can also be considered in deciding whether the disputed domain name is registered and used in bad faith.

The disputed domain name resolves to a parking page that redirects to a third party web site in French offering services relating to domain names.

The Complainant alleges that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his web site by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his web site and is therefore using the disputed domain name in bad faith.

The Panel agrees with the Complainant taking into account the evidence available in this dispute.

The Complainant provided evidence that its "KAUFMAN BROAD" trademark is known in France and the Complainant is one of the leaders in its industry in France.

The Respondent is from France and it is inconceivable that the Respondent was not aware of the Complainant and its trademark when registering the disputed domain name.

As stated in WIPO Overview 3.0 the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith (see par. 3.1.4).

Besides, the Panels can also consider additional factors, including nature of the domain name, timing and circumstances of registration, a clear absence of rights or legitimate interests coupled with no credible explanation for the respondent's choice of the domain name, and other indicia generally suggesting that the respondent had somehow targeted the complainant (see par. 3.2.1 of WIPO Overview 3.0).

The disputed domain name is identical with the word elements of the Complainant's mark, the Complainant's mark is popular and known in France and the Respondent is from France, the disputed domain name was registered many years after the registration of the Complainant's trademarks, the disputed domain name is used for a parking page with links to a third party web site that indicates the intent to capitalize on Complainant's fame and reputation and the Respondent failed to respond and explain reasons for registering the disputed domain name.

In these circumstances it is hard, if not impossible, to imagine any legitimate use of the disputed domain name by the Respondent (see e.g. CAC Case No. 102861).

All the circumstances of this case demonstrate that the Respondent targeted the Complainant by fully incorporating the word elements of the Complainant's trademark in the disputed domain name.

Based on the above, the Panel holds that the third requirement of the Policy has been satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **KAUFMANBROAD.SITE**: Transferred

PANELLISTS

Name	**Igor Motsnyi**

DATE OF PANEL DECISION 2020-05-25

Publish the Decision