Decision for dispute CAC-UDRP-103136

Case number	CAC-UDRP-103136
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Domain names	ekibio.com

Case administrator

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

Complainant

Organization	EKIBIO

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	Hola HolaDomains

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant owns the French trademark EKIBIO® No 3762507 registered since August 27, 2010 and <ekibio.fr> registered since July 7, 2011.

FACTUAL BACKGROUND

The disputed domain name <ekibio.com> was registered on July 8, 2019 and points to a parking page where the domain name is offered for sale. It is also offered for sale on SEDO for 6799 USD.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant’s contentions can be summarised as follows:

With 200 employees in nine companies and €75.5m in turnover in 2013, EKIBIO (the Complainant) is a major group in the

100% organic and eco-friendly products market. Its products are sold through specialist shops in France and worldwide.

The disputed domain name is identical to the Complainant's trademark EKIBIO®. Indeed, the trademark EKIBIO® is included in its entirety, without any alterations.

The addition of the gTLD ".COM" does not add any distinctiveness to the disputed domain name. Indeed, it is well established that TLDs may typically be disregarded in the assessment under paragraph 4(a)(i) of the Policy when comparing disputed domain names and trademarks.

Please see WIPO Overview 3.0, section 1.11 ("The applicable Top Level Domain ("TLD") in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.").

Thus, the disputed domain name is identical to the Complainant's trademark.

The Respondent does not have any rights or legitimate interest in the disputed domain name

According to the WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd., a Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy.

According to the information available on the Whois database, the owner of the disputed domain name is not identified as corresponding with the disputed domain name. Past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Thus, the Respondent is not known as the disputed domain name. Complainant drew Panel´s attention to several prior decisions, for instance:

- Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy 4(c)(ii).");

- Forum Case No. FA 699652, The Braun Corporation v. Wayne Loney.

The Complainant contends that the Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and he is not related in any way to its business. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither licence 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 by the Complainant.

The disputed domain name points to a parking page where the domain name is offered for sale. The Complainant contends this general offer to sell the disputed domain name evidences the Respondent's lack of rights or legitimate interest.

Forum Case No. 1562569, Enterprise Holdings, Inc. v. Webmaster & Support ("A general solicitation to sell a disputed domain name provides further evidence of a respondent's lack of rights and legitimate interests in a disputed domain name. […] Therefore, the Panel finds that Respondent's willingness to sell the <wwenterprise.us> domain name is credible evidence that Respondent lacked rights and legitimate interests in the disputed domain name pursuant to Policy 4(a)(ii).").

Accordingly, the Respondent has no rights or legitimate interests to the disputed domain name <ekibio.com>.

The Respondent has registered the disputed domain name several years after the registration of the trademark EKIBIO® by the Complainant, which has established a strong reputation while using this trademark. Besides, the term “EKIBIO” does not have any meaning, except in relation with the Complainant.

Therefore, the Respondent should have known about the Complainant’s rights, which evidences bad faith.

Moreover, the Respondent does not make any use of the disputed domain name. The disputed domain name resolves to a parking page where the disputed domain name is offered for sale. It is also offered for sale for 6799 USD on SEDO.

The Complainant claims that the Respondent fails to make an active use of the disputed domain name. Past panels have held that failure to actively use a domain name is evidence of bad faith registration and use.

Forum Case No. FA 1784212, Airbnb, Inc. v. khaled salem (“Complainant argues that Respondent diverts traffic to a parked website used to offer the disputed domain name for sale, in bad faith under Policy 4(a)(iii). The Panel agrees and finds that Respondent’s failure to actively use the disputed domain name demonstrates bad faith per Policy 4(a)(iii).”).

Furthermore, the Complainant contends that the Respondent has registered the disputed domain name only in order to sell it back for out-of-pockets costs, which evinces bad faith registration and use.

Forum Case No. FA 1623939 Citigroup Inc. v. Kevin Goodman (“Respondent offered the <citi.club> domain name for sale or lease at prices well above even its alleged but unverified acquisition costs. […] Therefore, the evidence shows that Respondent registered <citi.club> primarily for the purpose of transferring it for a profit and demonstrates Respondent’s bad faith registration and use of the <citi.club> domain name pursuant to Policy 4(b)(i).”).

On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain name <ekibio.com> in bad faith.

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, 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

The disputed domain name registered in 2019 is identical for the purposes of the Policy with the Complainant's distinctive trade mark adding only the gTLD .com which does not prevent them being identical.

The Respondent is not commonly known by the disputed domain name and is not authorised by the Complainant. The Respondent has made no use of the disputed domain name so there is no bona fide offering of goods or services or legitimate non-commercial fair use.

The disputed domain name has been offered for sale generally.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **EKIBIO.COM**: Transferred

PANELLISTS

Name	**Dawn Osborne**

DATE OF PANEL DECISION 2020-07-16

Publish the Decision