Decision for dispute CAC-UDRP-103687

Case number	CAC-UDRP-103687
Time of filing	2021-03-25 10:04:07
Domain names	ikeahomesmart.com

Case administrator

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

Complainant

Organization	Inter IKEA Systems B.V.

Complainant representative

Organization	Convey srl

Respondent

Name	huang wei

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 the following trademark registrations of “IKEA” and “IKEA HOME SMART” (the “IKEA mark”):

- German Trademark Registration No. DE867152 for IKEA registered on March 12, 1970;

- U.S.A. Trademark Registration No. 1118706 for IKEA figurative registered on May 22, 1979;

- U.S.A. Trademark Registration No. 1661360 for IKEA registered on October 22, 1991;

- European Union Trademark Registration No. 000109637 for IKEA figurative registered on February 22, 1999;

- European Union Trademark Registration No. 000109652 for IKEA registered on April 22, 2002;

- European Union Trademark Registration No. 013699228 for IKEA HOME SMART registered on July 3, 2015; and

- European Union Trademark Registration No. 015786361 for IKEA HOME SMART registered on January 27, 2017.

The Complainant also owns the domain names <ikea.com>, <ikea.net>, <ikea.us>, <ikea,cn>, <ikea.de>, <ikea.it>, <ikea.co.uk> among many others.

FACTUAL BACKGROUND

The Complainant, Inter IKEA Systems B.V., is one of the most well-known home furnishing brands in the world with more than 400 stores, roughly 220,000 employees worldwide in more than 50 markets and almost a billion visitors per year. The Complainant was founded in 1943 by Ingvar Kamprad to sell household goods like pens, wallets and picture frames. The international expansion of the IKEA business began with establishments of small start-up stores in Norway in 1963 and in Denmark in 1969. In 1973, the first IKEA store outside Scandinavia was established in Switzerland, followed by stores in Germany in the coming years. The Complainant started its retail operations in China in 1998 and now operates a network of 20 stores, 3 distribution centres, 7 delivery centres and an experience centre. In 2018, an e-commerce platform to provide services for 227 Chinese cities was launched and on March 2020, the Complainant and Alibaba announced the opening of the IKEA virtual store on the Alibaba e-commerce platform T-mall, in order to become more accessible for the many people in China. The Complainant offers and sell smart home products under the IKEA HOME SMART mark. These include smart lighting, smart blinds, wireless chargers and smart sound systems.

The disputed domain name, <IKEAHOMESMART.COM>, was registered on August 18, 2019 which resolved to a parking page of a domain name marketplace which was offered for sale.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to the IKEA mark on the basis that the disputed domain name wholly incorporates the Complainant's trademark with the addition of the suffix "homesmart" and generic top-level domain name suffix ("gTLD") ".com" are insufficient to avoid the finding that the disputed domain name is confusingly similar to its IKEA mark.

The Complainant also argues that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Respondent is not commonly known by the disputed domain name. In addition, the Respondent is not affiliated with the Complainant nor did the Complainant license or authorize the Respondent to use the IKEA mark.

The Complainant further asserts that the disputed domain name has been registered and is being used in bad faith as the Respondent should have known of the Complainant's IKEA mark at the time of registration of the disputed domain name. The Complainant also asserts that the Respondent is attempting to attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or of a product or service on the Respondent's website. The Complainant further asserts that the Respondent registered the disputed domain name to capitalize on the reputation and goodwill of the Complainant's IKEA mark and sell the domain for profit.

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.

Preliminary Issue: Language of Proceedings

Paragraph 11 of the Rules provides that:

"(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding."

The language of the Registration Agreement for the disputed domain name <IKEAHOMESMART.COM> is Chinese.

The Complainant requested that the language of the proceeding be English for the following reasons:

(i) the disputed domain name is in English;

(ii) the website under the disputed domain name is in the English language;

(iii) the Respondent responded to the Complainant's cease and desist letter in English; and

(iv) the proceeding will be put through unnecessary trouble and delay if Chinese were made the language of the proceeding.

The Respondent did not comment on the language of the proceeding.

The Panel cites the following with approval: "Thus, the general rule is that the parties may agree on the language of the administrative proceeding. In the absence of this agreement, the language of the Registration Agreement shall dictate the language of the proceeding. However, the Panel has the discretion to decide otherwise having regard to the circumstances of the case. The Panel's discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time and costs. It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her abilities to articulate the arguments for the case." (See Groupe Auchan v. xmxzl, WIPO Case No. DCC2006 0004).

Having considered the above factors, the Panel determines that English be the language of the proceeding. The Panel agrees that the Respondent appear to be familiar with the English language, taking into account his selection of the English-language trademark and the domain name in dispute. In the absence of an objection by the Respondent, the Panel does not find it procedurally efficient to have the Complainant translate the Complaint and evidence into Chinese.

PRINCIPAL REASONS FOR THE DECISION

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a complainant to show that a domain name is identical or confusingly similar to a

trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns the IKEA and IKEA HOME SMART trademark.

The disputed domain name wholly incorporates the Complainant's IKEA and IKEA HOME SMART trademarks in addition to the gTLD ".com".

The addition of a gTLD to a domain name does not avoid confusing similarity as the use of a TLD is technically required to operate a domain name (see Accor v. Noldc Inc. WIPO Case No. D2005-0016; F. Hoffmann-La Roche AG v. Macalve e-dominios S.A., WIPO Case No. D2006-0451; Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003; L'Oréal v Tina Smith, WIPO Case No. 2013-0820; Titoni AG v Runxin Wang, WIPO Case No. D2008-0820; and Alstom v. Itete Peru S.A. WIPO Case No. D2009-0877).

Therefore, the Panel finds that the disputed domain name is confusingly similar or to the IKEA mark and the element under paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the complainant to show that the respondent has no rights or interests in respect of the domain name. Once the complainant establishes a prima facie case that the respondent lacks rights or legitimate interests in the domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the domain name (see WIPO Overview 3.0, paragraph 2.1).

In the present case, the Complainant has demonstrated prima facie that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant submitted evidence that it did not authorize or license the Respondent to use the IKEA or IKEA HOME SMART marks (See OSRAM GmbH. v. Mohammed Rafi/Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org, WIPO Case No. D2015-1149; Sanofi-Aventis v. Abigail Wallace, WIPO Case No. D2009-0735).

In addition, the evidence submitted by the Complainant shows that the Respondent is not commonly known by the disputed domain name.

The Respondent did not submit a response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain name which is sufficient to rebut the Complainant's prima facie case.

The Panel is therefore of the view that the Respondent has no rights or legitimate interests in respect of the disputed domain name and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The Complainant must show that the Respondent registered and is using the disputed domain name in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence that the disputed domain name resolved to parking page of a domain name marketplace which was offered for sale. It is well established that generally registering a domain name for subsequent resale (including for a profit) would not by itself support a claim that the respondent registered the domain name in bad faith with the primary purpose of selling it to a trademark owner (or its competitor). The Panel will look to the totality of

circumstances surrounding the registration of the disputed domain name to determine a finding of bad faith (see WIPO Overview 3.0, paragraph 3.1.1). In doing so, we must look to: (i) the respondent's likely knowledge of the complainant's rights, (ii) the distinctiveness of the complainant's mark, (iii) a pattern of abusive registrations by the respondent, and (iv) failure of a respondent to present a credible evidence-backed rationale for registering the domain name.

In the present case, the Complainant has submitted evidence that its IKEA mark is distinctive and has no meaning. Moreover, the Complainant submitted evidence showing that the IKEA mark has attained significant worldwide fame. In addition, the Complainant's IKEA registration precede the registration of the domain name by many years. Given the evidence submitted to the Panel, the Panel is of the view that the Respondent would have been aware of the Complainant's IKEA and IKEA HOME SAMRT marks at the time of registration of the disputed domain name and it is implausible that there is any good faith use to which the disputed domain name may be put to.

The Complainant also submitted evidence that the Respondent had responded to a cease and desist letter issued prior to the commencement of proceedings by asking for USD$10,000 in exchange for the disputed domain name. The sum requested by the Respondent is heavily in excess of out-of-pocket costs related to the registration of the disputed domain name, which is another indicator of bad faith.

The Respondent did not submit a Response in this proceeding which is a further indication of the Respondent's bad faith, which was considered by the Panel.

The Complainant made some allegations that the Respondent engaged in a pattern of abusive behavior, however, these allegations were not supported by sufficient evidence.

Taking all of the above circumstances into account and based on the evidence presented to the Panel, including the Complainant's IKEA mark's fame, the confusing similarity between the disputed domain name and the Complainant's marks, the implausibility of any good faith use of the disputed domain name, the Respondent's request for valuable consideration in excess of out-of-pocket costs associated with registration and the fact that no Response was submitted by the Respondent in response to the Complainant's cease-and-desist letter and to the Complaint, the Panel draws the inference that the disputed domain name was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **IKEAHOMESMART.COM**: Transferred

PANELLISTS

Name	**Mr. Jonathan Agmon**

DATE OF PANEL DECISION 2021-05-19

Publish the Decision