

Decision for dispute CAC-UDRP-103816

Case number	CAC-UDRP-103816
Time of filing	2021-05-21 09:32:25
Domain names	hkscanswedenab.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	HKScan Oyj
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Complainant representative

Organization	Berggren Oy
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Respondent

Organization	Craze Tech
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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 holder of various trademarks, including the following:

- European Union trademark registrations:
- No. 012561627 (fig.) and No. 0908520 HKScan (word), Finnish trademark;
- Registrations No. 238730 HKScan (word) and No. 267040 HKScan (word) and US trademark;
- Registrations No. 4829379 (fig) and No. 4665272 HKSCAN (word).

The Complainant is also the owner of the International trademark registration No. 1216950 (fig.) designating Bahrain, Belarus, China, Iceland, Japan, South Korea, Kazakhstan, Norway, New Zealand, Philippines, Singapore and the US.

FACTUAL BACKGROUND

The Complainant, HKScan Oyj, is a Finnish food manufacturer and a leading Nordic food company with over a hundred years' experience in meat production and processing of raw materials. The company is based in Turku, Finland, and it has subsidiary companies in Finland, Sweden, Denmark, Estonia, Latvia and Lithuania. HKScan Oyj has over 7000 employees and it exports products to almost 50 countries. The Complainant's company is listed on the Helsinki Stock Exchange.

HKScan Oyj is the parent company of several subsidiaries, for example, of the Finnish subsidiary HKScan Finland Oy (Company ID 1951458-9) and the Swedish subsidiary HKScan Sweden AB (Company ID 556655-4597). The Complainant's main company domain name is <hkscan.com>.

The Respondent has registered the domain name <hkscanswedenab.com> on 14 January 2021. The disputed domain name resolves to a website displaying an online store, offering a wide range of consumer goods including food products. Said website refers to the Complainant's subsidiary, HKScan Sweden AB and includes the same address, as listed on the Complainant's main website.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant considers the disputed domain name to be confusingly similar to trademarks in which it has rights. The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name. According to the Complainant, the Respondent does not use the disputed domain name in connection with any legitimate use. Also, according to the Complainant, the Respondent has not been authorized to register or use the disputed domain name. Finally, the Complainant considers that the disputed domain name was registered and is being used in bad faith. The Complainant contends that the Respondent registered and has been using the disputed domain name with the intention to attract, for commercial gain, Internet users to the Respondent's website, creating a likelihood of confusion with the Complainant's registered and well-known HKSCAN trademark and company name as to the source, sponsorship, affiliation, and endorsement of the Respondent's web site. The purpose and registration of the disputed domain name has also been to cause disruption to the Complainant's business in Sweden and elsewhere, according to the Complainant.

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.

Paragraph 15 of the Rules provides that the Panel is to decide the complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in Paragraph 4 (a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed, it must prove, within the meaning of Paragraph 4(a) of the Policy and on the balance of probabilities, that:

1. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
2. The Respondent has no rights or legitimate interests in respect of the domain name; and
3. The domain name has been registered and is being used in bad faith.

The Panel has therefore dealt with each of these requirements in turn.

1. Identity or confusing similarity

The Complainant must first establish that there is a trademark or service mark in which it has rights. Since the Complainant is the holder of registered HKSCAN marks which are used in connection with its meat production and food processing activities, it is established that there are trademarks in which the Complainant has rights.

The disputed domain name <hkscanswedenab.com> incorporates the Complainant's HKSCAN trademark in its entirety, merely adding the geographic term "sweden" and the letters "AB", which is the abbreviation for a limited company or corporation in Sweden or Finland. In these circumstances, the Panel finds that the confusing similarity is obvious.

It is well established that the Top-Level Domains ("TLDs") such as ".com" may be disregarded when considering whether the disputed domain name is confusingly similar to the trademark in which the Complainant has rights (see section 1.11 WIPO Overview 3.0).

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks. Accordingly, the Complainant has made out the first of the three elements that it must establish.

2. No rights or legitimate interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is established case law that it is sufficient for the Complainant to make a prima facie showing that the Respondent has no right or legitimate interest in the disputed domain name in order to shift the burden of proof to the Respondent (see section 2.1 WIPO Overview 3.0 and *Champion Innovations, Ltd. V. Udo Dussling (45FHH)*, WIPO case No. D2005-1094; *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO case No. D2003-0455; *Belupo d.d. v. WACHEM d.o.o.*, WIPO case No. 2004-0110).

The Panel observes that the Respondent has not been commonly known by the disputed domain name and that the Respondent has not acquired trademark or service mark rights. According to the information provided by the Registrar, the

Respondent is named “Craze Tech”. The Respondent’s use and registration of the disputed domain name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent existed.

Generally speaking, UDRP panels have found that where a domain name consists of a trademark plus an additional term, such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (see section 2.5.1 WIPO Overview 3.0). In this case, the disputed domain name incorporates the Complainant’s HKSCAN trademark in its entirety, merely adding the descriptive terms “Sweden” and “AB”, which makes the disputed domain name identical to the Complainant’s subsidiary HKScan Sweden AB. Therefore, the Panel finds that the disputed domain name carries a high risk of implied affiliation with the Complainant and cannot constitute fair use.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, such as the content of the website linked to the disputed domain name and the absence of a response, support a fair use or not (see sections 2.5.2 and 2.5.3 of the WIPO Overview 3.0).

The website available through the disputed domain name as if the website was operated by the Complainant’s Swedish subsidiary, HKScan Sweden AB, and displays an official address of this subsidiary, but with a different telephone number. The Panel finds that such reference to the Complainant’s subsidiary increases the likelihood of confusion and does not support a fair use.

The Respondent had the opportunity to demonstrate his rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the prima facie case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the disputed domain name. In light of the above, the Complainant succeeds on the second element of the Policy.

3. Bad faith

Complainant must prove on the balance of probabilities that the disputed domain name was registered in bad faith and that it is being used in bad faith (see section 4.2 WIPO Overview 3.0 and e.g. Telstra Corporation Limited v. Nuclear Marshmallow, WIPO Case No. D2000-0003; Control Techniques Limited v. Lektronix Ltd, WIPO Case No. D2006-1052).

According to the Panel, the Respondent’s awareness of the Complainant and/or the Complainant’s trademark rights at the time of registration can evidence bad faith (see Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz, WIPO Case No. D2011-2209; Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite, WIPO Case No. D2001-1070).

Given the distinctiveness of the Complainant’s HKSCAN trademark, the Panel finds it more likely than not that the Respondent was aware of the Complainant’s rights at the moment it registered the disputed domain name. Moreover, the fact that the disputed domain name is identical to the name of one of the Complainant’s subsidiaries is a further indication of the Respondent’s knowledge of the Complainant.

UDRP panels have found the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant’s mark:

- seeking to cause confusion for the respondent’s commercial benefit, even if unsuccessful;
- the lack of a respondent’s own rights to or legitimate interests in a domain name;
- absence of any conceivable good faith use (see section 3.1.4 WIPO Overview 3.0).

In the present case, the Panel finds that the use of the Complainant’s HKSCAN mark to redirect to a website featuring inter alia meat and food products and displaying contact details that refer to an official address of one of the Complainant’s subsidiaries indicates an intention to cause confusion for the Respondent’s commercial benefit. The uncontested lack of the Respondent’s own rights to or legitimate interests in the disputed domain name has already been mentioned above. Finally, given the distinctive character of the Complainant’s mark, the Panel finds it difficult to conceive any plausible good faith use of the disputed domain name by the Respondent.

By failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown 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. **HKSCANSWEDENAB.COM**: Transferred

PANELLISTS

Name	Flip Petillion
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DATE OF PANEL DECISION 2021-06-25

Publish the Decision