# Decision for dispute CAC-UDRP-101646

| | |
|---|---|
| Case number | CAC-UDRP-101646 |
| Time of filing | 2021-07-02 09:40:38 |
| Domain names | ikeacrimea.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 | Келюх Ирина Павловна/Kelyukh Irina |

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 relies on several international and national “IKEA” trademarks citing the following marks in particular:

- The German word mark IKEA No. DE867152, registered on March 12, 1970, protected for goods in class 20;

- The US figurative mark IKEA No. 1118706, registered on May 22, 1979, protected for goods in classes 11, 20, 21, 24, 27;

- The US word mark IKEA No. 1661360, registered on October 22, 1991, protected for goods and services in classes 2, 18, 25, 29, 30, 31, 35, 36, 39, 41;

- The EU word mark IKEA No. 000109652, registered on October 1, 1998, protected for goods and services in classes 2, 8, 11, 16, 18, 20, 21, 24, 25, 27, 28, 29, 30, 31, 35, 36, 39, 41, 42;

- The EU figurative mark IKEA No. 000109637, registered on October 8, 1998, protected for goods and services in classes 2,

8, 11, 16, 18, 20, 21, 24, 25, 27, 28, 29, 30, 31, 35, 26, 39, 41, 42;

- The international mark IKEA (figurative) No 926155, protected inter alia in Russia and Ukraine, registered on April 24, 2007, protected for goods and services in classes 16, 20, 35, 43;

- The Italian word mark IKEA No 0001257211, registered on March 12, 2010, protected for goods in class 20;

- The Italian word mark IKEA No 0001300174, registered on June 3, 2010, protected for goods in class 21; and

- The Ukrainian trademark No. 273659 (IKEA word + device), registered on March, 25, 2020, protected for goods and services in classes 16, 20, 35, 43.

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 is the worldwide IKEA franchisor and responsible for developing and supplying the global IKEA range. IKEA is one of the most well-known home furnishing brands in the world with more than four hundred stores, whilst all the IKEA Group has roughly 220,000 employees worldwide reaching more than fifty markets and almost a billion of visitors per year.
The use of the mark started more than 70 years ago and has been renowned for its business services and brand recognition. The Complainant holds trademark registrations in more than 80 countries around the world and the IKEA trademark has been extensively promoted, without limitation, in print advertisements, promotional materials, Internet forums acquiring a high international recognition.

The IKEA web site www.ikea.com was launched in 1997 and nowadays the Complainant has registered more than 441 domain names under generic Top- Level Domains (“gTLDs”) and 294 domain names under country code Top-Level Domains (“ccTLDs”).
The trademark IKEA has been extensively used in the major social networks where the Complainant has multiple accounts on the same platform for each country.

The Complainant claims its trademark IKEA is distinctive and well known all around the world.

The disputed domain name has been registered by the Respondent on December 16, 2014, without authorization of the Complainant, and has been pointed to a website passing off as an authorized website of a Complainant's franchisee providing the delivery service of IKEA goods to local customers – however such website was in no manner linked to the Complainant.

When the Complainant became aware of the registration and use of the disputed domain name by the Respondent, it served the Respondent and the corresponding Internet Service Providers with cease and desist letters in order to formally notify them of the infringement of the Complainant’s trademark rights, requesting the immediate cease of any use, and the transfer of the disputed domain name to the Complainant.

On May 8, 2020 a trademark infringement notice was sent to the email address of the Registrar of the disputed domain name.
The Registrar answered to the Complainant that its notice of trademark infringement above was forwarded to the owner of the disputed domain name.

On May 27, 2021, the Complainant sent via email a new cease and desist letter to the Respondent requesting to refrain from using the disputed domain name and to transfer it to the Complainant.

In absence of a reply and failing to comply with the request for transfer of the disputed domain name, the Complainant has decided to file Complaint in order to obtain the transfer of the disputed domain name.

The Complainant highlights that the disputed domain name reproduces the Complainant's IKEA trademark in its entirety with the addition of the denomination “Crimea” after the word “ikea”, thus the disputed domain name is confusingly similar to the Complainant’s trademark.

The addition of the geographic term “Crimea” does not reduce the high degree of similarity between the disputed domain name and the Complainant’s trademark.
The disputed domain name fully incorporates the Complainant’s IKEA trademark and the addition of the geographical term “Crimea” does not prevent a finding of confusing similarity. The .com suffix is merely instrumental to the use in Internet.

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

The Complainant states that the Respondent is not an authorized dealer of the Complainant nor has ever been authorized by the Complainant to use its trademark in the disputed domain name.

The Complainant is not aware of the existence of any evidence demonstrating that the Respondent might be commonly known by the disputed domain name or a name corresponding to the disputed domain name as an individual, business, or other organization.

According to the Complainant, there is no evidence of use, or demonstrable preparations to use, of the disputed domain name in connection with a bona fide offering of goods or services before any notice of the dispute.
The Complainant could not find any evidence of bona fide offering of goods or services related to the denomination IKEA.
The Complainant contends that the Respondent has registered the disputed domain name to trade upon IKEA trademark reputation, since the disputed domain name was at first connected to a web page that was hosting IKEA related content passing off as an authorized Complainant’s delivery service provider.

As of April 16, 2021, the disputed domain name was redirected to a website that was no longer advertising content showing any delivery service of IKEA goods to IKEA consumers living in Crimea, but it was still active displaying the IKEA sign in yellow capital letters as website logo.

The Complainant adds that the Respondent still intends to trade upon the reputation of Complainant’s trademark through obtaining profits from the business of delivery and assembly of IKEA products in Crimea via the website corresponding to the disputed domain name.

The Respondent has not been authorized by the Complainant to conduct any business activity under the “IKEA” name.
The Complainant states that the Respondent has registered and used the disputed domain name comprising the wording “IKEA” despite the fact that the IKEA word was a well-known trademark all over the world, including in Crimea, Russia and Ukraine.
Therefore, the Complainant argues that the Respondent has no rights or 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 the registered trademark IKEA has been used extensively and exclusively by the Complainant since 1943 and, through long established and widespread use in several countries of the world, the aforesaid trademark of the Complainant enjoys worldwide reputation in the sector of furniture.
The disputed domain name was registered in December 2014, years after the Complainant obtained its trademark registrations, including registrations in Russia and Ukraine.

By virtue of its extensive worldwide use, the Complainant's trademark has become a well-known trademark as indicated in several UDRP decisions.

The Complainant states that registering a well-known trademark is deemed bad faith registration considering indeed that the Respondent knew or should have known that its registration would be identical to the Complainant's mark.

It is inconceivable that the Respondent was unaware of the existence of the Complainant's registered trademark at the time of the registration of the disputed domain name, with which it is confusingly similar, also in consideration of the circumstances that the IKEA word mark is displayed as website logo in yellow and in capital letters in the homepage of the corresponding website.
The Respondent failed to respond to Complaint's cease and desist letter.

The Complainant further adds that the Respondent has registered the disputed domain name having in mind the value of the Complainant's trademark and with the aim to profit of IKEA fame in order to attract, for commercial gain, Internet users to the website corresponding to the disputed domain name, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of such web site or location or of a product or service on such web site or location.

This, in the opinion of the Complainant, reveals the implausibility of any good faith use of the disputed domain name by the Respondent. The Respondent demonstrated to be aimed at capitalizing on the reputation and goodwill of the Complainant's marks or otherwise at misleading Internet users.

Therefore, considering the high reputation of the trademarks IKEA, the Complainant claims such use amounts to 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.

Language of the proceeding.

The registrar – Hosting Ukraine LLC, Ukraine in its communication to the Czech Arbitration Court (CAC) stated that the language of the registration agreement is Russian.
The Complainant requests that English shall be the language of this proceeding. The Complainant's arguments can be summarized as follows:

1. The registrar on its website has a registration agreement in Russian, English and Ukrainian. Thus, the Complainant has

supposed that the Respondent could know English.
2. The response received from the registrar regarding Complainant's trademark infringement complaint was in English. The Complainant assumes the Respondent should understand English, as otherwise the Registrar would have asked the Complainant to translate the letter in Russian or Ukrainian.
3. After the refusal to deactivate the website, the Complainant sent a cease a desist letter to the Respondent requesting the transfer of the disputed domain name. A few days after Complainant's notification, which was sent to the Respondent's attention in English, the Respondent took down most of the content of the website. Therefore, the Complainant contends that the Respondent has a knowledge of English and was able to understand the content of the Complainant's cease and desist letters.
4. The Respondent's email address is associated to the domain "privacyprotected.net" corresponding to the website http://privacyprotected.net/ that is entirely in English. The Complainant contends that to activate the privacy protection of Hosting Ukraine LLC, the Respondent has signed the agreement in English. This circumstance serves as further evidence to Complainant's contention that the Respondent understands English.
5. The Respondent has chosen to register the disputed domain name in Latin characters, including the indication in English of the Crimea region, rather than in Russian script. The top-level domain .com is an international TLD, not a ccTLD. English is commonly recognized as the primary language for business and international relations.
6. The payment page of the website by the disputed domain name was partially in English, demonstrating that the owner of the website understands English and that prima facie the website was dedicated also to English speakers.
7. The Respondent showed on the website a hyperlink leading to a VK (a Russian Social Media) account where he posts content also in English. The link to the VK account https://vk.com/ was posted on the cached version of the website before the Respondent's removal of most of the IKEA-related contents. On the VK page there is also content published in English.
The Complainant concludes that all of the above demonstrates that the Respondent has knowledge and understanding of English.

The Complainant further contends that it would be disproportionate to require the Complainant not to submit the present Complaint in English, incurring costs of translation, and it would be contrary to the aim of the UDRP of providing time and cost-effective means of resolving domain name disputes.

The Panel first notes that paragraph 10 of the UDRP Rules vests a panel with authority to conduct the proceeding in a manner it considers appropriate while also ensuring that the parties are treated with equality, and that each party is given a fair opportunity to present its case and it is Panel's obligation to ensure that the administrative proceeding takes place with due expedition.

Under par. 11 (a) of the UDRP Rules 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.
Therefore, the Panel needs to provide the balance of interests of both parties to the proceeding and provide them with a fair opportunity to present their case and explain their positions, on the one hand and to ensure that the administrative proceeding takes place with due expedition, on the other hand.
Both fairness and equal rights of the parties and speed and efficiency of the proceeding need to be maintained.

Second, the Panel notes that the website by the disputed domain name on the date of this decision is entirely in Russian. The previous versions of the website provided by the Complainant in its annex and as checked by the Panel via web.archive.org were also only in the Russian language.
There is no direct evidence indicating that the Respondent is able to communicate in English or that the website was targeted to English speakers: there is no English language content on the website by the disputed domain name and there was no direct communication in English between the Parties.

Based on the evidence available before the Panel the Respondent has never responded to the Complainant in English.

However, the registrar has indeed its registration agreement in three (3) languages and the fact that the Respondent appears to have changed the website's content shortly after receipt of Complainant's cease and desist letter sent in English may

indicate at least some understanding of English. The disputed domain name also includes the English word “Crimea” rather than transliteration of Russian or Ukrainian words (“Krym” or “Krim”).
However, all these factors may only serve as indirect evidence (indication) of possible understanding of English by the Respondent.

Third, the Respondent failed to respond in this dispute. The Panel understands both English and Russian and is able to conduct the proceeding in both languages.
Exercising its rights under par. 10 (a) of the UDRP Rules the Panel issued a procedural order in both Russian and English and invited the Respondent to submit her response and arguments in either Russian or English, whereas the Complainant was invited to provide additional arguments in respect of the language of this proceeding.
The Respondent failed to take this additional opportunity and did not provide a response. The Complainant provided additional submissions after the Panel’s deadline set in the procedural order however the Complainant stated that it missed the deadline due to technical reasons.
In any case, the Complainant’s additional submissions essentially repeat the same arguments summarized above.
To sum up, the Panel finds that it provided fair opportunities to both parties.

In particular, the Respondent was given an additional opportunity to explain her case and arguments in Russian, but failed to do so.
The Panel was ready to accept the response and arguments in Russian.

As stated by one of the UDRP panels: “The spirit of Paragraph 11 is to ensure fairness in the selection of language by giving full consideration to the parties’ level of comfort with each language, the expenses to be incurred and the possibility of delay in the proceeding in the event translations are required and other relevant factors” (see Groupe Industriel Marcel Dassault, Dassault Aviation v. Mr. Minwoo Park, WIPO Case No. D2003-0989).

Previous UDRP decisions confirmed that a complaint may be filed in one language and a response can be submitted in the same or another language when the Panel is familiar with both languages: “to accept the Complaint in the language as filed, to accept a Response in either language, and to put the matter through for determination by a Panel familiar (wherever possible) with both languages” (see e.g. Zappos.com, Inc. v. Zufu aka Huahaotrade, WIPO Case No. D2008-1191 and Laverana GmbH & Co. KG v. Silkewang, Jiangsu Yun Lin Culture Communication Co., Ltd. / xia men yi ming wang luo you xian gong si, WIPO Case No. D2016-0721).

Taking into account speed and efficiency of the proceeding, the spirit of paragraphs 10 and 11 of the UDRP Rules and circumstances of this dispute described above, the Panel decides to proceed in English.

## PRINCIPAL REASONS FOR THE DECISION

A. Identical or confusingly similar with Complainant’s trademark

The Complainant is the owner of the “IKEA” trademark registrations effective in many jurisdictions.

As confirmed by WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”), 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 fully incorporates the “IKEA” mark of the Complainant coupled with the addition of the geographic term “Crimea”.

It is well accepted that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms, including geographic terms, would not prevent a finding of confusing similarity under the first element (see par. 1.8 of WIPO Overview 3.0).

The Panel notes that the addition of “Crimea” does not change overall impression and does not eliminate the confusing

similarity between the disputed domain name and the Complainant's "IKEA" trademarks.

The trademark is clearly recognizable in the disputed domain name.

The gTLD suffix ".com" is to be disregarded under the confusing similarity test.

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 and CAC Case No. 101284.

The disputed domain name was registered on December 16, 2014.

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 Vertical Solutions Management, Inc. v. webnet-marketing, inc., FA 95095, National Arbitration Forum).

The Complainant states that the Respondent is not an authorized dealer of the Complainant nor has ever been authorized by the Complainant to use the trademark IKEA in the disputed domain name.

The Complainant contends that the Respondent has registered the disputed domain name to trade upon IKEA trademark reputation, since the disputed domain name was at first connected to a web page that was hosting IKEA related content passing off as an authorized Complainant's delivery service provider and later redirected to a website still active displaying the IKEA written in yellow capital letters as website logo.
Thus, the Complainant contends that the Respondent still intends to trade upon the reputation of Complainant's trademark through obtaining profits from the business of delivery and assembly of IKEA products in Crimea via the website corresponding to the disputed domain name.

The Respondent appears to have registered and is using the disputed domain name to offer services of delivery of "Ikea" goods to customers in Crimea.

Therefore, the Respondent can be considered as a reseller of Complainant's products. Resellers, even unauthorized, can, under certain circumstances, have legitimate rights and interests under UDRP.

As stated in WIPO Overview 3.0: "Panels have recognized that resellers, distributors, or service providers using a domain name containing the complainant's trademark to undertake sales or repairs related to the complainant's goods or services may be making a bona fide offering of goods and services and thus have a legitimate interest in such domain name" (see par. 2.8.1 of WIPO Overview 3.0).

The requirements are outlined in the "Oki data" test (Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No. D2001-0903):

(i) the respondent must actually be offering the goods or services at issue;

(ii) the respondent must use the site to sell only the trademarked goods or services;
(iii) the site must accurately and prominently disclose the registrant's relationship with the trademark holder; and
(iv) the respondent must not try to "corner the market" in domain names that reflect the trademark.

Even though in this case the Respondent has not been authorized by the Complainant, the "Oki data" test applies to unauthorized resellers as well (see e.g. ITT Manufacturing Enterprises, Inc., ITT Corporation v. Douglas Nicoll, Differential Pressure Instruments, Inc., WIPO Case No. D2008-0936).

Therefore, the Panel needs to consider the application of the "Oki data" criteria to the present case.

Based on the available evidence, the Panel finds that the Respondent satisfies criteria (i), (ii) and (iv) listed above.
The Respondent seems to actually offer the Complainant's goods to customers located in Crimea, there is no information that the Respondent offered any other goods except "Ikea" goods and in the present case there is no evidence of Respondent's attempt "to corner the market".

What appears to be the main issue in this dispute is whether the Respondent's site "accurately and prominently discloses the registrant's relationship" with the Complainant.

The disputed domain name contains a reference to "Crimea" suggesting that the goods can be delivered to customers in Crimea.
The initial version of the website as provided by the Complainant and verified by the Panel on web.archive.org contained information about goods, their delivery and some contact information. Current version of the website on the date of the decision contains very little information, only a reference to "Ikea" delivery in Sevastopol and Crimea "with low commission".

The website does not contain any conspicuous notice or a disclaimer disclosing Respondent's relationship with the Complainant.

As noted before previous UDRP panels generally applied the "Oki data" to unauthorized resellers, see e.g. ITT Manufacturing Enterprises, Inc., ITT Corporation v. Douglas Nicoll, Differential Pressure Instruments, Inc., WIPO Case No. D2008-0936: "The Panel concludes, however, that the issues of legitimate reseller interests in accurately describing a lawful business, on the one hand, and of potential abuses of trademark, on the other, are similar whether or not there is a contractual relationship between the parties. Therefore, the Panel follows the precedents of Volvo Trademark Holding AB v. Auto Shivuk and Dr. Ing. h.c. F. Porsche AG v. Del Fabbro Laurent, finding that the Oki Data criteria are appropriate here to assess the rights or legitimate interests of the unauthorized reseller for purposes of this element of the Policy."

In Dr. Ing. h.c. F. Porsche AG v. Del Fabbro Laurent, WIPO Case No. D2004-0481, decided in favor of the Respondent (unauthorized distributor), the Panel found that the Respondent disclosed the relationship by a disclaimer on the website entry that he is neither affiliated to nor authorized by the Complainant itself.

In CAC Case No. 102244 it was found that the Respondent "does not satisfy criterion, owing to the lack of any explanation of the Respondent's status (or indeed contact details or business activities), and the prominent use of the Complainant's logo on the Respondent's website" and the Panel came to a similar conclusion in CAC Case No. 102058 (" the Respondent has not properly explained its relationship to the Complainant, in particular, there is no reference made to unofficial distributor status of the Respondent or origin of the products").

However, some Panels were more lenient and found that even in the absence of an express disclaimer on the website, this criterion can be met by, for instance, the very disputed domain name and/or by some other information on the website, see e.g. CAC Case No. 102168: "As to disclaimers and representations, the Panel notes the disputed domain name includes the word 'shop.' The main page on the site says Rochas Paris. It does not say that it is Rochas or that it is not. The use of the generic word 'shop' arguably operates as a kind of disclaimer…"

In CAC Case No. 101464 the Panel applied the "Oki data" test and found in favor of the respondent based on the domain

name itself (that contained the word “servisi” – English “service”) and the statements on the website indicating Respondent’s provision of services relating to Complainant’s products that, in the view of the Panel, was a kind of a disclaimer.

Whether the disputed domain name itself can, in certain cases, serve as a disclaimer and when, in the absence of direct statements and disclaimers, information on the website can be seen as “accurately and prominently disclosing the relationship with the trademark owner” depends on facts of a specific dispute and can only be decided on a case- by-case basis.

The Panel sees this dispute as a borderline case.

However, in the view of the Panel, the wording “accurately and prominently” requires clear and obvious disclosure and statements so that the website visitors can easily, without spending much time and efforts, see the nature of the relationship and unofficial character of the website.

In other words, the nature of the relationship must be obvious and clear.

"Accurately and prominently" mean a conspicuous and precise disclaimer, description or statements referring to the relationship between the parties.

This is not the case here. The Panel could not find any disclaimers, statements or any other info on the website (both the old version and the current version) that would disclose Respondent’s relationship with the Complainant and that would qualify as a disclaimer or similar statements.

The Respondent does not expressly claim to be officially connected with the Complainant, but at the same time, Complainant’s “IKEA” yellow logo was (and is still) used in the top left corner of the website that may be seen as indicating connection with the Complainant and some kind of support and authorization by the Complainant.

Some visitors could, after spending some time on the website, understand that this is not an official site of the Complainant and is not affiliated with the Complainant, but this is not obvious and no accurate and prominent statements are present on the website.

The disputed domain name contains a geographic term “Crimea” but, in the view of the Panel, this term cannot serve as a disclaimer in this dispute.

It may, on the contrary, imply that the Complainant has some official presence in Crimea and be seen as some kind of an authorization (see also par. 2.5.1 of WIPO Overview 3.0: “certain geographic terms are seen as tending to suggest sponsorship or endorsement by the trademark owner”).

Based on the above, the Panel finds that the Respondent does not meet the “Oki data” criteria and the Respondent therefore lacks rights and legitimate interests in respect of the disputed domain name.

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.

As confirmed by WIPO Overview 3.0 “Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) 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).

While the Panel could see that, under certain circumstances, registration and/or use of the disputed domain name by the Respondent could have been legitimate, taking into account the evidence available in this dispute the Panel finds bad faith based on the following:

1. Well-known character of Complainant's "IKEA" marks, also as confirmed by previous UDRP panels (see e.g. CAC Case No. 103722, Inter Ikea Systems B.V. v. ahmed Omar, a2-hostweb, ahmed saad, WIPO Case No. D2019-0944 and Inter IKEA Systems B.V. v. WhoisGuard Protected, WhoisGuard, Inc. / Justin Briggs, WIPO Case No. D2018-0314 – "the Complainant's IKEA trademarks enjoy a worldwide reputation and amount to well-known trademarks as pointed out above").
As stated above registration of the domain name confusingly similar with the well-known mark by itself creates a presumption of bad faith. The Complainant's marks are indeed famous and have global reputation.
2. It is clear that the Respondent targeted the Complainant by registering and using the disputed domain name and was taking advantage of Complainant's mark fame and reputation in a certain way.
As confirmed by WIPO Overview 3.0 "bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark". Most of Complainant's marks were registered before the registration of the disputed domain name.
3. The Respondent failed to respond to Complainant's cease and desist letters and failed to respond to the Complaint in this dispute.
At the same time the Respondent took down a great deal of content after receipt of the cease and desist letter.
4. Absence of clear information disclosing Respondent's relationship with the Complainant coupled with the use of the Complainant's logo on the website (while these factors are relevant for assessing the second UDRP element, they also play a role in the third element assessment). The addition of the geographic term "Crimea" could only increase an assumption of an affiliation with the Complainant or endorsement by the Complainant.

The question remains, to what extent, the reseller that failed the "Oki data" test can still be considered to have good faith.

This is not entirely improbable depending on circumstances of a particular case (see e.g. Snap-on Incorporated v. Jeffrey Scotese, WIPO Case No. D2013-0577: "Whether a registrant registered and used a disputed domain name in bad faith is a separate test than whether the registrant had any legitimate rights or interests in the domain name").

As noted by one Panel: "the Policy was not designed to establish for the holder of a strong trademark a bar to entry of any online competitors or other online legitimate sellers" (see Dr. Ing. h.c. F. Porsche AG v. Del Fabbro Laurent, WIPO Case No. D2004-0481).

UDRP in such cases should provide a balance between the interests of trademark holders, on the one hand, and the interests of resellers and distributors to be able to describe their business activity, on the other.

Obviously, the trademark owners may want to object the use of their trademarks by resellers in domain names and such objections shall not always lead to UDRP complaints being accepted.

The resellers may need to use trademarks to refer to their business and to inform customers about their business.
In some cases they may use trademarks in the domain names, however such use must be compliant with UDRP principles and/or, where applicable, national trademark legislation.

The Panel notes that the UDRP standards of proof is "balance of probabilities" or "preponderance of the evidence". Under this standard, a party should demonstrate to a panel's satisfaction that it is more likely than not that a claimed fact is true (see par. 4.2 of WIPO Overview 3.0).

As regards this dispute, the Panel finds that the Respondent more likely than not registered and is using the disputed domain name in bad faith.
Again, this case is a close one. However, the Respondent failed to respond and provide any explanations regarding her registration and use of the disputed domain name and her activities.

The Panel finds that in this case, taking into account absence of a response and any explanations from the Respondent, strength and global reputation of Complainant’s marks, use of the Complainant's strong mark in the disputed domain name with the addition of the geographic term "Crimea", use of the Complainant’s logo on the website and absence of clear information on the website describing the relationship between the Parties, the balance of probabilities is in the Complainant’s favor.

The Panel finds that the disputed domain name was registered in order to attract, for commercial gain, Internet users to the website corresponding to the disputed domain name, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of such web site or location or of a product or service on such web site or location.

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. **IKEACRIMEA.COM**: Transferred

## PANELLISTS

| Name | **Igor Motsnyi / Mocni Konsalting doo** |
|---|---|

DATE OF PANEL DECISION 2021-08-20

Publish the Decision