

Decision for dispute CAC-UDRP-104435

Case number CAC-UDRP-104435

Time of filing 2022-03-24 09:41:13

Domain names kaufmanbroad-fr.com

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization KAUFMAN & BROAD EUROPE

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name patrice dautel

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 a number of trade marks for KAUFMAN BROAD including, by way of example, International Trade Mark, registration, number 736440 for KAUFMAN BROAD, in classes 19, 35, 36 and 37, registered on March 24, 2000.

FACTUAL BACKGROUND

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

The Complainant is a real estate development and construction company, with its headquarters in Neuilly-sur-Seine, France, and is active in both the residential and business sectors. The Complainant trades as KAUFMAN & BROAD and, in addition to its trade marks for KAUFMAN BROAD, it owns domain names which comprise or include this term, namely <kaufmanbroad.com> and <kaufmanbroad.fr>.

The disputed domain name was registered on February 15, 2022. It resolves to a website containing pay-per-click ("PPC") links including "Achat Appartement Paris", "Achat Immobilier" and "Construction maison" (roughly translated as; "Buy an apartment in Paris", "Real estate purchase" and "House building" respectively).

The disputed domain name is confusingly similar to a trade mark in which the Complainant has rights. The addition of the letters “fr”, which is a recognised abbreviation for “France”, does not change the overall impression of the disputed domain name as being connected with the Complainant’s mark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. In particular, the use of the disputed domain name to resolve to a website containing PPC links relating to the Complainant’s business does not amount to a bona fide offering of goods and services. Nor has the Complainant granted any licence or authorisation to the Respondent to make any use of its KAUFMAN BROAD mark.

The Respondent has registered and is using the disputed domain name in bad faith. In view of fact that the Complainant’s mark is distinctive and its mark is known in France, where the Respondent is located, it is inconceivable that the Respondent registered the disputed domain name without knowledge of the Complainant’s mark and the mark was therefore registered in bad faith. The Respondent is using the disputed domain name in order to attempt to attract Internet user to its website for its own commercial gain, which amounts to evidence of bad faith use.

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

Rights

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s KAUFMAN BROAD trade mark. Where a complainant’s mark is recognizable within a domain name, the addition of other terms, irrespective of their meaning, will not prevent a finding of confusing similarity; see CAC Case No. 102382, MAJE v enchong lin.

Rights and legitimate interests

The use by the Respondent of the disputed domain name in order to resolve to a website containing PPC links which are associated with the Complainant’s business activities in the fields of real estate construction and development does not amount to a bona fide offering of goods and services as such links capitalize on the reputation and goodwill of the Complainant’s mark; see, by way of example, CAC Case No. 102360, ARCELORMITTAL (SA) v Milton Liquors LLC. There is no evidence that the Respondent has been commonly known by the disputed domain name, nor does the Respondent’s use of the disputed domain name to point to a directory page amount to making a legitimate non-commercial

or fair use of it.

The Complainant having made out a prima facie case in relation to the second element, the burden of proof shifts to the Respondent to rebut it; see, for example, CAC Case No. 102333, Amedei S.r.l. v sun xin. In the absence of any response by it to the Complaint, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Bad faith

The only known use to which the disputed domain name has been put is to point to a page hosting PPC links which are associated with the Complainant's services. This suggests that the Respondent was aware of the Complainant and its KAUFMAN BROAD mark as at the date of registration of the disputed domain name and that it did not have any other use in mind for it as at the date of registration. In these circumstances, the Respondent's registration leads to a presumption of bad faith; see for example CAC Case No 102157, FEDERATION FRANCAISE DE TENNIS (FFT) v Biswas, Jyotirmoy.

The Respondent is seeking to gain income from Internet users who, having regard to the confusing similarity between the disputed domain name and the Complainant's KAUFMAN BROAD mark, are apt to visit the Respondent's website under the impression that it is owned and/or operated by, or with the authority of, the Complainant. Whilst Internet users are likely to appreciate, on arriving at the Respondent's website, that it has no connection with the Complainant, the Respondent will, by then, have had the opportunity to earn PCC income from them; see, for example, Yahoo! Inc. v. Hildegard Gruener, WIPO Case No. D2016-2491. The Respondent's conduct therefore falls within the example of bad faith registration and use set out at paragraph 4(b)(iv) of the Policy namely that, by using the disputed domain name, it has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website.

The Panel accordingly finds that the disputed domain name was both registered and 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. KAUFMANBROAD-FR.COM: Transferred

PANELLISTS

Name	Antony Gold
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DATE OF PANEL DECISION 2022-04-29

Publish the Decision
