

Decision for dispute CAC-UDRP-104612

Case number	CAC-UDRP-104612
Time of filing	2022-05-27 09:17:12
Domain names	ikksin.xyz, ikksjob.xyz, ikksorder.xyz, ikkstt.xyz, ikkswork.xyz, ikkszz.xyz

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	IKKS GROUP
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Organization	cheap wasy
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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 names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several trademarks consisting of the term "IKKS", in particular:

- Word mark IKKS, European Union Intellectual Property Office (EUIPO), registration No.: 002255552, registration date: July 11, 2002, status: active; Classes 3, 9, 14, 16, 18, 25, 28; and
- Word mark IKKS, International Trademark/World Intellectual Property Organization (WIPO), registration No.: 782171, registration date: May 2, 2002, status: active, Class 3.

Further, the Complainant owns domain names consisting of the term "IKKS" such as <ikks.com>, used for its official website since 1998.

FACTUAL BACKGROUND

On May 15, 2022, the Respondent registered the following six disputed domain names:

- <ikksin.xyz>
- <ikksjob.xyz>
- <ikksorder.xyz>

<ikkstt.xyz>
<ikkswork.xyz>
<ikkzzz.xyz>

The language of the registration agreement is English.

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

The Complainant is a French apparel company and owner of the brand IKKS. Established in 1986, the Complainant owns and operates retail stores that sell apparel and clothing accessories.

The disputed domain names are confusingly similar to the Complainant's distinctive trademark IKKS.

The Complainant has a strong reputation in the trademark IKKS, and the disputed domain names were registered several years after the registration of the IKKS trademark.

The term IKKS does not have any meaning, save for in connection with the Complainant and its brand.

Regarding bad faith, the Respondent knew or should have known about the Complainant's rights at the time of registering the disputed domain names. The disputed domain names resolve to an error page thus there is no evidence of actual or contemplated legitimate use thereof.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (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 names have been registered and are 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

THREE ELEMENTS COMPLAINANT MUST ESTABLISH UNDER THE POLICY

According to Paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to obtain an order that the disputed domain name should be transferred or cancelled:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel has examined the evidence available to it and has come to the following conclusion concerning the satisfaction of the three elements of paragraph 4(a) of the Policy in these proceedings:

(A) THE COMPLAINANT'S RIGHTS AND CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAMES TO THE COMPLAINANT'S RIGHTS

Sufficient evidence has been submitted by the Complainant of its trademark rights in the term IKKS in numerous classes. Further, the Complainant is the owner of domain names that incorporate its trademark including <IKKS.COM>. All of the above were created and registered prior to May 15, 2022, the creation date of the disputed domain names. It is well established that a nationally or regionally registered trademark confers on its owner sufficient rights to satisfy the requirement of having trademark rights for the purposes of standing to file a UDRP case. As such, the Panel finds that the Complainant possesses rights in its IKKS trademark.

The Panel finds that the disputed domain names <ikksin.xyz>, <ikksjob.xyz>, <ikksorder.xyz>, <ikkstt.xyz>, <ikkswork.xyz>, as well as <ikkszz.xyz> are confusingly similar to the Complainant's IKKS trademark, since all of them incorporate the IKKS trademark in its entirety, simply with the addition of the terms "in", "job", "order", "tt", "work" and "zz". Numerous UDRP panels have recognized that incorporating a trademark in its entirety can be sufficient to establish that the disputed domain name is at least confusingly similar to a registered trademark. Moreover, it has also been held in many UDRP decisions and has meanwhile become a consensus view among UDRP panels that the mere addition of descriptive or other terms, such as e.g. the terms "job", "order" and "work", does not dispel the confusing similarity arising from such entire incorporation of the Complainant's IKKS trademark in the disputed domain names.

UDRP panels agree that the TLD may usually be ignored for the purpose of determination of identity or confusing similarity between a domain name and the Complainant's trademark as it is technical requirement of registration (see paragraph 1.11.1 WIPO Overview 3.0).

Therefore, the Panel concludes that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy and the disputed domain names are confusingly similar to Complainant's mark.

(B) RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DISPUTED DOMAIN NAMES

The second element of the Policy requires that the Complainant establish that the Respondent has no rights or legitimate interests in the disputed domain name. The generally adopted approach by UDRP panels, when considering the second element, is that if a complainant makes out a prima facie case, 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. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (see e.g. WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

However, the burden of proof still remains with the Complainant to make out its prima facie case on a balance of probabilities; see, for example, CAC Case No. 102263, Intesa Sanpaolo S.p.A. v Ida Ekkert. Moreover, the wording of paragraph 4(a)(ii) of the Policy requires a complainant to establish that the respondent has no rights or legitimate interests in the domain name in issue. Simply establishing that the complainant also has rights in the domain name in issue is insufficient.

In the present case, the Complainant asserts that the Respondent is not commonly known by the disputed domain names, is not in any way related to the Complainant, nor has the Respondent been granted an authorization or license to use the disputed domain names by the Complainant. This has not been contested by the Respondent. Instead, the Respondent has not responded in any form and thus has failed to provide any information and evidence whatsoever that could have shown that it has relevant rights or legitimate interests in respect of the disputed domain names (within the meaning of paragraph 4(a) (ii) of the Policy).

Further, the disputed domain names all resolve to an error page. There is no evidence of legitimate use of the disputed domain names nor of any plan by the Respondent to make such legitimate use.

Therefore, the Panel concludes that neither the Respondent nor the evidence establishes that the Respondent has any right or legitimate interest to the disputed domain names. The Complainant has therefore also satisfied the requirement under paragraph 4(a)(ii) of the Policy.

(C) BAD FAITH REGISTRATION AND USE OF THE DISPUTED DOMAIN NAMES

The third element requires Complainant to show that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy. Hallmark Licensing, LLC v. EWebMall, Inc., Case No. D2015-2202 (WIPO, February 12, 2016) ("The standard of proof under the Policy is often expressed as the "balance of the probabilities" or "preponderance of the evidence" standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true.").

For this purpose, the Complainant has successfully put forward prima facie evidence that the Respondent has not made use, or demonstrable preparations to use, of either the disputed domain names in connection with a bona fide offering of goods or services, or of making a legitimate non-commercial or fair use of the disputed domain names. Complainant submits the

Respondent is not commonly known under the disputed domain names and that Respondent has never been authorized or licensed by Complainant to use the Complainant's trademark(s) or register the disputed domain names. This prima facie evidence has not been challenged by the Respondent.

At the time the disputed domain names were registered, it is unlikely that the Respondent did not have knowledge of the Complainant's rights on the trademarks, because Complainant adduced evidence to show that, if the Respondent had carried out a Google search for the term IKKS, the search results would have yielded immediate and obvious references to the Complainant. In light of these factors, it is therefore reasonable to infer that the Respondent either knew, or should have known, that the disputed domain names would be identical, or confusingly similar to, the Complainant's trademarks and that they registered the disputed domain names with knowledge of the Complainant's trademarks.

In the present case, the disputed domain names resolve to an error page. It is well established that the non-use of a domain name does not prevent a finding of bad faith under the doctrine of passive holding. Whether there is passive holding cannot be answered in abstract, but rather the Panel must consider the totality of the circumstances applicable to a specific case (Telstra Corporation Limited v. Nuclear Marshmallows WIPO Case No. D2000-0003). In this present case the factors which lead the Panel to conclude that Respondent's passive holding amounts to bad faith are: (i) the Complainant's trademark has a strong reputation and is widely known, as evidenced by its significant presence on the internet (as shown through the Google search results) and substantial use in France and in other countries around the world, (ii) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the domain name, (iii) several of the terms used in the disputed domain names could be associated with the complainant and its retail business such as "jobs", "work" and "order", and (iv) taking into account the above, it is unlikely any actual or contemplated active use of the disputed domain names by the Respondent would not be illegitimate, such as by being a passing off, or an infringement of the Complainant's rights under trademark law.

As a final point the Panel notes that the Respondent obviously provided false or incomplete contact information in the Whois register for the disputed domain names, with the name "cheap wasy" and a street address "dndlmldidj". Further, email notices sent to the various email addresses provided by Respondent were all returned back undelivered due to permanent fatal errors in the email addresses. This fake contact information casts a negative light on Respondent's behavior which further bolsters the Panel's bad faith finding.

Therefore, in light of the above analysis, the Panel concludes that the Complainant made out its case that the disputed domain names were registered and is being used in bad faith, and thus has satisfied the requirement under paragraph 4(a) (iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. IKKSIN.XYZ: Transferred
2. IKKSJOB.XYZ: Transferred
3. IKKSORDER.XYZ: Transferred
4. IKKSTT.XYZ: Transferred
5. IKKSWORK.XYZ: Transferred
6. IKKSZZ.XYZ: Transferred

PANELLISTS

Name	Claire Kowarsky, LL.M
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DATE OF PANEL DECISION 2022-06-25

Publish the Decision
