

Decision for dispute CAC-UDRP-104642

Case number CAC-UDRP-104642

Time of filing 2022-06-13 09:23:37

Domain names ikks.vip

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization IKKS GROUP

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Organization Xiang Gang

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 <ikks.vip>.

IDENTIFICATION OF RIGHTS

IKKS GROUP (the Complainant) is an apparel company founded in 1986 and is based in Saint-Macaire-en-Mauges, France. The company owns and operates apparel retail stores that sell apparel and clothing accessories.

The Complainant is the owner of several trademarks worldwide, such as:

- European trademark IKKS n° 002255552 registered since June 12th, 2001;
- International trademark IKKS n° 782171 registered since May 2nd, 2002;
- European trademark IKKS n° 002913929 registered since October 30th, 2002.

The Complainant also owns an important domain names portfolio, including the same distinctive wording "IKKS", such as the domain name <ikks.com> registered and used for its official website since April 2nd, 1998.

The disputed domain name has been registered on June 3rd, 2022.

FACTUAL BACKGROUND

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

The Complainant draws Panel attention to previous UDRP decisions:

- WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A. (“It is also well established that the specific top level of a domain name such as “.com”, “.org” or “.net” does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.”)
- Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> (“Here, the WHOIS information of record identifies Respondent as “Chad Moston / Elite Media Group.” The Panel therefore finds under Policy ¶ 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy ¶ 4(c)(ii).”).
- Forum Case No. FA 156251, Am. Int’l Group, Inc. v. Busby (finding that the respondent attempts to pass itself off as the complainant online, which is blatant unauthorized use of the complainant’s mark and is evidence that the respondent has no rights or legitimate interests in the disputed domain name).
- Forum Case No. 1770729, UNFCU Financial Services, LLC d/b/a Industrial Coverage v. Clark Lienemann (“Use of a confusingly similar domain name to pass off as complainant to conduct a phishing scheme is evidence of bad faith under Policy ¶ 4(b)”).
- Forum Case No. 1760987, Ripple Labs Inc. v. Thomas Viva Vivas (“Use of a domain name to create confusion as to the source, sponsorship, affiliation, or endorsement of competing content therein can evidence bad faith under Policy ¶ 4(b) (iv).”).

PARTIES' CONTENTIONS:

COMPLAINANT:

I. The disputed domain name is confusingly similar to the protected mark

According to the Complainant, the disputed domain name <ikks.vip> is confusingly similar to the IKKS mark as it fully incorporates the IKKS mark in its entirety, without any addition or deletion, adding the purely generic top-level domain (“gTLD”) “vip”.

II. The Respondent does not have any rights or legitimate interest in the disputed domain name

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name and is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither license nor authorization has been granted to the Respondent to make any use of the Complainant’s trademark IKKS, or apply for registration of the disputed domain name by the Complainant.

Moreover, the disputed domain name points to a login page displaying the Complainant’s trademark. The Complainant claims that this page could be used in order to collect the personal information of the Complainant’s clients.

According to the Complainant, the Respondent’s website cannot be considered as a bona fide offering of services or fair use, since the website can mislead the consumers into believing that they are accessing the Complainant’s website.

III. The disputed domain name has been registered and is being used in bad faith

The Complainant claims that the disputed domain name was registered and is used in bad faith.

The Complainant provides that the disputed domain name is identical to the Complainant's distinctive trademark IKKS. The Respondent has registered the disputed domain name several years after the registration of the trademark IKKS by the Complainant, which has established a strong reputation while using its trademark.

The Complainant contends that the term "IKKS" does not have any signification, except in relation to the Complainant.

According to the Complainant, the Respondent should have known about the Complainant's rights, which evidences bad faith.

Finally, the disputed domain name points to a login page displaying the Complainant's trademark. The website does not contain any information about the Respondent. Therefore, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his websites (par. 4(b)(iv) of the Policy).

PARTIES CONTENTIONS

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.

PRINCIPAL REASONS FOR THE DECISION

The UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY (UDRP) of the Internet Corporation for Assigned Names and Numbers (ICANN) (the "Policy") provides that complainant must prove each of the following to obtain transfer or cancellation of the domain name:

1. that respondent's domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights; and
2. that 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.

1) The disputed domain name is confusingly similar to a trademark in which the Complainant has rights

The Complainant has provided evidence and proved to be the owner of the trademark IKKS.

The Respondent appropriated the trademark IKKS by adding the new gTLD “.vip” which, according to the Panel, does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated.

The disputed domain name is confusingly similar to the Complainant's trademark IKKS since it fully incorporates the Complainant's trademark IKKS despite the addition of the new gTLD “.vip” which the Panel finds does not eliminate any confusing similarity. It is well-established that “a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP”. See WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasily Terkin. This is especially true where, as here, the trademark is “the dominant portion of the domain name,” LEGO Juris A/S v. Domain Tech Enterprises, WIPO Case No. D2011-2286, or where the trademark in the domain name represents “the most prominent part of the disputed domain name[] which will attract consumers' attention.”

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark IKKS.

2) The Respondent lacks rights or legitimate interests in the disputed domain name

Under the Policy, a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such a prima facie case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP (see WIPO Overview 2.0, paragraph 2.1).

The Panel finds that the Respondent does not have a legal right to use the term IKKS as part of the disputed domain name. The Respondent is not in any way connected with the Complainant, nor is it authorized to register the disputed domain name or use its intellectual property rights for its operations. The Respondent is not known by the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark IKKS.

The Respondent has no right or legitimate interests in the disputed domain name resolving to an inactive login page displaying the Complainant's trademark. Past panels have held that the lack of use of a domain name is considered an important indicator of the absence of legitimate interests by the Respondent. See Forum Case No. FA 1773444, Ashley Furniture Industries, Inc. v. Joannet Macket / JM Consultants (“The Panel finds that Respondent's lack of content at the disputed domain shows the lack of a bona fide offering of goods or services or a legitimate non-commercial or fair use per Policy 4(c)(i) and (iii).”).

In the present case, the Respondent failed to file a Response in which it could have provided evidence in support of its rights or legitimate interests. Therefore, all these circumstances are sufficient to establish a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name.

The Panel thus takes the view that the Respondent lacks rights or legitimate interests in the disputed domain name.

3) The disputed domain name has been registered and is being used in bad faith

The Panel finds that the disputed domain name <ikks.vip> is confusingly similar to the Complainant's trademark IKKS. It is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademark. The Complainant's use and registration of the trademark IKKS largely precede the registration date of the disputed domain name. The fact that the Respondent has registered a domain name that includes the term IKKS and despite

the addition of the new gTLD “.vip”, clearly indicates that the Respondent had knowledge of the Complainant’s trademark at the time of registration of the disputed domain name. It is reasonable to conclude that this is evidence of registration of the domain name in bad faith.

The disputed domain name redirects to an inactive login page displaying the Complainant’s trademark. According to the Panel, a passive holding of the disputed domain name may amount to bad faith when it is difficult to imagine any plausible future active use of the disputed domain name by the Respondent that would be legitimate and not infringing the Complainant’s well-known mark or unfair competition and consumer protection legislation (See Inter-IKEA v Polanski, WIPO Case No. D2000 1614; Inter-IKEA Systems B.V. v. Hoon Huh, WIPO Case No. D2000 0438; Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003). Countless UDRP decisions also confirmed that the passive holding of a domain name with the knowledge that the domain name infringes another party’s trademark rights is evidence of bad faith registration and use (see, in this regard, Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003).

The fact that a complainant’s trademark has a strong reputation and is widely used and the absence of evidence whatsoever of any actual or contemplated good faith use are further circumstances that may evidence bad faith registration and use in the event of passive use of domain names (see section 3.3, WIPO Overview 3.0).

For all reasons stated above, the Panel is satisfied that the Complainant has proven the third element of the Policy that is that the Respondent’s registration and use of the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **IKKS.VIP**: Transferred

PANELLISTS

Name	Mgr. Barbora Donathová, LL.M.
-------------	--------------------------------------

DATE OF PANEL DECISION **2022-07-13**

Publish the Decision
