

Decision for dispute CAC-UDRP-104668

Case number CAC-UDRP-104668

Time of filing 2022-06-23 09:37:49

Domain names kaufmanbroadfr.com

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization KAUFMAN & BROAD EUROPE

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name Denis Jeanroy

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 has submitted evidence, which the Panel accepts, showing that it is the registered owner of the following:

- the EU trademark KAUFMAN BROAD (registration n° 001505916) dated February 14, 2000; and
- the IR trademark KAUFMAN BROAD (registration n° 736440) dated March 24, 2000.

Moreover, the Complainant is also the owner of the domain names bearing the sign "KAUFMAN BROAD" such as the domain names <kaufmanbroad.com> and <kaufmanbroad.fr>.

FACTUAL BACKGROUND

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

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". Please see WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasily Terkin.

The disputed domain name resolves to a parking page.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

1. THE DISPUTED DOMAIN NAME IS CONFUSINGLY SIMILAR

The Complainant states that the disputed domain name is confusingly similar to the Complainant's trademark "KAUFMAN BROAD". It only has an addition of the country code FR, which does not alter the overall impression and does not prevent likelihood of confusion, because the disputed domain name fully includes the Complainant's trademark. The Complainant refers to earlier decision of WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasily Terkin.

The Complainant also states that the top level ".com" does not change the overall impression and does not prevent likelihood of confusion as referring to WIPO Overview 3.0, section 1.11 ("The applicable Top Level Domain ("TLD") in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.").

Consequently, the Complainant asserts that the disputed domain name is identical to the Complainant's trademark.

2. NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant states that the Respondent has no rights or legitimate interests on the disputed domain name as the Respondent is not known as the disputed domain name and not identified in the WHOIS database.

The Complainant also states that the Respondent is neither affiliated nor authorized by the Complainant in any way and it has no business with the Respondent. There is neither any license nor authorization granted to the Respondent to use the Complainant's trademark KAUFMAN BROAD®, or to apply for registration of the disputed domain name by the Complainant. Since the disputed domain name resolves to a parking page, the Complainant states that the Respondent did not use the disputed domain name since its registration, and it confirms that the Respondent has no demonstrable plan to use the disputed domain name. It shows a lack of legitimate interests on the disputed domain name.

3. THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS USED IN BAD FAITH

The Complainant indicates that the disputed domain name is confusingly similar to the Complainant's distinctive trademark KAUFMAN BROAD® and a Google search on "KAUFMAN BROAD" displays several results, all of them being related to the Complainant and its related entity KAUFMAN & BROAD S.A. The Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark KAUFMAN BROAD®.

Since the disputed domain name resolves to a parking page, the Complainant states that the Respondent has not demonstrated any activity in respect of the disputed domain name, and it is not possible to ascertain any reasonable actual or planned active use of the domain name by the Respondent that would not be illegitimate, such as passing off, infringement of consumer protection or trademark law.

The Complainant also states that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his website by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his website by registering the disputed domain name and therefore, using the disputed domain name is in bad faith.

Accordingly, the Complainant alleges that the disputed domain name was registered and is being used in bad faith.

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

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable. In this context, the Panel also notes that the burden of proof is on the Complainant to make out its case and past UDRP panels have consistently said that a Complainant must show that all three elements of the Policy have been made out before any order can be made to transfer a domain name.

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

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

The Panel will therefore deal with each of these requirements in turn.

A. IDENTICAL OR CONFUSINGLY SIMILAR

The Policy simply requires the Complainant to demonstrate that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The Panel is satisfied that the Complainant is the owner of registration of "KAUFMAN BROAD" trademarks.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's "KAUFMAN BROAD" trademark and the addition of the country code "FR" is not sufficient to vanish the similarity.

In particular, the country code indicates the country that the Complainant company is registered to and it may even increase the likelihood of association.

Moreover, the addition of the gTLD ".COM" is not enough to abolish the similarity.

The Panel is of the opinion that the Internet users will easily fall into false impression that the disputed domain name is an official domain name of the Complainant. The Panel recognizes the Complainant's rights and concludes that the disputed domain name is confusingly similar with the Complainant's trademark. Therefore, the Panel concludes that the requirements of paragraph 4(a)(i) of the Policy is provided.

B. 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 domain name.

It is open to a respondent to establish its rights or legitimate interests in a domain name, among other circumstances, by showing any of the following elements:

- (i) before any notice to the respondent of the dispute, the use or making demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) the respondent of the dispute (as an individual, business, or other organization) has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent of the dispute is making a legitimate non-commercial or fair use of the domain name, without an intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Thus, if the respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate interest in the disputed domain name, the complainant will have failed to discharge its burden of proof and the complaint

will fail. The burden is on the complainant to demonstrate a prima facie case that the respondent does not have rights or legitimate interests in the disputed domain name. Once the complainant has made out a prima facie case, then the respondent may, inter alia, by showing one of the above circumstances, demonstrate rights or legitimate interests in the disputed domain name.

The Complainant contends that the Respondent has nothing to do with the Complainant and any use of the trademarks "KAUFMAN BROAD" has to be authorized by the Complainant and there is no such authorization. Moreover, the disputed domain name has no relation with the Respondent and the Respondent is not commonly known as the disputed domain name.

In the absence of a response, the Panel accepts the Complainant's allegations as true that the Respondent has no authorization to use the Complainant's trademarks in the disputed domain name.

Hence, as the Complainant has made out its prima facie case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the disputed domain name, the Panel concludes that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. BAD FAITH

The Panel concludes that the Complainant's "KAUFMAN BROAD" trademark is of distinctive character. Therefore, the Panel is of the opinion that due to the earlier rights of the Complainant in the "KAUFMAN BROAD" trademarks, the Respondent, was aware of the Complainant and its trademarks at the time of registration of the disputed domain name (see e.g., *Ebay Inc. v. Wangming*, WIPO Case No. D2006-1107). Referring to *Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net*, WIPO Case No. D2000-0226, the Panel believes that the awareness of the Complainant's trademark at the time of the registration of the disputed domain name is to be considered an inference of bad faith registration.

Moreover, the link <kaufmanbroadfr.com> is currently inactive.

Therefore, in light of the above-mentioned circumstances in the present case, the Panel finds that the disputed domain name has been registered and is being used in bad faith and that the Complainant has established the third element 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. KAUFMANBROADFR.COM: Transferred

PANELLISTS

Name	Mrs Selma Ünlü
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DATE OF PANEL DECISION 2022-07-31

Publish the Decision
