

Decision for dispute CAC-UDRP-104919

Case number	CAC-UDRP-104919
Time of filing	2022-10-13 10:17:01
Domain names	sikksboutique.com, soldesikks.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (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

Name	Hqaip Liwpo
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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 registrant, among others, of the international trademark registration No. 782171, "IKKS", registered on May 2, 2002, for goods and services in class 3.

The disputed domain names were registered by the Respondent on February 12, 2022.

FACTUAL BACKGROUND

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

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

The Complainant is the owner of the trademark IKKS and owns an important domain names portfolio, including the same distinctive word IKKS, such as the domain name <ikks.com> registered and used for its official website since April 2, 1998.

The disputed domain names have been registered on February 12, 2022 and redirect to an online store.

The Complainant contends that the disputed domain names are confusingly similar to the trademark IKKS.

The Complainant notes that the disputed domain names include the Complainant's trademark in its entirety.

The Complainant asserts that the addition of the letter "S" and French generic term "BOUTIQUE" for <sikkboutique.com> or French generic term "SOLDES" for <soldesikks.com> is not sufficient to escape the finding that the disputed domain names are confusingly similar to the trademark and branded goods IKKS. It does not change the overall impression of the designations as being connected to the Complainant's trademark. It does not prevent the likelihood of confusion between the disputed domain names and the Complainant, its trademark and the domain name associated.

Furthermore, the Complainant contends that the addition of the top-level domain ".COM" does not change the overall impression of the designations as being connected to the Complainant's trademark. It does not prevent the likelihood of confusion between the disputed domain names and the Complainant, its trademark and its domain names associated.

The Complainant asserts that the Respondent is not known as the disputed domain names.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain names and he 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 names by the Complainant.

Furthermore, the disputed domain names resolve to an online store with IKKS's logo, which compete with the products provided by the Complainant.

Thus, the Complainant contends that the Respondent has no right or legitimate interest in respect of the disputed domain names.

The disputed domain names are confusingly similar to the Complainant's distinctive trademark IKKS. The Respondent has registered the disputed domain names several years after the registration of the trademark IKKS by the Complainant, which has established a strong reputation while using this trademark. Besides, the Complainant contends that the term "IKKS" does not have any signification, except in relation with the Complainant. Thus, given the distinctiveness of the Complainant's trademark and its reputation, it is reasonable to infer that the Respondent has registered and used the disputed domain names with full knowledge of the Complainant's trademark.

Furthermore, the disputed domain names redirect to an online store which compete with the products offered by the Complainant. By using the domain names, the Complainant contends that the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the respondent's website or location, as mentioned by Policy, paragraph 4(b) (iv).

Thus, the Complainant contends that the Respondent has registered the disputed domain names and is using them in 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 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

In accordance with paragraph 4(a) of the Policy, in order to obtain the transfer of a domain name, the complainant has to demonstrate that:

- (i) The 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 domain name; and
- (iii) The domain name has been registered and is being used in bad faith.

IDENTICAL OR CONFUSINGLY SIMILAR

The first requirement that the Complainant must establish is that the disputed domain names are identical with, or confusingly similar to, the Complainant's trademarks.

There are two elements of this test: for each domain name, the Complainant must demonstrate that it has rights in a trademark or service mark and, if so, the disputed domain names must be shown to be identical or confusingly similar to the trademark or service mark.

The Complainant has proven ownership of the registered trademark "IKKS", identified in section "Identification of rights" above. The Panel observes that the registration of the Complainant's trademarks predates the registration of the disputed domain names. On the question of identity or confusing similarity, what is required is simply a comparison and assessment of the disputed domain names to the Complainant's trademark.

The disputed domain name <sikkboutique.com> differ from the Complainant's trademark only by the addition of the letter "S" before and the word "BOUTIQUE" after, and of the top-level domain ".COM". The Panel notes that the word "BOUTIQUE" is a generic term in French which is also used in English and usually relates to fashion.

The disputed domain name <soldesikks.com> differ from the Complainant's trademark only by the addition of the word "SOLDES" before, and of the top-level domain ".COM". The Panel notes that the word "SOLDES" is a generic term in French which means "sales" and often refers to clothes and fashion.

Other panels have established the addition of a generic term and of a letter to a complainant's trademark does not prevent the likelihood of confusion between the disputed domain name and the Complainant and its trademark (see CAC Case No. 104666).

The Panel considers that in the case of the disputed domain names the addition of the above-mentioned elements to the Complainant's trademark does not prevent a finding of confusing similarity.

The Panel observes that it is well established that the top-level domain may generally be disregarded in the confusing similarity test (see WIPO case No. D2016-2547).

Therefore, the Panel considers that the disputed domain names are confusingly similar to the Complainant's trademarks.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

RIGHTS OR LEGITIMATE INTERESTS

The second requirement that the Complainant must prove is that the Respondent has no rights or legitimate interests in each of the disputed domain names.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the respondent has rights or legitimate interests in a domain name:

(i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a bona fide offering of goods or services; or

(ii) [the Respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the Respondent] [has] acquired no trademark or service mark rights; or

(iii) [the Respondent] [is] making a legitimate non-commercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

This is a non-exhaustive list of circumstances in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement falls on the Complainant. UDRP panels have recognized that proving that a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative".

Accordingly, it is usually sufficient for a complainant to raise a prima facie case against the respondent and the burden of proof on this requirement shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in a domain name.

The Panel finds that the Complainant has made out a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain names.

In particular, the Complainant states that:

- the Respondent is not known as the disputed domain names;
- the Respondent is not related in any way with the Complainant;

- the Complainant does not carry out any activity for the Respondent;
- the Complainant does not have any business with the Respondent;
- the Complainant has not granted any license nor any authorisation to the Respondent to make any use of the Complainant's trademark or apply for registration of the disputed domain names;
- the disputed domain names redirect to an online store with the IKKS's logo, which compete with the products provided by the Complainant.

In the absence of a Response, there is no indication in the present case that the Respondent is commonly known by the disputed domain names.

Furthermore, the Respondent has failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under paragraph 4(c) of the Policy or other evidence of rights or legitimate interests in the disputed domain names.

The Respondent does not appear to make any legitimate non-commercial or fair use of the disputed domain names, nor any use in connection with a bona fide offering of goods or services. Indeed, the disputed domain names redirect to a website with the IKKS's logo, which seems to be an online shop where internet users could buy the Complainant's products at discounted prices.

The Panel considers that, on the balance of probability, the Respondent knew the Complainant's trademark and registered the disputed domain names with knowledge of the Complainant's rights. Indeed, it is not conceivable that the Respondent did not have the Complainant's trademark in mind, when registering and using the disputed domain names. Under these circumstances, it cannot be concluded that the Respondent is making a "fair" use of the disputed domain names.

Taking into account that the Respondent is not commonly known as the disputed domain names, that the Respondent has no connection or business relationship with the Complainant, that the Complainant has not authorized the Respondent to apply for registration of the disputed domain names or to use the Complainant's trademarks, that the disputed domain names are used by an online shop which seems to be in competition with the Complainant's one and not for any other legitimate purpose, the Panel cannot imagine any possible legitimate justification for this use, and the Respondent has not come forward with any explanation that demonstrates any rights or legitimate interests in the disputed domain names.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

REGISTERED AND USED IN BAD FAITH

Under the third requirement of the Policy, the Complainant must establish that the disputed domain names have been both registered and used in bad faith by the Respondent.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, including:

(i) circumstances indicating that [the Respondent] [has] registered or [has] acquired the [disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the [disputed] domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of [the Respondent's] documented out-of-pocket costs directly related to the [disputed] domain name; or

(ii) [the Respondent] [has] registered the [disputed] domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [the Respondent] [has] engaged in a pattern of such conduct; or

(iii) [the Respondent] [has] registered the [disputed] domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the [disputed] domain name, [the Respondent] [has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent's] web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the Respondent's] web site or location or of a product or service on [the Respondent's] web site or location.

The Panel, on the basis of the evidence presented, agrees with the Complainant's contentions that the disputed domain names were registered in bad faith and that they have been used in bad faith.

Taking into account the distinctiveness and reputation of the trademark "IKKS" also recognized by other panels (see CAC Case No. 104589), the Panel agrees that it is inconceivable that the Respondent was not aware of the Complainant's rights in the Complainant's trademarks when registering the disputed domain names.

Other panels considered that knowledge of a corresponding mark at the time of the domain name's registration can suggest bad faith (see WIPO Case No. D2017-0100). The Panel shares this view.

The Panel agrees also that directing Internet users to a website displaying the Complainant's trademark prominently and offering for sale alleged IKKS products at discounted prices without any disclaimer informing the visitors that no relationship exists with the

Complainant, like in the present case, is evidence of use in bad faith (see CAC case No. 104754).

The Panel observes that if the Respondent had legitimate purposes in registering and using the disputed domain names it would have filed a Response in this proceeding.

The Panel, having taken into account the Respondent's knowledge of the Complainant's trademarks at the time of the disputed domain names' registration, that no response to the complaint has been filed and the use of the disputed domain names in a website displaying the Complainant's trademark prominently and offering for sale alleged IKKS products at discounted prices without any disclaimer, considers that the disputed domain names were registered and are being used in bad faith.

Accordingly, the Panel finds that the disputed domain names were registered and are being used in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **sikksboutique.com**: Transferred
2. **soldesikks.com**: Transferred

PANELLISTS

Name	Michele Antonini
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DATE OF PANEL DECISION **2022-11-20**

Publish the Decision
