

Decision for dispute CAC-UDRP-104754

Case number CAC-UDRP-104754

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Domain names ikkskids.com

Case administrator

Organization Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization IKKS GROUP

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name Bjcjd Ubhjfe

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 the following trademark registrations:

- IKKS, EU registration No. 002255552, filed on 12 June 2001 and registered on 11 July 2002, covering goods in classes 3, 9, 14, 16, 18, 25 and 28;
- IKKS, EU registration No. 002913929, registered on 2 May 2002, covering goods in class 20;
- IKKS international registration No. 782171, registered on 2 March, 2002, covering goods in class 3.

The Complainant is also the owner of various domain names including the IKKS trademark, including <ikks.com>, registered and used for its official website since 2 April 1998.

FACTUAL BACKGROUND

The Complainant is a French clothing company founded in 1986. The Complainant owns and operates apparel retail stores

and sells apparel and clothing accessories. The Complainant also sells its apparel online through its website at "www.ikks.com".

The disputed domain name has been registered on 7 July 2022 and redirects to a website apparently selling IKKS products at discounted prices.

PARTIES CONTENTIONS

According to the Complainant, the disputed domain name is confusingly similar to its IKKS trademark, as it includes this trademark in its entirety and the addition of the word "kids" is not sufficient to escape a finding of confusing similarity.

The Complainant further maintains that the Respondent lacks rights or legitimate interests in the disputed domain name, as the Respondent does not appear to be commonly known by the disputed domain name, and the Complainant does not have any business relationship with the Respondent. Neither license nor authorization has been granted to the Respondent to make use of the Complainant's trademark IKKS, or to apply for the registration of the disputed domain name. Furthermore, the Respondent is not using the disputed domain name in connection with a bona fide offering of goods, as the disputed domain name leads to a webpage where alleged IKKS goods are offered for sale. This website does not contain any information or disclaimer identifying its owner or informing otherwise the Internet visitors that it is not a website related to the Complainant.

As far as registration and use of the disputed domain name in bad faith, the Complainant contends that the disputed domain name is confusingly similar to the Complainant's distinctive trademark IKKS, which has a strong reputation. The terms "IKKS KIDS" do not have any meaning except in relation with the Complainant. Furthermore, the Complainant's trademark is reproduced in the website. The website's content gives the false impression that it originates from the Complainant, and Internet users would consider that the disputed domain name is in some way endorsed by, or connected with the Complainant. Hence, according to the Complainant, the Respondent registered and uses the disputed domain name to create confusion with the Complainant's trademark for commercial gain, by using a confusingly similar domain name to resolve to a website offering counterfeit or unauthorised versions of the Complainant's products in direct competition with those of the Complainant.

To the above statements, the Respondent failed to submit its Response.

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

II. The Respondent's lack of rights or legitimate interests in respect of the disputed domain name (Paragraph 4(a)(ii) of the Policy)

While the overall burden of proof rests with the complainant, UDRP panels have recognized that this could result in the often-impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. As such, where a complainant makes a prima facie case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

In the case at issue, the Complainant has declared that it does not entertain any business relationship with the Respondent, that the Respondent is not one of its licensees, and that it never authorised the Respondent to make use of its IKKS trademark, including as part of a domain name. Furthermore, the Whois of the disputed domain name does not indicate that the Respondent is commonly known by the disputed domain name, and nothing else in the case file shows this circumstance. The Respondent is using the disputed domain name to access a website prominently displaying the Complainant's trademark and purportedly selling IKKS branded clothing at discounted prices. Said use, with no authorisation from the Complainant, cannot amount to a bona fide offering of goods or to a legitimate noncommercial 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.

In view of the above, the Panel finds that the Complainant has discharged its burden of proof that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The burden of production now shifts to the Respondent to demonstrate that it owns rights or legitimate interests in the disputed domain name. The Respondent has omitted to file a Response, and therefore has waived its right to contest the Complainant's allegations.

The Panel is therefore satisfied that also the second condition under the Policy has been met.

III. Registration and use of the disputed domain name in bad faith (Paragraph 4(a)(iii) of the Policy)

The Complainant maintains that the IKKS trademark enjoys extensive reputation. The Panel is not in the condition to confirm this statement, in view of the fact that there is no evidence in the file allowing the Panel to evaluate a possible reputation of the Complainant's trademark. Notwithstanding the above, the Panel can certainly confirm that the IKKS trademark is distinctive, as it is an invented word deprived of any meaning.

As mentioned above, the Complainant has at least established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name, while the Complainant enjoys valid trademark rights over the term IKKS. In this scenario, and considering also the contents of the website associated to the disputed domain name, the Panel is of the opinion that the Respondent had well in mind the Complainant's trademark and its business when it registered the disputed domain name. This is also confirmed by the inclusion of the term "kids" after the trademark IKKS in the disputed domain name, which term is strictly connected with the Complainant's activity, that includes the sale of kids' apparel.

With respect to the use of the disputed domain name in bad faith, the Panel notes that the disputed domain name leads to a misleading website, displaying the Complainant's trademark prominently and offering for sale alleged IKKS products at discounted prices. The relevant website does not contain any disclaimer informing its visitors that it does not originate from, or is endorsed by the Complainant. As the Respondent lacks rights or legitimate reasons in the disputed domain name, the Panel concludes that the Respondent is illegitimately impersonating the Complainant through the registration and use of the disputed domain name. The Respondent is presumably deriving an income from the sale of the clothing displayed on the website associated with the disputed domain name, or at least is attempting to do so. In view of all these circumstances, the Panel concludes that the Respondent has registered and used the disputed domain name to intentionally attempt 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 the Respondent's website, or of the goods offered for sale on the same.

As a last consideration, the Panel notes that the name of the Respondent is Bjcjd Ubhjfe. It is unlikely that the first name "Bjcjd ", that consists of a series of consonants without any vowel, exists. Also, the surname sounds as invented. It is therefore more likely than not, that the Respondent has not disclosed its true identity at the time of the registration of the disputed domain name. This is a further indication of bad faith.

Thus, the Panel is satisfied that also the third and last condition under the Policy is met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. IKKSKIDS.COM: Transferred

PANELLISTS

Name	Angelica Lodigiani
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DATE OF PANEL DECISION 2022-09-04

Publish the Decision