

Decision for dispute CAC-UDRP-104734

Case number	CAC-UDRP-104734
Time of filing	2022-08-01 09:25:13
Domain names	highlandkiltscompany.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	Highland Kilt Company LLC
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Complainant representative

Organization	Dimov Internet Law Consulting
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Respondent

Name	M.Y Rajput, Green Shark
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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 name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of US word trademark HIGHLAND KILT COMPANY (Reg. No. 5748766, registered since May 14, 2019), covering Nice classes 24 and 25 for tartan fabrics, kilts and t-shirts.

FACTUAL BACKGROUND

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

The Complainant, Highland Kilt Company LLC, is the US company which sells traditional Scottish kilts. The company started its first activities in 2007-2012 and operates the e-shop at <www.HighlandKilt.com>.

The Complainant is the owner of US word trademark HIGHLAND KILT COMPANY (Reg. No. 5748766, registered since May 14, 2019), covering Nice classes 24 and 25 for tartan fabrics, kilts and t-shirts. The Complainant also owns the domain name <highlandkilt.com> registered and used for its official website since July 22, 2007.

The disputed domain name <highlandkiltscompany.com> has been registered on August 5, 2020. The disputed domain name resolves to the separate e-shop of traditional Scottish kilts and is used by the Respondent to sell traditional Scottish kilts. Some parts of the Complainant's website are copied and used by the Respondent in his website

<highlandkiltscompany.com>.

PARTIES CONTENTIONS

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

1. The Complainant, Highland Kilt Company LLC, is the US company which sells traditional Scottish kilts. The Complainant owns US word trademark HIGHLAND KILT COMPANY (Reg. No. 5748766, registered since May 14, 2019), covering Nice classes 24 and 25 for tartan fabrics, kilts and t-shirts. The company started its first activities in 2007-2012 and since then sells kilts for US and foreign customers at <www.HighlandKilt.com>.
2. The Panel acknowledges that the Complainant presented prima facie evidence that the Respondent is not sponsored by or affiliated with Complainant in any way. Furthermore, Complainant has not licensed, authorized, or permitted Respondent to use Complainant's trademark in any manner, including in domain names. The Respondent's name does not resemble the disputed domain name in any manner. Respondent's use of the disputed domain name does not constitute a bona fide offering of goods or services or a legitimate non-commercial or fair use (Policy Para. 4(c)).
3. The Panel agrees with the Complainant that the disputed domain name <highlandkiltscompany.com> is confusingly similar to the Complainant's trademark HIGHLAND KILT COMPANY. The use of plural form for word "kilt" (adding „-s“) does not change the fact that the disputed domain name and the registered trademark are confusingly similar as it does not change the overall impression of the designation as being connected to the Complainant's trademark and it does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and domain name associated. As set forth in section 1.7 of WIPO Overview 3.0, "in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing." Further, section 1.9 of WIPO Overview 3.0 states: "A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element."
4. As no administratively compliant response has been provided to the Panel and the prima facie evidence was not challenged by the Respondent, the Panel concludes that the Respondent, when it registered the disputed domain name, meant nothing else except the Complainant's trademark HIGHLAND KILT COMPANY. Therefore, the Respondent knew or should have known about the Complainant's rights, which evidences bad faith. As the disputed domain name resolves to the separate e-shop of traditional Scottish kilts and is used by the Respondent to sell traditional Scottish kilts and even some parts of the Complainant's website are copied and used by the Respondent in his website, one can simply conclude that

Respondent's knowledge about the Complainant's prior rights was inevitable. 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).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **HIGHLANDKILTSCOMPANY.COM**: Transferred
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PANELLISTS

Name	dr. Darius Sauliūnas
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DATE OF PANEL DECISION 2022-09-05

Publish the Decision
