

Decision for dispute CAC-UDRP-105254

Case number CAC-UDRP-105254

Time of filing 2023-03-02 09:00:05

Domain names instantpot-us.com

Case administrator

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

Complainant

Organization Instant Brands LLC

Complainant representative

Organization Stobbs IP Ltd

Respondent

Name Liam Frisina

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 proprietor of a number of marks in respect of the string 'INSTANT POT', including US mark 6291537 (registered 16 March 2021 in multiple classes) and UK mark UK00801514738 (registered 3 July 2020 in classes 7, 11, and 21 in respect of household / kitchen products).

FACTUAL BACKGROUND

The Complainant, a corporation with its seat in Illinois, USA, holds a number of brands in respect of consumer products. It (through a corporate predecessor) launched a kitchen product known as 'INSTANT POT' 15 years ago, maintaining today an online presence in connection with promoting it (e.g. Facebook, Twitter, and Instagram accounts, all using the term 'INSTANTPOT'), and a website at the domain name INSTANTHOME.COM (registered in 2009).

The Respondent, an individual with an address in the USA, registered the disputed domain name on 16 December 2022.

PARTIES CONTENTIONS

No administratively compliant Response has been filed. The Provider is unaware whether written notice of the Complaint was delivered or not delivered to the Respondent. E-mail messages sent were either returned as undelivered or could not be confirmed as delivered or undelivered, and the Respondent never accessed the online platform.

The Complainant submits that all requirements of the Policy have been met and that the disputed domain name should be transferred to it. It cites a number of past decisions under the Policy and presents evidence in support of its Complaint in the form of a number of Annexes.

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).

Disregarding the generic TLD .com, in accordance with established practice under the Policy, the only differences between the disputed domain name and the Complainant's marks is the addition to the former of a hyphen (a feature of the technical operation of the domain name system where spaces are not supported) and the term 'US'. This is a generic, descriptive or geographic term, for instance as the common abbreviation for United States. Indeed, it refers to the geographical location of the Complainant and the jurisdiction in which a number of its marks are registered. As such, the Panel can find without any difficulty, taking into account cases cited by the Complainant and the provisions of the WIPO Jurisprudential Overview, version 3.0, para 1.8, that confusing similarity is present on this occasion.

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).

The Complainant has made out a prima facie case regarding the absence of rights or legitimate interests. In particular, the Complainant submits that the Respondent's use of the disputed domain name for the sale of products in a way that infringes the Complainant's intellectual property rights, meaning that rights or legitimate interests are impossible.

The Panel has reviewed the evidence supplied by the Complainant, read alongside all inferences drawn from the Respondent's failure to participate in these present proceedings. It was open to the Respondent to argue, for instance, that it was engaged in legitimate resale activities. Similarly, if there was the possibility of a contention in respect of intellectual property or authenticity, the Respondent could have provided relevant clarifying information on its website. However, none of the above is present in this case. On the contrary, the Panel accepts the Complainant's uncontradicted arguments in respect of the likelihood that the Respondent's activity is intended to impersonate the Complainant and so mislead visitors to the website as to the origin or authenticity of the goods being sold, and finds further support for such arguments in the materials presented as Annexes (screenshots of the Respondent's website). For instance, the Respondent's website appears to use graphical elements of the Complainant's brands as if they are its own, with no additional information presented as to the relationship between the Respondent and Complainant.

While the Complainant has not framed the dispute as one to which the 'Okidata' test should apply (WIPO Case No. D2001-0903, OKI Data Americas v ASD <okidataparts.com>), the Panel gives brief consideration to it of its own motion, in order to be certain of its decision in a situation where there is the possibility of 'reseller' activity. However, this similarly confirms the finding in favour of the Complainant under this heading, given that there is no evidence of actual offer of goods, and that there is no accurate and prominent disclosure of the relationship between the parties.

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).

The Panel first considers the Respondent's registration of the disputed domain name. Given the established nature of the Complainant and its marks, and the fact that the Respondent has gone on to use the disputed domain name to produce a website intentionally resembling some of the materials used by the Complainant in its marketing, the Panel accepts the Complainant's uncontradicted submission that the Respondent was unequivocally aware of the INSTANT POT brand and marks. The Panel agrees that it is more likely than not that the Respondent registered the disputed domain name in order to impersonate the Complainant or pass off its products as those of the Complainant. The Panel takes note of the Complainant's submissions regarding the lack of a response to a 'cease and desist' letter sent to the Respondent, and regarding the initial use of a proxy / privacy service by the Respondent in registering the disputed domain name.

The Panel further considers the closely related question of the use of the disputed domain name by the Respondent. Again, the Complainant points to consistent authority regarding the relevance of infringing use of a mark and infringing sales in respect of a finding of bad faith. The Panel accepts, in particular, that the situation is one contemplated by paragraph 4(b)(iv) of the Policy, that

the Respondent has intentionally attempted 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 its (the Respondent's) website and the products purporting to be sold on said website.

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 the absence of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name. On the other hand, it is clear that the Complainant has rights in respect of the trade mark INSTANT POT, and that the addition of the geographic or generic term US does not prevent a finding of confusing similarity with the Complainant's marks. It is likely, in light of the nature of the Complainant's mark and activities, and the content of the Respondent's website, that the Respondent would have been aware of the Complainant and its particular products, and that the Respondent is intentionally using the disputed domain name to attract Internet users to its page offering products for sale in association with the Complainant's brand, an established form of bad faith use under the Policy. The Panel can find for these reasons that the disputed domain name was registered and is being operated in bad faith, and that the Respondent, through its failure to participate, has not pointed to any rights, legitimate interests, or the absence of bad faith registration or use. The requirements for the acceptance of a Complaint under paragraph 4 of the Policy have therefore been met, and the Panel ordered that the disputed domain name be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **instantpot-us.com**: Transferred

PANELLISTS

Name	Daithi Mac Sithigh
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DATE OF PANEL DECISION 2023-04-07

Publish the Decision
