

Decision for dispute CAC-UDRP-105253

Case number	CAC-UDRP-105253
Time of filing	2023-03-02 08:59:46
Domain names	instantpot-air-fryer.com

Case administrator

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

Organization	Instant Brands LLC
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Complainant representative

Organization	Stobbs IP Ltd
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Respondent

Name	guo tian tian
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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 numerous trademarks, including but not limited to the following:

- USPTO Trademark Registration No. 3887207 for Instant Pot, registered on December 7, 2010;
- USPTO Trademark Registration No. 6291537 for INSTANT POT, registered on March 16, 2021;
- USPTO Trademark Registration No. 6907251 for INSTANT POT, registered on November 22, 2022;
- UKIPO Trademark Registration No. UK00801514738 for INSTANT POT, registered on July 3, 2020.

FACTUAL BACKGROUND

The Complainant is a company which manufactures and markets the INSTANT POT branded multicooker, which it launched in 2008. The Complainant owns rights to the INSTANT POT trademark registrations. The INSTANT POT branded multicooker has gained widespread commercial success and fame since its launch in 2016, and according to Complainant has sold 215,000 units.

The Complainant also has an active social media presence which includes 797,000 Facebook followers and 515,000 Instagram

followers.

The Complainant owns the domain name <www.instanthome.com> with the website being live at least as early as May 22, 2009.

The disputed domain name was registered on November 25, 2021, and according to the Complainant resolved to an active website displaying the mark INSTANT POT to offer for sale and advertise for sale products which compete with those of the Complainant via affiliate links from Amazon.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

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

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a complainant to show that a domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns trademark registrations of the INSTANT POT mark.

The differences between the disputed domain name and the Complainant's INSTANT POT trademark are the addition of the generic term "air-fryer" and the gTLD ".com" which in the Panel's view does not avoid confusing similarity with the Complainant's trademark since the term air fryer is descriptive referring to a small countertop convection oven designed to simulate deep frying without submerging the food in oil.

It is established that where a trademark is recognizable within the disputed domain name, the addition of a descriptive term would not prevent a finding of confusing similarity under the first element. (See WIPO Overview 3.0, section 1.8). It is further established that the gTLD is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. (See WIPO Overview 3.0, section 1.11). The addition of a gTLD to a disputed domain name does not avoid confusing similarity as the use of a TLD is technically required to operate a domain name (see Accor v. Noldc Inc., WIPO Case No. D2005-0016; F. Hoffmann-La Roche AG v. Macalve e-dominios S.A., WIPO Case No. D2006-0451; Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003; L'Oréal v Tina Smith, WIPO Case No. 2013-0820; Titoni AG v Runxin Wang, WIPO Case No. D2008-0820; and Alstom v.

Itete Peru S.A., WIPO Case No. D2009-0877).

Therefore, the Panel finds that the disputed domain name is confusingly similar to the INSTANT POT mark and the element under paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the complainant to show that the respondent has no rights or interests in respect of the domain name. Once the complainant establishes a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the domain name (see WIPO Overview 3.0, section 2.1).

In the present case, the Complainant has demonstrated *prima facie* that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant submitted evidence that it did not authorize or license the Respondent to use the INSTANT POT mark (see *OSRAM GmbH. v. Mohammed Rafi/Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org*, WIPO Case No. D2015-1149; *Sanofi-Aventis v. Abigail Wallace*, WIPO Case No. D2009-0735). The Complainant also submitted evidence that its registrations and use of the trademarks predate the registration of the disputed domain name by over ten years.

In addition, the evidence submitted by the Complainant shows that the Respondent is not commonly known by the disputed domain name.

The Respondent did not submit a response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain name which is sufficient to rebut the Complainant's *prima facie* case.

Accordingly, the Panel considers that the Respondent has not demonstrated bona fide use of the disputed domain name. The Panel did not find any evidence that paragraphs 4(c)(ii) or (iii) of the Policy apply in the circumstances of this case.

The Panel is therefore of the view that the Respondent has no rights or legitimate interests in respect of the disputed domain name and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The complainant must show that the respondent registered and is using the disputed domain name in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence that the Respondent registered the disputed domain name long after the Complainant registered its INSTANT POT trademark. Given that the Complainant's trademark has been registered since 2010, it is highly unlikely that the Respondent did not know of the Complainant and its marks prior to the registration of the disputed domain name. The disputed domain name incorporates the Complainant's mark in its entirety with the additional descriptive suffix "air-fryer", which given the circumstances of this case, the Panel finds is an attempt by the Respondent to confuse and/or mislead Internet users seeking or expecting the Complainant's website. Previous UDRP panels have ruled that in such circumstances "a likelihood of confusion is presumed, and such confusion will inevitably result in the diversion of Internet traffic from the Complainant's site to the Respondent's site", see *Edmunds.com, Inc v. Triple E Holdings Limited*, WIPO Case No. D2006-1095.

The Complainant also submitted evidence that the disputed domain name resolved to an active website which prominently displays the Complainant's marks. The website appears to pass off as the Complainant and offers the Complainant's products through Amazon affiliate links. These links enable the Respondent to receive a commission when an internet user clicks on a link on the website, showing that the Respondent is operating the website for commercial gain without first receiving Complainant's permission or consent. Previous panels have held that these circumstances amount of bad faith, see *Consumer Reports, Inc. v. Domains By Proxy, LLC / Khorn Youra* WIPO Case No. D2021-0869.

Based on the circumstances of the particular case, it is the Panel's view that it is unlikely that the Respondent registered the disputed domain name without sight and knowledge of the Complainant's marks and it is implausible that there is any good faith use to which the disputed domain name may be put to. It is clear to the Panel that the Respondent specifically targeted the Complainant and its marks and registered the disputed domain name to divert Internet traffic and benefit commercially from unsuspecting Internet users seeking out the Complainant.

Based on the evidence presented to the Panel, including the confusing similarity between the disputed domain name and the Complainant's INSTANT POT mark, the fact that the Respondent used the Complainant's mark on the disputed domain name website to offer goods similar to those of the Complainant's, and the fact that no Response was submitted by the Respondent, the Panel draws the inference that the disputed domain name was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **instantpot-air-fryer.com**: Transferred

PANELLISTS

Name **Jonathan Agmon**

DATE OF PANEL DECISION **2023-04-12**

Publish the Decision