

Decision for dispute CAC-UDRP-105280

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| Case number | CAC-UDRP-105280 |
| Time of filing | 2023-03-17 09:53:07 |
| Domain names | KIKKOMAN-LIVEKITCHEN-TOKYO.COM |

Case administrator

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| Name | Olga Dvořáková (Case admin) |
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Complainant

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| Organization | Kikkoman Corporation |
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Complainant representative

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| Organization | RODENBAUGH LAW |
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Respondent

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| Organization | Edoms LLC |
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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 as provided evidence of ownership of several trademarks, including the following:

- USPTO trademark KIKKOMAN n. 0650225 registered since August 13, 1957;
- International trademark KIKKOMAN n. 919542 registered since November 15, 2006.

FACTUAL BACKGROUND

The Complainant, KIKKOMAN CORPORATION, is a multinational food company. The Complainant is the owner of trademarks in the terms KIKKOMAN.

The Complainant also owns a number of domain names, including the same distinctive wording KIKKOMAN, such as the domain names <kikkoman.com> and <Kikkoman.eu>.

The disputed domain name was registered on July, 7, 2021 and resolves to a parking page including pay-per-click advertisings, and a mention stating that the domain name might be for sale.

PARTIES CONTENTIONS

COMPLAINANT

The disputed domain name is confusingly similar to the Complainant's trademark KIKKOMAN and its domain names. The Complainant contends that the mere addition of the terms 'live kitchen' (in relation with a brand mostly known for food related products), and "Tokyo" (the capital of the country of origin of the complainant) is not sufficient to escape the finding that the domain name is confusingly similar to the Complainant's trademarks nor does it change the overall impression of the domain name as being associated with the trademark KIKKOMAN. Moreover, the Complainant submits that the addition of the suffix ".COM" is irrelevant in determining whether or not a disputed domain name is confusingly similar to a mark.

Per the Complaint, the Respondent is not known by the disputed domain name. The Complainant contends that Respondent is not affiliated with nor authorized by the Complainant in any way and that Respondent has no rights or legitimate interests in respect of the disputed domain name. The use of the domain name, in relation to a parking page including pay-per-click advertisements, and a mention stating that the domain might be for sale, cannot be considered as a bona fide offering of goods or services under the Policy, nor does the Respondent use the domain name for a legitimate or non-commercial fair use, per the Complainant.

As regards the bad faith of the Respondent, the disputed domain name includes the distinctive trademark KIKKOMAN. It is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademark, in particular since the domain name was registered via a drop-catch service.

Furthermore, the Complainant argues that the Respondent intentionally attempted to divert Internet users by creating a likelihood of confusion, and that the Respondent primarily intended to disrupt the Complainant's business by registering the disputed domain name.

RESPONDENT

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

Notwithstanding the fact that no Response has been filed, the Panel shall consider the issues present in the case based on the statements and documents submitted by the Complainant.

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following elements:

- the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- the disputed domain name was registered and is being used in bad faith.

Identical or Confusingly Similar

The Complainant must establish that it has a trademark or service mark and that the disputed domain name is identical or confusingly similar to that trademark or service mark, to succeed.

The Complainant, KIKKOMAN CORPORATION, is a multinational food company. The Complainant has provided evidence of ownership of trademarks in the terms KIKKOMAN.

The disputed domain name is <kikkoman-livekitchen-tokyo.com>.

As regards the question of identity or confusing similarity for the purpose of the Policy, it requires a comparison of the disputed domain name with the trademarks in which the Complainant holds rights. According to section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), "this test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name".

Also, according to section 1.7 of the 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".

The disputed domain name wholly incorporates the Complainant's trademark **KIKKOMAN**, followed by the terms "live kitchen" and "Tokyo". This addition does not prevent a finding of confusing similarity with the Complainant's trademarks. The fact that a domain name wholly incorporates the Complainant's trademark is sufficient for this Panel to establish identity or confusing similarity for the purpose of the Policy, despite the addition of other words to such marks.

It is well accepted by UDRP panels that a generic Top-Level Domain ("gTLD"), such as ".com", is typically ignored when assessing whether a domain name is identical or confusingly similar to a trademark.

This Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademark and therefore finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, any of the following circumstances, if found by the Panel, may demonstrate the Respondent's rights or legitimate interests in the disputed domain name:

- before any notice to it 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
- the Respondent has been commonly known by the disputed domain name, even if it has acquired no trademark or service mark rights; or
- 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.

The consensus view of UDRP panels on the burden of proof under paragraph 4(a)(ii) of the Policy is summarized in section 2.1 of the WIPO Overview 3.0, which states: "[...] where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element."

The Panel accepts that, in the absence of rebuttal from the Respondent, the Complainant has not at any time authorised or licensed the Respondent to use **KIKKOMAN** as a domain name, business or trading name, trade mark or in any other way. In addition, nothing in the record shows any bona fide offering of goods or services from the disputed domain name on the part of the Respondent before the submission of the Complaint. The Panel accepts, in line with the general doctrine under the Policy, that the use of a domain name in connection with a parking page of pay-per-click commercial links cannot be deemed a legitimate, or non-commercial use.

It is clear on the Panel's view that the Respondent intends to earning financial gains with the disputed domain name, which the Panel cannot consider a legitimate or bona fide use of the disputed domain name.

The Panel concludes that the Respondent has no right or legitimate interests in the disputed domain name and therefore finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

Registration and Use in Bad faith

For the purpose of Paragraph 4(a) (iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of the disputed domain name in bad faith:

- circumstances indicating that the holder 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 holders documented out-of-pocket costs directly related to the disputed domain name; or
- the holder 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 holder has engaged in a pattern of such conduct; or
- the holder has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- by using the domain name, the holder has intentionally attempted to attract, for commercial gain, Internet users to the holder's website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on the holder's website or location.

The evidence on the record shows that the Respondent was aware of the existence of the Complainant and of the rights of the Complainant, in particular since the domain name was registered intentionally via a drop-catch service. The Panel accepts that the term **KIKKOMAN** is arbitrary and has no meaning in any language. The disputed domain name reproduces the Complainant's distinctive trademarks.

The Panel equally accepts the Complainant's submission that the **KIKKOMAN** trademarks enjoy a worldwide long-standing reputation for food products, in particular seasoning goods.

In addition, the use of pay-per-click commercial links on the website associated with the disputed domain name shows in the view of the Panel, that the Respondent intended to earn commercial gains from the disputed domain name. The commercial links' ability to generate revenue depends on the ability of the disputed domain name to attract users seeking information on the owner of the mark. As the disputed domain name comprises Complainant's mark and relates to a country where Complainant has active business, it appears extremely likely that the disputed domain name will attract Internet users, and in particular Japanese ones.

The use of a domain name for a parking website with links that may generate PPC revenue is not, per se, evidence of bad faith. However, where the registration and use of the corresponding mark preceded the registration of the disputed domain name, where the disputed domain name incorporates another's well-known mark in its entirety, coupled with just an irrelevant addition (which, in the case at hand, may be indicative of Japan, country where Complainant has a strong business presence), where use of Complainant's mark in the disputed domain name is without Complainant's authorization, where there is a risk of implied affiliation of the disputed domain name with Complainant and its mark, and where the website linked to the disputed domain name shows sponsored links, there is no doubt that Respondent has intentionally sought to attract, for commercial gain, Internet users to the website associated with the disputed domain name by creating a likelihood of confusion with Complainant and its **KIKKOMAN** mark. In sum, the overall evidence indicates that Respondent's choice of the disputed domain name was deliberate for its substantial similarity with, and with the likely intention to benefit from the reputation and goodwill of, Complainant's name and **KIKKOMAN** mark, which denotes bad faith.

In the absence of a rebuttal from the Respondent, and in light of all the elements above, the Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith, and finds that the requirement of paragraph 4(a)(iii) of the Policy is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **KIKKOMAN-LIVEKITCHEN-TOKYO.COM**: Transferred

PANELLISTS

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|------|--------------|
| Name | Arthur Fouré |
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DATE OF PANEL DECISION 2023-05-06

Publish the Decision
