

## Decision for dispute CAC-UDRP-105481

Case number	CAC-UDRP-105481
Time of filing	2023-06-01 08:58:58
Domain names	kamikpromo.com, kamikfrance.com, kamikbootsjapan.com, kamikaustralia.com, kamiksuomi.com, kamik-suomi.com, kamikcanada.com, kamikkengat.com, kamik-slovenija.com, kamik-deutschland.com, kamik-france.com, kamikdanmark.com, kamikdeutschland.com, kamikespana.com, kamikitalia.com, kamikpolska.com, kamikromania.com, kamikslovensko.com, kamikbootsireland.com, kamikbootscanada.com, kamikbootaustralia.com, kamikbootsnz.com, kamikbootssouthafrica.com, kamikbuty.com, kamikgumbootsaustralia.com, kamiksandalen.com, kamikschweiz.com, kamiksko-norge.com, kamikturkiye.com, kamikchile.com, kamiknz.com, kamikbootsclearance.com, kamikbootsuk.com, kamikbootsusa.com, kamikbootuk.com, kamikwien.com, kamik-australia.com, kamik-schweiz.com, kamiksuisse.com, kamikpraha.com, kamik-danmark.com, kamikzapatos.com, kamik-nederland.com, kamik-norge.com, kamik-nz.com, kamik-buty.com, kamik-uk.com, kamikoutletnorge.com, kamikboots-canada.com, kamikschuheschweiz.com, rainbootskamik.com, kamik-italia.com, kamik-sverige.com, kamikbootsoutlet.com, kamikbootsukstore.com, kamikbootusa.com, kamikosterreich.com, kamikoutlet.com, kamikbootireland.com, kamikmexico.com

### Case administrator

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

Organization	Kamik Canada Inc.
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### Complainant representative

Organization	Convey srl
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### RESPONDENTS

Name	Chao Chen
Organization	Web Commerce Communications Limited
Name	Dolkner Feno
Organization	Whoisprotection.cc

### 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 names.

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## IDENTIFICATION OF RIGHTS

The Complainant is the owner of various trademarks for KAMIK, including:

- Australian Trademark No. 932025, KAMIK, registered on 29 September 2005;
- Canadian Trademark Registration No. TMA216457, KAMIK, registered on 1 October 1976;
- Canadian Trademark Registration No. TMA485122, KAMIK, registered on 31 October 1997;
- Chinese Trademark Registration No. 4398979, KAMIK, registered on 7 January 2010; and
- European Union Trade Mark No. 000439588, KAMIK, registered on 21 January 1999.

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## FACTUAL BACKGROUND

First established in 1898, the Complainant is a Canadian footwear manufacturer. In 1976, the Complainant adopted the KAMIK trademark, an Inuit word meaning "boot made of caribou hide or sealskin."

The Complainant is the registrant of the domain name <kamik.com> (registered on 2 February 1996), which it uses to promote and sell its products online.

All of the disputed domain names were registered 2022, with the exception of the disputed domain name <kamikmexico.com> (registered on 2 December 2020) and the disputed domain name <rainbootskamik.com> (registered on 14 August 2021).

At the time of submission of the Complaint, the disputed domain names resolved to websites purporting to sell the Complainant's products (the "Respondent's websites"). The websites all featured the Complainant's KAMIK trademark in their headers, displayed images of the Complainant's footwear products, and purported to offer the Complainant's products at substantially discounted prices.

On 28 March 2023, the Complainant sent a cease-and-desist letter to the Respondent via the Whois-listed e-mail address for the disputed domain name <kamikpromo.com>, putting the Respondent on notice of the Complainant's trademark rights and requesting, inter alia, transfer of the disputed domain names. The Respondent did not reply to the Complainant's cease and desist letter.

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## PARTIES CONTENTIONS

### **Complainant**

The Complainant asserts rights in the KAMIK trademark. The Complainant submits that the disputed domain names are identical or confusingly similar to the Complainant's KAMIK trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain names. The Complainant submits that the Respondent is using the disputed domain names to offer for sale goods bearing the Complainant's trademark that are advertised at prices that are disproportionately below their market value. According to the Complainant, the goods advertised at the Respondent's websites are counterfeit. As such, argues the Complainant, the Respondent is not using the disputed domain names in connection with any bona fide offering of goods or services. The Complainant further asserts that there is no evidence

that the Respondent is commonly known by the disputed domain names, nor is the Respondent making any legitimate noncommercial or fair use of the disputed domain names.

The Complainant submits that the disputed domain names were registered and are being used in bad faith. The Complainant argues that knowledge of the Complainant's KAMIK trademark may be inferred from the contents of the Respondent's websites, which purport to offer for sale goods bearing the Complainant's trademark, which the Complainant argues are counterfeit. The Complainant asserts that the disputed domain names were registered to capitalize on the reputation of the Complainant's trademark by diverting Internet users seeking the Complainant to the Respondent's websites. The Complainant argues that the Respondent's offering for sale of counterfeit goods on the Respondent's websites disrupts the Complainant's business. The Complainant further submits that by registering 60 domain names, each containing the Complainant's KAMIK trademark, the Respondent has engaged in an abusive pattern of domain name registration preventing the Complainant from reflecting its trademark in corresponding domain names.

The Complainant requests transfer of the disputed domain names.

## **Respondent**

The Respondent did not file a Response to the Complaint.

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## **RIGHTS**

The Panel finds that the Complainant has established rights in the trademark KAMIK, the registration details of which are provided above.

Each of the disputed domain names comprises the Complainant's KAMIK trademark together with a variety of geographical and/or descriptive terms ("australia", "-australia", "bootaustralia", "bootireland", "bootscanada", "boots-canada", "bootsclearance", "bootsireland", "bootsjapan", "bootsnz", "bootsoutlet", "bootssouthafrica", "bootsuk", "bootsukstore", "bootsusa", "bootuk", "bootusa", "buty", "-buty", "canada", "chile", "danmark", "-danmark", "deutschland", "-deutschland", "espana", "france", "-france", "gumbootsaustralia", "italia", "-italia", "kengat", "mexico", "-nederland", "-norge", "nz", "-nz", "osterreich", "outlet", "outletnorge", "polska", "praha", "promo", "rainboots", "romania", "sandalen", "schuheschweiz", "schweiz", "-schweiz", "sko-norge", "-slovenija", "slovensko", "suisse", "suomi", "-suomi", "-sverige", "turkiye", "-uk", "wien", "zapatos") under the gTLD ".com".

It is well established that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element; see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0), section 1.8.

The Panel finds that the Complainant's KAMIK trademark is readily recognizable in each of the disputed domain names, and that the addition of the above-listed terms does not prevent a finding of confusing similarity between the disputed domain names and the Complainant's KAMIK trademark.

The gTLD ".com" may be disregarded for purposes of comparison under the first element of the Policy.

The Panel finds the disputed domain names to be confusingly similar to the Complainant's KAMIK trademark. The Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

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## **NO RIGHTS OR LEGITIMATE INTERESTS**

As stated above, the disputed domain names have been used in connection with websites purporting to sell products bearing the trademark. The Complainant alleges that these products are counterfeit.

There is no commercial relationship between the Complainant and the Respondent, nor has the Respondent been granted any licence

to use the Complainant's trademark, in a domain name or otherwise.

The Panel notes that the Respondent appears to have misappropriated copyrighted product images from the Complainant's website, and that the goods offered for sale via the Respondent's websites are offered at prices below market value, in many cases at half the price for corresponding items as listed on the Complainant's website. In the absence of any reply from the Respondent, the Panel considers it entirely plausible that the goods offered for sale via the Respondent's websites are in fact counterfeit. Prior UDRP panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent; see WIPO Overview 3.0, section 2.13.

Even if the Panel were to treat the goods offered via the Respondent's websites as genuine goods originating from the Complainant, with the Respondent acting as an unauthorized reseller, there is no disclaimer-like statement on the Respondent's websites clarifying its lack of affiliation with the Complainant. Rather, the inclusion of the Complainant's KAMIK trademark in the header of the Respondent's websites, coupled with the look and feel of the Respondent's websites being similar to the Complainant's official website, give a misleading impression of authorization from or affiliation with the Complainant. Moreover, the Respondent's registration of 60 domain names, many of which follow a similar naming pattern including the Complainant's trademark together with geographical terms or descriptive terms related to the Complainant's goods, signals an intent on the part of the Respondent to "corner the market" in domain names that reflect the Complainant's trademark. The Panel therefore finds that the Respondent has no valid claim of rights or legitimate interests in the disputed domain names as an unauthorized reseller of the Complainant's products; see *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. D2001-0903. The Panel finds that the Respondent has not made use of the disputed domain names in connection with a bona fide offering of goods or services pursuant to paragraph 4(c)(i) of the Policy.

Many of the disputed domain names were registered using a privacy service to mask the Respondent's identity. For those disputed domain names with public-facing Whois registrant information, the Respondent appears to have provided false or incomplete contact details. The Respondent's use of the disputed domain names does not support any legitimate claim of being commonly known by the disputed domain names in accordance with paragraph 4(c)(ii) of the Policy. The Panel further finds that the Respondent is not making any legitimate noncommercial or fair use of the disputed domain names within the meaning of paragraph 4(c)(iii) of the Policy.

For the above reasons, the Panel finds that Respondent has no rights or legitimate interests in respect of the disputed domain names. The Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

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#### BAD FAITH

The Panel notes that the registration of the Complainant's trademark predates the registration of the disputed domain names by well over 40 years. The Complainant has gained substantial reputation in connection with its footwear products and other goods sold under the KAMIK trademark. The Panel finds that the Respondent's intent to target the Complainant through the disputed domain names is readily apparent from the contents of the Respondent's websites, which make explicit reference to the Complainant and its products. In the circumstances, the Panel finds that the Respondent registered the disputed domain names, having no authorization to make use of the Complainant's trademark in a domain name or otherwise, with a view to deriving commercial gain from its unauthorized use of the Complainant's trademark, in bad faith. The Panel further finds that by registering 60 domain names, each following a similar naming pattern of incorporating the Complainant's KAMIK trademark together with geographical terms and/or descriptive terms relating to products offered by the Complainant, the Respondent has engaged in an abusive pattern of domain name registration preventing the Complainant from reflecting its KAMIK trademark in corresponding domain names, amounting to bad faith registration of the disputed domain names pursuant to paragraph 4(b)(ii) of the Policy.

The Panel further finds that by using the disputed domain names in the manner described above, Internet users are likely to be misled as to the source of the goods offered for sale via the Respondent's websites. Given that the use of a domain name for per se illegitimate activity such as the sale of counterfeit goods can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith; see WIPO Overview 3.0, section 3.1.4. The Panel concludes that by using the disputed domain names, the Respondent is intentionally attempting to attract, for commercial gain, Internet users to its websites, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's websites and the goods advertised for sale therein, in bad faith pursuant to paragraph 4(b)(iv) of the Policy.

The Respondent's use of a privacy service to obscure its identity, coupled with the provision of what appear to be false or incomplete contact details, further evidences the Respondent's bad faith.

The Panel finds that the disputed domain names were registered and are being used in bad faith. The Complainant has satisfied the requirements of paragraph 4(a)(iii) of the Policy.

## PROCEDURAL FACTORS

## Procedural matter: Consolidation of multiple Respondents

The Complaint has been filed against multiple nominally distinct Respondents. Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario.

The Panel notes that the following domain names are registered in the name of a privacy service, "Client Care, Commerce Communications Limited" of Malaysia:

<kamikaustralia.com>

<kamikaustralia.com>

<kamikbootaustralia.com>

<kamikbootscanada.com>

<kamikbootscanada.com>

<kamikbootsclearance.com>

<kamikbootsireland.com>

<kamikbootsjapan.com>

<kamikbootsnz.com>

<kamikbootsoutlet.com>

<kamikbootssouthafrica.com>

<kamikbootsuk.com>

<kamikbootsukstore.com>

<kamikbootsusa.com>

<kamikbootuk.com>

<kamikbootusa.com>

<kamikbuty.com>

<kamikbuty.com>

<kamikcanada.com>

<kamikchile.com>

<kamikdanmark.com>

<kamikdanmark.com>

<kamikdeutschland.com>

<kamikdeutschland.com>

<kamikesspana.com>

<kamikfrance.com>

<kamikfrance.com>

<kamikgumbootsaustralia.com>

<kamikitalia.com>

<kamikitalia.com>

<kamikkengat.com>

<kamiknederland.com>

<kamiknorge.com>

<kamiknz.com>

<kamiknz.com>

<kamikosterreich.com>

<kamikoutlet.com>

<kamikoutletnorge.com>

<kamikpolska.com>

<kamikpraha.com>

<kamikromania.com>

<kamiksandalen.com>

<kamikschuheschweiz.com>

<kamikschweiz.com>

<kamikschweiz.com>

<kamikskonorge.com>

<kamikslovenija.com>

<kamikslovensko.com>

<kamiksuisse.com>

<kamiksuomi.com>

<kamiksuomi.com>

<kamiksverige.com>

<kamikturkiye.com>

<kamikuk.com>

<kamikwien.com>

<kamikzapatos.com>

<rainbootskamik.com>

The disputed domain name <kamikmexico.com> is registered in the name of a privacy service, "Domain Admin, Whoisprotection.cc" of Malaysia.

The disputed domain name <kamikbootireland.com> is registered to a registrant, "Dolkner Feno" of Germany. The Panel notes that no street address has been provided by the registrant.

The disputed domain name <kamikpromo.com> is registered to a registrant, "Chao Chen" of China. The Panel notes that the Whois-listed registrant city does not correspond to the Whois-listed registrant state/province.

The Panel finds that the following factors support the Complainant's request for consolidation of multiple nominally distinct Respondents:

- All of the disputed domain names have been used to resolve to websites with similar layouts that target the Complainant in a similar fashion, as described in detail above.
- All of the disputed domain names follow a similar naming pattern, comprising the Complainant's KAMIK trademark together with geographical and/or descriptive terms that may be read as referring directly to goods sold by the Complainant.
- All of the disputed domain names were registered using a privacy service or appear to have been registered using false or incomplete registrant information.
- All of the disputed domain names were registered under the same generic Top-Level Domain ("gTLD") ".com".

The Panel infers that the disputed domain names were registered by the same registrant, or multiple registrants acting together such that the disputed domain names may be said to be subject to common control. The Panel considers that consolidation of the Respondent is appropriate in the present case, and therefore accepts the Complainant's request. The Panel has referred to the registrants of the disputed domain names collectively throughout this decision as the "Respondent".

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#### PRINCIPAL REASONS FOR THE DECISION

The Complainant has established rights in the KAMIK trademark. The disputed domain names are confusingly similar to the Complainant's KAMIK trademark. The Complainant has demonstrated that the Respondent has no rights or legitimate interests in respect of the disputed domain names, and that the disputed domain names were registered and are being used in an attempt to create a misleading impression of association between the Complainant, its trademarks, the disputed domain names, and the websites to which they resolve, in bad faith.

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#### FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **kamikpromo.com**: Transferred
2. **kamikfrance.com**: Transferred
3. **kamikbootsjapan.com**: Transferred
4. **kamikaustralia.com**: Transferred
5. **kamiksuomi.com**: Transferred
6. **kamik-suomi.com**: Transferred
7. **kamikcanada.com**: Transferred
8. **kamikkengat.com**: Transferred
9. **kamik-slovenija.com**: Transferred
10. **kamik-deutschland.com**: Transferred
11. **kamik-france.com**: Transferred
12. **kamikdanmark.com**: Transferred
13. **kamikdeutschland.com**: Transferred
14. **kamikespana.com**: Transferred
15. **kamikitalia.com**: Transferred

16. **kamikpolska.com**: Transferred
17. **kamikromania.com**: Transferred
18. **kamikslovensko.com**: Transferred
19. **kamikbootsireland.com**: Transferred
20. **kamikbootscanada.com**: Transferred
21. **kamikbootaustralia.com**: Transferred
22. **kamikbootsnz.com**: Transferred
23. **kamikbootssouthafrica.com**: Transferred
24. **kamikbuty.com**: Transferred
25. **kamikgumbootsaustralia.com**: Transferred
26. **kamiksandalen.com**: Transferred
27. **kamikschweiz.com**: Transferred
28. **kamiksko-norge.com**: Transferred
29. **kamikturkiye.com**: Transferred
30. **kamikchile.com**: Transferred
31. **kamiknz.com**: Transferred
32. **kamikbootsclearance.com**: Transferred
33. **kamikbootsuk.com**: Transferred
34. **kamikbootsusa.com**: Transferred
35. **kamikbootuk.com**: Transferred
36. **kamikwien.com**: Transferred
37. **kamik-australia.com**: Transferred
38. **kamik-schweiz.com**: Transferred
39. **kamiksuisse.com**: Transferred
40. **kamikpraha.com**: Transferred
41. **kamik-danmark.com**: Transferred
42. **kamikzapatos.com**: Transferred
43. **kamik-nederland.com**: Transferred
44. **kamik-norge.com**: Transferred
45. **kamik-nz.com**: Transferred
46. **kamik-buty.com**: Transferred
47. **kamik-uk.com**: Transferred
48. **kamikoutletnorge.com**: Transferred
49. **kamikboots-canada.com**: Transferred
50. **kamikschuheschweiz.com**: Transferred
51. **rainbootskamik.com**: Transferred
52. **kamik-italia.com**: Transferred
53. **kamik-sverige.com**: Transferred
54. **kamikbootsoutlet.com**: Transferred
55. **kamikbootsukstore.com**: Transferred
56. **kamikbootusa.com**: Transferred
57. **kamikosterreich.com**: Transferred
58. **kamikoutlet.com**: Transferred
59. **kamikbootireland.com**: Transferred
60. **kamikmexico.com**: Transferred

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## PANELLISTS

Name	Jane Seager
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DATE OF PANEL DECISION	2023-07-24
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Publish the Decision
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