

## Decision for dispute CAC-UDRP-105764

Case number CAC-UDRP-105764

Time of filing 2023-10-25 18:51:28

Domain names korika.com

### Case administrator

Name Olga Dvořáková (Case admin)

### Complainant

Organization Corso Vittorio Emanuele II, 44, 10123 Torino TO, Italy

### Complainant representative

Organization GIVET S.R.L.

### Respondent

Name RAVINDRA BALA

#### 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 the following European Union trademarks:

- KORIKA (word), No. 017156795, filed on 29 August 2017 and registered on December 11, 2017, for goods in class 3;
- KORIKA (figurative), No. 018024205, filed on 18 February 2019, and registered on 4 June 2019, for goods in class 3;
- KORIKA (figurative), No. 018539230, filed on 26 August 2021 and registered on 10 December 2021, for goods in classes 3 and 10;
- KORIKA (word), No. 018539231, filed on 26 August 2021, and registered on 10 December 2021, for goods in classes 3 and 10;

#### FACTUAL BACKGROUND

The Complainant is an Italian company selling cosmetics under the KORIKA brand. The KORIKA cosmetics have been sold on-line for several years in Europe. KORIKA cosmetics are growing by about 30% every year and are in the middle to high income consumer's segment. KORIKA cosmetics are directed to an extended public, from teenagers to adults, including anti-aging products.

The disputed domain name was registered on 3 December 2004 and resolves to a website displaying the wording "This Domain is For Sale", Below this wording is the same email address contained in the Whois of the disputed domain name.

#### PARTIES CONTENTIONS

According to the Complainant, the disputed domain name is identical to its KORIKA trademark as it merely reproduces this trademark followed by the generic Top Level Domain Name (gTLD) ".com", which has no distinctive character.

The Complainant also maintains that the Respondent lacks rights or legitimate interests in the disputed domain name as the Respondent has not title enabling him to use the trademark KORIKA in the disputed domain name. On the contrary, the Respondent violates the rights of the Complainant deriving from the trademark KORIKA.

Lastly, the Complainant maintains that the disputed domain name was registered and is being used in bad faith. The Complainant's trademark is well known and the Respondent is offering for sale the disputed domain name. Thus, the Respondent has the dishonest intention to profit from the reputation of the Complainant's trademark for its own economic advantage.

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#### 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).

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#### NO RIGHTS OR LEGITIMATE INTERESTS

The Panel has not evaluated the requirement of the Respondent's rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy) since the Complainant has not proved the Respondent's bad faith (see below).

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#### BAD FAITH

The Complainant has not, 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).

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#### 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.

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#### PRINCIPAL REASONS FOR THE DECISION

##### I. First Element of the Policy - Identity or Confusing Similarity

It is well accepted that the first element of the Policy functions primarily as a standing requirement. The Complainant has shown that it owns registered trademark rights on the term "korika". These trademarks have been registered long time after the registration of the disputed domain name. However, this circumstance does not by itself preclude a complainant's standing to file a UDRP case, nor a panel's finding of identity or confusing similarity under the first element.

The disputed domain name fully includes the Complainant's trademark KORIKA, without any other element besides the gTLD ".com". The gTLD ".com" is a technical requirement, which has no bearing in the assessment of identity or confusing similarity of the disputed domain name with the Complainant's trademark. Accordingly, the Panel finds that the disputed domain name is identical to the Complainant's trademark.

In light of the above, the Panel is satisfied that the first condition under the Policy is met.

##### II. Second Element of the Policy - Rights or Legitimate Interests in the Disputed Domain Name

In light of the findings on bad faith, it is not necessary for the Panel to make findings with respect to rights or legitimate interests.

##### III. Third Element of the Policy - Bad Faith

As mentioned above, the disputed domain name was registered in December 2004, while the earliest Complainant's mark was filed in August 2017, approximately 13 years after the registration of the disputed domain name. Because of the long period of time

elapsed between the registration of the disputed domain name and the registration of the Complainant's marks and the total lack of evidence of prior use of the KORIKA mark, let alone any reputation of that mark (which is merely mentioned in the Complaint, but not substantiated), the Panel cannot conclude that the Respondent registered and has been using the disputed domain name in bad faith. This is so even if the Respondent is using the disputed domain name to sell it to third parties, as there is no evidence in the file that the Respondent targeted the Complainant or its KORIKA trademark at the time it registered the disputed domain name and later on.

In light of the above, the Panel finds that the Complainant failed to prove the third requirement under the Policy.

#### IV. Reverse Domain Name Hijacking

Paragraph 15(e) of the UDRP Rules provides that, if "after considering the submissions the panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking (RDNH) or was brought primarily to harass the domain-name holder, the panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding".

RDNH is furthermore defined under the UDRP Rules as "using the UDRP in bad faith to attempt to deprive a registered domain-name holder of a domain name." According to the current consensus view of UDRP panelists, it is not necessary for a respondent to seek a RDNH finding or to prove this conduct on the side of the Complainant for a RDNH finding to be made (section 4.16 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, the "WIPO Jurisprudential Overview 3.0").

Reasons articulated by panels for finding RDNH include: (i) facts which demonstrate that the complainant knew it could not succeed as to any of the required three elements – such as, without limitation, the complainant's clear knowledge of a lack of respondent bad faith such as registration of the disputed domain name well before the complainant acquired trademark rights, (ii) facts which demonstrate that the complainant clearly ought to have known it could not succeed under any fair interpretation of facts reasonably available prior to the filing of the complaint, including basing a complaint on only the barest of allegations without any supporting evidence (section 4.16 of the "WIPO Jurisprudential Overview 3.0").

Applying those principles to the facts of the present case, the Panel's view is that there are several reasons why a finding of RDNH should be made.

First, the Respondent registered the disputed domain name some thirteen years before the Complainant filed its trademarks. There is also no mention in the Complaint, or evidence in the UDRP, file that the Complainant was using a non-registered KORIKA mark prior to the registration of the disputed domain name, in a manner that could determine the Respondent's knowledge of this mark when it registered and used the disputed domain name. Therefore, it is impossible for the Respondent to have known of the Complainant or to have been motivated by bad faith towards a non-existent trademark when it registered the disputed domain name.

Secondly, there is a complete absence of evidence or any facts from which an inference could reasonably be drawn that the Respondent registered the disputed domain name to tarnish the KORIKA trademark of the Complainant or for any other improper reason. In particular, there is no evidence that the Respondent was targeting the Complainant or was minded to do so when it registered and used the disputed domain name.

Thirdly and in general, the Complainant is basing its Complaint on only the barest of allegations without any relevant supporting evidence

All these circumstances must have been known to the Complainant or could have been ascertained by reasonable inquiries on behalf of the Complainant before the Complaint was filed. Therefore, the Panel is of the opinion that the Complainant filed its Complaint to attempt to deprive the Respondent of the disputed domain name.

For the above reasons, the Panel finds that there has been RDNH in this case.

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

**Rejected**

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

1. **korika.com**: Remaining with the Respondent

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#### PANELLISTS

Name	Angelica Lodigiani
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DATE OF PANEL DECISION 2023-12-03

Publish the Decision

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