Decision for dispute CAC-UDRP-106230

Case number	CAC-UDRP-106230
Time of filing	2024-02-07 08:51:51
Domain names	instantfrance.com

Case administrator

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

Complainant

Organization	IB Appliances US Holdings, LLC

Complainant representative

Organization	Stobbs IP

Respondent

Name	Molly Frost

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 relies on the followed US registered trademarks:

- No. 6251592 for the word mark INSTANT POT, registered on 19 January 2021 in Nice classes 7 and 11;
- No. 6907251 for the word mark INSTANT POT, registered on 22 November 2022 in Nice classes 9, 11, 16, 21 and 25;
- No. 6859672 for the word mark INSTANT OVEN, registered on 27 September 2022 in Nice class 11.

FACTUAL BACKGROUND

The Complainant has sold a multicooker product under the mark INSTANT POT since 2008. The product has had considerable commercial success around the world. 215,000 units were sold on a single day ("Amazon Prime Day") in 2016. The Complainant's pages promoting the product on Facebook and Instagram have respectively over 797,000 and 515,000 followers.

The disputed domain name was registered on 13 December 2023.

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.

RIGHTS

The Panel finds that the Complainant has registered rights in the marks INSTANT POT and INSTANT OVEN.

The Panel is also satisfied that the disputed domain name is confusingly similar to these marks.

The Complainant's registered marks consist of the word "INSTANT" followed by generic words for a cooking vessel. Considerably more weight should be attached to the word "INSTANT" in these marks, since it is the first element of the marks and while it has some descriptive connotation, suggesting the capability of rapid cooking, it is not wholly descriptive or generic, in that the product obviously does not cook foodstuffs instantly.

The disputed domain name comprises the word "instant" followed by the name of a country (France) and the generic top level domain name suffix. As a descriptive term, indicating that the domain name is used for a website directed to customers in France, the second part of the disputed domain name should be discounted. In the Panel's view the identity of the first part of the disputed domain name and the first part of the Complainant's marks creates a likelihood of confusion that is not displaced by the differences in the descriptive or generic second parts of the disputed domain name and the Complainant's marks.

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The Panel finds on the Complainant's undisputed evidence that the disputed domain name has been used to advertise and offer for sale counterfeits of its multicooker products under the mark "Instant". The Panel considers this mark to be confusingly similar to the Complainant's registered marks.

This use of the disputed domain name does not constitute a bona fide offering of goods, nor a legitimate non-commercial or fair use. On the contrary, it is a commercial use in bad faith, with intent to obtain commercial gain by misleadingly diverting consumers seeking the Complainant's products.

The Panel is further satisfied that the Complainant has not authorised the Respondent's use of the disputed domain name or any corresponding names and that the Respondent is not commonly known by this name.

On the undisputed evidence, 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 Panel finds that the Respondent has used the disputed domain name intentionally to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's marks as to the source of the Respondent's website and products on it. In accordance with paragraph 4(b)(iv) of the Policy this constitutes evidence of registration and use of the disputed domain name in bad faith. There is no evidence displacing this presumption.

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 original Complaint identified the single disputed domain name considered above. The Complainant sought to include 15 additional disputed domain names, which it believed to have been registered by the Respondent, in an Amended Complaint. However, the Complainant did not include these additional disputed domain names in the fields of the form in which additional domain names should be inserted. As a result, registrar verification was not triggered for the additional domain names and the applicable additional fee was not requested or paid. Accordingly the Administrative Proceeding was commenced and progressed in respect of the single disputed domain name as indicated in the title of the various documents including the Panel’s appointment.

The Complainant also sought to include two further disputed domain names following the commencement of the proceeding. This

was refused by the ADR Center.

This decision is therefore in respect of the single disputed domain name specified in the original Complaint. The Complainant may submit a further Complaint in respect of other disputed domain names by fully completing the Complaint form and paying the applicable fee.

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

The disputed domain name is confusingly similar to the Complainant's registered marks. The first part of the disputed domain name and the Complainant's marks are identical. The second part is different but descriptive, and so discounted. The disputed domain name locates website promoting counterfeit products. This does not confer any rights or legitimate interests and is evidence of registration and use in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **instantfrance.com**: Transferred

PANELLISTS

Name	**Jonathan Turner**

DATE OF PANEL DECISION 2024-03-23

Publish the Decision