Decision for dispute CAC-UDRP-106401

Case number	CAC-UDRP-106401
Time of filing	2024-04-09 10:20:26
Domain names	instantpotcookware.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	IB Appliances US Holdings, LLC

Complainant representative

Organization	Stobbs IP

Respondent

Name	Kiattisak Kalkumnerd

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that are pending or decided and that relate to the Disputed Domain Name.

IDENTIFICATION OF RIGHTS

Complainant states that it "owns very extensive rights" in the trademark INSTANT POT (the "INSTANT POT Trademark"). In support thereof, Complainant provides a schedule of what appear to be 41 registrations or applications in 18 trademark offices for marks that consist in whole or in part of the words "INSTANT POT," although the owner for many of the entries is identified as "Instant Brands, Inc." or other entities, not Complainant. (Complainant does not describe how any of these entities may be related to Complainant.) Further, Complainant provides no documentation in support of the schedule, such as copies of trademark registration certificates or printouts from relevant trademark law offices. Nevertheless, exercising its power to conduct independent research under paragraph 10 of the Rules, the Panel notes that the first registration on Complainant's schedule is for U.S. Reg. No. 6,907,251 (registered November 22, 2022) for INSTANT POT for use in connection with, inter alia, "[e]lectric cooking ovens for household purposes."

FACTUAL BACKGROUND

Complainant states that "[s]ince launching the INSTANT POT branded multicooker in 2008, the brand[] has gained widespread acclaim and commercial success"; that "[o]n Amazon Prime Day 2016, the Instant Pot multicooker sold 215,000 units alone"; that Complainant has had a website using the domain name <instanthome.com> since at least May 22, 2009; and that Complainant has more than 805,000 followers on Facebook, 524,000 on Instagram, and 23,000 on Twitter (presumably referring to the service now

known as X).

The Disputed Domain Name was created on February 5, 2024, and, according to Complainant, is being used in connection with a website that "offers the Complainant's products through Amazon affiliate links" that "allow the Respondent to earn commission when an internet user clicks on a link." Complainant provided a printout of a page from this website.

PARTIES CONTENTIONS

Complainant contends, in relevant part, as follows:

Paragraph 4(a)(i): Complainant states that it has rights in the INSTANT POT Trademark "[a]s illustrated" by the schedule described above; and that the Disputed Domain Name is confusingly similar to the INSTANT POT Trademark because, inter alia, "[t]he Disputed Domain Name include[s] the Complainant's INSTANT POT marks as the dominant element, along with a non-distinctive term 'cookware'," which "does nothing to alter the overall impression in the eyes of the average Internet user."

Paragraph 4(a)(ii): Complainant states that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, inter alia, "[b]ased on the considerable reputation of the INSTANT POT brand, there is no credible, believable, or realistic reason for registration or use of the Disputed Domain Name other than to take advantage of the Complainant's rights and brand reputation"; Respondent's website using the Disputed Domain Name is operated "for commercial gain without the Complainant's permission or consent"; "Respondent's use of the Disputed Domain Name is merely to pass off as the Complainant in order to earn commission via affiliate links"; "Respondent has never legitimately been known by the name INSTANT POT at any point in time"; and "nothing about the Disputed Domain Name suggests that the Respondent is making a legitimate non-commercial or fair use of the Disputed Domain Name."

Paragraph 4(a)(iii): Complainant states that the Disputed Domain Name was registered and is being used in bad faith because, inter alia, "Respondent was unequivocally aware of the INSTANT POT brand given the Respondent's Infringing Website makes substantial use of INSTANT POT brand assets and directs internet users to the Complainants products on Amazon via affiliate links"; "[u]sing a trade mark to divert traffic to the Respondent's own website is consistently held by panelists to amount bad faith registration and use"; and "Respondent disrupts the Complainant's business by diverting potential customers to the Infringing Website to earn commission via Amazon affiliate links."

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

Identical or Confusingly Similar: Paragraph 4(a)(i):

The trademark schedule provided by Complainant (unsupported by documentation in support thereof, such as copies of trademark registration certificates or printouts from relevant trademark law offices) is insufficient – by itself – to establish that Complainant has rights in the INSTANT POT Trademark. Further, as previously noted, the owner for many of the entries is identified as "Instant Brands, Inc." or other entities, not as Complainant, and Complainant has failed to describe how any of these entities may be related to Complainant. However, as also noted, the Panel has exercised its power to conduct independent research under paragraph 10 of the Rules and notes that the first registration on Complainant's schedule is for U.S. Reg. No. 6,907,251 (registered November 22, 2022) for INSTANT POT for use in connection with, inter alia, "[e]lectric cooking ovens for household purposes." As set forth in section 4.8 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), "a panel may undertake limited factual research into matters of public record" – including "accessing trademark registration databases" – "if it would consider such information useful to assessing the case merits and reaching a decision." Accordingly, after undertaking its own factual research, the Panel is satisfied that Complainant has rights in the INSTANT POT Trademark.

As to whether the Disputed Domain Name is identical or confusingly similar to the INSTANT POT Trademark, the relevant comparison to be made is with the second-level portion of the Disputed Domain Name only (i.e., "instantpotcookware") because "[t]he applicable Top Level Domain ('TLD') in a domain name (e.g., '.com', '.club', '.nyc') is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test." WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.11.1.

Here, the Disputed Domain Name contains the INSTANT POT in its entirety, simply adding the descriptive word "cookware". As set forth in section 1.8 of WIPO Overview 3.0: "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."

Accordingly, the Panel finds that Complainant has proven the first element of the Policy.

Rights or Legitimate Interests: Paragraph 4(a)(ii)

Complainant states that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, inter alia, "[b]ased on the considerable reputation of the INSTANT POT brand, there is no credible, believable, or realistic reason for registration or use of the Disputed Domain Name other than to take advantage of the Complainant's rights and brand reputation"; Respondent's website using the Disputed Domain Name is operated "for commercial gain without the Complainant's permission or consent"; "Respondent's use of the Disputed Domain Name is merely to pass off as the Complainant in order to earn commission via affiliate links"; "Respondent has never legitimately been known by the name INSTANT POT at any point in time"; and "nothing about the Disputed Domain Name suggests that the Respondent is making a legitimate non-commercial or fair use of the Disputed Domain Name."

WIPO Overview 3.0, section 2.1, states: "While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of 'proving a negative', requiring information that is often primarily within the knowledge or control of the respondent. As such, 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 finds that Complainant has established its prima facie case and, without any evidence from Respondent to the contrary, the Panel is satisfied that Complainant has satisfied the second element of the UDRP.

Registered and Used in Bad Faith: Paragraph 4(a)(iii)

Whether a domain name is registered and used in bad faith for purposes of the UDRP may be determined by evaluating four (non-exhaustive) factors set forth in paragraph 4(b) of the UDRP: (i) circumstances indicating that the registrant has registered or the registrant has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the 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 registrant's documented out-of-pocket costs directly related to the domain name; or (ii) the registrant has registered the 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 registrant has engaged in a pattern of such conduct; or (iii) the registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the registrant has intentionally attempted to attract, for commercial gain, Internet users to the registrant'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 the registrant's website or location or of a product or service on the registrant's website or location.

Here, by using the Disputed Domain Name in connection with a website that, as described by Complainant, "offers the Complainant's products through Amazon affiliate links" that "allow the Respondent to earn commission when an internet user clicks on a link," Complainant argues that Respondent has acted in bad faith pursuant to paragraph 4(b)(iv) of the UDRP. Section 3.1.1 of WIPO Overview states that such a likelihood of confusion is established where there is evidence of "the lack of a respondent's own rights to or legitimate interests in a domain name" and the domain name is "redirecting… to a different respondent-owned website." Many previous panels have found that a respondent acts in bad faith where it uses a domain name under certain circumstances as an Amazon affiliate. For example, one panel wrote: "Given the evident intention of the Respondent to profit from the marketing arrangement involved conducting an Amazon affiliate site, and the strong likelihood of confusion in attracting consumers to that site, there can be little doubt that it would constitute bad faith for the Respondent to continue to operate under the disputed domain

name." Beachbody, LLC v. Derek Armson, APD Marketing Ltd, WIPO Case No. D2011-0687.

Accordingly, the Panel finds that Complainant has proven the third element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **instantpotcookware.com**: Transferred

PANELLISTS

Name	**Douglas Isenberg**

DATE OF PANEL DECISION 2024-05-09

Publish the Decision