

ADMINISTRATIVE PANEL DECISION

Ingka Holding B.V. v. Faisal Khan, CREATIVEMODE LIMITED
Case No. D2023-1633

1. The Parties

The Complainant is Ingka Holding B.V., Netherlands, represented by Advokatfirman Lindahl, Sweden.

The Respondent is Faisal Khan, CREATIVEMODE LIMITED, United Kingdom.

2. The Domain Names and Registrar

The disputed domain name <ingka.foundation> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 14, 2023. On April 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 18, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Redacted for Privacy, GDPR Masked), and contact information in the Complaint. The Center sent an email communication to the Complainant on April 19, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on April 24, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on April 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 15, 2023. The Response was filed with the Center on May 15, 2023.

The Center appointed Adam Taylor as the sole panelist in this matter on May 22, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is part of the Ikea home furnishing group, which is ultimately owned by a Dutch charity known as the “INGKA Foundation”, founded in 1982.

The Complainant owns many trade marks for INGKA including European Union Trade Mark No. 016745846, filed on November 13, 2017, in classes 2, 4, 7-9, 11, 16, 18, 20, 21, 24, 25-31, and 35-44.

The Complainant operates a website at “www.ingkafoundation.org”.

The Respondent supplies web-related services.

The Respondent registered the disputed domain name November 27, 2022.

As of February 23, 2023, the disputed domain name resolved to a pay-per-click (“PPC”) website with a list of topics relating mainly to applications for various kinds of grants.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for transfer of the disputed domain name.

Notably, the Complainant contends that the Respondent must have been aware of the Complainant when acquiring the disputed domain name, which is referable only to the Complainant’s highly distinctive mark, and that the PPC links on the Respondent’s website relates to services that are similar to those provided under the Complainant’s mark.

B. Respondent

The following is a summary of the Respondent’s contentions.

The Respondent has a legitimate interest in the disputed domain name. He chose the disputed domain name in connection with a *bona fide* interest and has invested significant time, effort and resources therein.

The Respondent registered the disputed domain name in good faith and without any intent to infringe the Complainant’s rights. The disputed domain name does not target any specific trade mark or infringe any intellectual property rights. The Respondent has not broken any copyright law as the disputed domain name has no live content.

The disputed domain name does not create any likelihood of confusion with the Complainant’s trade marks. There is no evidence to suggest that consumers are being misled. Any similarity with the Complainant’s marks is purely coincidental.

The Respondent was the subject of a previous “wrongful” UDRP decision: *Totaljobs Group Limited v. Faisal Khan, CreativeMode Ltd*, WIPO Case No. [D2017-0295](#).

The Respondent hopes that this decision will not be influenced by undue pressure from a big corporation.

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

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

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trade mark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

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. [WIPO Overview 3.0](#), section 2.1.

The Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made 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. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.
- the Respondent (as an individual, business, or other organization) has not been commonly known by the disputed domain name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.
- the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

As regards paragraph 4(c)(i) of the Policy, the disputed domain name has been used for a parking page with PPC links concerning grant applications, which compete with, or at least relate to, the Complainant's services. Such use of the disputed domain name could not of itself confer rights or legitimate interests. In particular, use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalise on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users. [WIPO Overview 3.0](#), section 2.9.

The Respondent refers to the alleged investment of "significant time, effort and resources", seemingly implying that it is preparing to use the disputed domain name for an unspecified future project. However, where a respondent relies on future plans, clear contemporaneous evidence of *bona fide* pre-complaint preparations predating the Respondent's notice of the dispute is required. While, depending on the circumstances, such evidence may not need to be particularly extensive, it must go beyond a mere statement of a claimed intention. [WIPO Overview 3.0](#), section 2.2. However, the Respondent has supplied no such evidence in this case.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel considers that the record of this case reflects that:

-The Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location or of a product or service on the Respondent's web site or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

The Panel notes that the disputed domain name, including the Top-Level Domain suffix, seems to be uniquely referable to the Complainant's highly distinctive name and mark. It is difficult to conceive of any plausible legitimate reason for the Respondent to have selected this name, and the Respondent has provided no explanation, simply asserting in general terms that it registered the disputed domain name in good faith and without any intent to infringe the Complainant's rights.

In these circumstances, and without any explanation to the contrary, the Panel is not convinced by the Respondent's contention that any similarity with the Complainant's marks is "purely coincidental".

The Respondent's claim that it has not infringed any trade mark or copyright infringement does not assist it because the Panel is considering a separate issue, namely whether the disputed domain name has been registered and used in bad faith.

The Respondent claims that the disputed domain name has no "live content". If, by this, the Respondent means that it is not responsible for the content of the PPC page, that is incorrect. Respondents cannot disclaim responsibility for "automatically" generated pay-per-click links on their websites and neither the fact that such links are generated by a third party such as a registrar, nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of bad faith. [WIPO Overview 3.0](#), section 3.5.

The Panel disagrees with the Respondent's contention that there is no likelihood of confusion.

First, the disputed domain name carries a high risk of implied affiliation as it is identical to the Complainant's trade mark – see section 2.5.1 of the [WIPO Overview 3.0](#).

Second, while it is possible that some users arriving at the Respondent's site may realise that the site is not connected with the Complainant, paragraph 4(b)(iv) of the Policy is concerned with the intentional attracting of Internet users. Here, the disputed domain name creates an implied risk of affiliation with the Complainant, and the Respondent profits from at least some of the traffic intended for the Complainant.

The Panel would add that, even if the disputed domain name had not been resolved to a PPC page, the Panel would have nonetheless made a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. The Panel considers that the following factors that have been considered relevant in applying the passive holding doctrine are applicable here: (i) the degree of distinctiveness or reputation of the Complainant's mark, (ii) the failure of the Respondent to provide any evidence of actual or contemplated good-faith use, and (iii) the implausibility of any good faith use to which the domain name may be put.

The Respondent also invokes a previous UDRP decision against the Respondent, claiming that it was "wrongful". It is not entirely clear why the Respondent considers that this allegation is relevant to the present proceeding. In any event, it is not the role of the Panel to look behind a previous UDRP decision and the Panel has not taken it into account, either for or against the Respondent.

Finally, the Panel can confirm that there is no question of this decision being affected by "pressure" from a big corporation. UDRP decisions sometimes go against big corporations. The crucial factor here is that the Respondent has failed to put forward any good faith explanation for registering a disputed domain name that is uniquely associated with the Complainant's highly distinctive trade mark.

Based on the available record, the Panel finds the third element of the Policy has been established.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <ingka.foundation> be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: June 5, 2023