

ADMINISTRATIVE PANEL DECISION

AAK AB v. Privacy service provided by Withheld for Privacy ehf, Iceland / Dia Shia

Case No. D2022-0301

1. The Parties

Complainant is AAK AB, Sweden, represented by Ports Group AB, Sweden.

Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Dia Shia, Nigeria.

2. The Domain Name and Registrar

The disputed domain names <aakint.com>, <aakintl.com>, and <aaknit.xyz> are registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 28, 2022. On January 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On January 28, 2022 the Registrar transmitted by email to the Center its verification response, disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. On February 2, 2022, Complainant sent to the Center a first amended Complaint to include the disputed domain name <aaknit.xyz>. The Center sent another request for registrar verification to the Registrar on February 8, 2022, to which the Registrar replied on the same day. The Center sent an email communication to Complainant on February 10, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed a second amended Complaint on February 11, 2022.

The Center verified that the Complaint, together with the first and second amended Complaints (hereinafter the “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 Respondent of the Complaint, and the proceedings commenced on February 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 7, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on March 14, 2022.

The Center appointed Phillip V. Marano as the sole panelist in this matter on March 22, 2022. 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

Complainant is AAK AB, a Sweden-based company headquartered in Malmö, Sweden that produces specialty and semi-specialty vegetable oils and fats, and was founded in 2005. Complainant owns valid and subsisting registrations for the AAK trademark in numerous jurisdictions around the world, including the trademark for AAK Sweden Reg. No. 393500 registered on January 4, 2008, and International Reg. No. 900433, registered on March 26, 2007.

Respondent registered the disputed domain name <aakint.com> on December 16, 2021; the disputed domain name <aakintl.com> on November 30, 2021; and the disputed domain name <aaknit.xyz> on January 24, 2022. At the time the Complaint was filed, the disputed domain names <aakint.com> and <aakintl.com> failed to resolve to any active websites, and the disputed domain name <aaknit.xyz> displayed PPC link advertisements for “Clothes For Big Women” and “Invoice Payment” (translated from Danish) to various third party websites.

5. Parties' Contentions

A. Complainant

Complainant asserts ownership of the AAK trademark and has adduced evidence of trademark registrations in numerous jurisdictions around the world including in Sweden, the European Union, and the United States. The disputed domain names are confusingly similar to Complainant's AAK trademark, according to Complainant, because they are composed of the verbal elements “AAK Int”, “AAK Intl”, and “AAK Nit”, all of which entirely incorporate Complainant's AAK trademark, with the additional elements “int”, “intl”, and “nit” in reference to the word “international”, which is a reference to one of Complainant's subsidiaries, namely, AAK International AB.

Complainant further asserts that Respondent lacks any rights or legitimate interests in the disputed domain names based on the lack of evidence that Respondent is commonly known by the disputed domain names, the lack of evidence that Respondent has made use of, or demonstrable preparations to use the disputed domain names in connection with a *bona fide* offering of goods or services, and the fact that the domain names have been used to create and send emails attempting to defraud a supplier of Complainant by posing as an employee of Complainant.

Complainant argues that Respondent has registered and used the disputed domain names in bad faith for numerous reasons, including use of the disputed domain names to send fraudulent phishing emails to Complainant's supplier, by posing as an employee of Complainant.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

To succeed in its Complaint, Complainant must establish in accordance with paragraph 4(a) of the Policy:

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

Although Respondent did not reply to Complainant's contentions, the burden remains with Complainant to establish by a balance of probabilities, or a preponderance of the evidence, all three elements of paragraph 4(a) of the Policy. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3 ("A respondent's default would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true [...] UDRP panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case, e.g. where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent."); see also *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#) ("The Respondent's default does not automatically result in a decision in favor of the complainant. The Complainant must still prove each of the three elements required by Policy paragraph 4(a)").

A. Identical or Confusingly Similar

Ownership of a nationally or regionally registered trademark serves as *prima facie* evidence that Complainant has trademark rights for the purposes of standing to file this Complaint. [WIPO Overview 3.0](#), section 1.2.1. Complainant submitted evidence that the AAK trademark has been registered in numerous countries around the world including Sweden, the European Union, and the United States. Thus, the Panel finds that Complainant's rights in the AAK trademark have been established pursuant to the first element of the Policy.

The only remaining question under the first element of the Policy is whether the disputed domain names are identical or confusingly similar to Complainant's AAK trademark. In this case, the disputed domain names are confusingly similar to Complainant's AAK trademark because, disregarding the ".com" and ".xyz" generic Top-Level Domains ("gTLDs"), the trademark is contained in its entirety within each of the disputed domain names. [WIPO Overview 3.0](#), section 1.7. ("This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name ... [I]n cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar..."). In regards to gTLDs, such as ".com" and ".xyz" in the disputed domain names, they are generally viewed as a standard registration requirement and are disregarded under the first element. [WIPO Overview 3.0](#), section 1.11.

The combination with the terms "int", "intl", and "nit" do not prevent a finding of confusing similarity between Complainant's AAK trademark and the disputed domain names. WIPO Overview, section 1.8 (Additional terms "whether descriptive, geographic, pejorative, meaningless, or otherwise" do not prevent a finding of confusing similarity under the first element"); see also *AT&T Corp. v. WorldclassMedia.com*, WIPO Case No. [D2000-0553](#) ("Each of the domain names in dispute comprises a portion identical to [the ATT trademark] in which the Complainant has rights, together with a portion comprising a geographic qualifier, which is insufficient to prevent the composite domain name from being confusingly similar to Complainant's [ATT trademark]"); *OSRAM GmbH v. Cong Ty Co Phan Dau Tu Xay Dung Va Cong Nghe Viet Nam*, WIPO Case No. [D2017-1583](#) ("[T]he addition of the letters 'hbg' to the trademark OSRAM does not prevent a finding of confusing similarity between the Disputed Domain Name and the said trademark.").

In view of Complainant's registration for the AAK trademark, and Respondent's incorporation of that trademark in its entirety in the disputed domain names, the Panel concludes that Complainant has established the first element of the Policy.

B. Rights or Legitimate Interests

Complainant must make out a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain names, shifting the burden of production on this element to Respondent to come forward with evidence demonstrating such rights or legitimate interests. Where, as in this case, Respondent fails to come forward with any relevant evidence, Complainant is deemed to have satisfied the second element of the Policy. WIPO Overview, section 2.1.

It is evident that Respondent, identified by the Registrar for the disputed domain names as "Dia Shia", is not commonly known by the disputed domain names or Complainant's AAK trademark.

UDRP panels have categorically held that use of a domain name for illegal activity - including the impersonation of the complainant and other types of fraud - can never confer rights or legitimate interests on a respondent. Circumstantial evidence can support a credible claim made by Complainant asserting Respondent is engaged in such illegal activity, including that Respondent has masked its identity to avoid being contactable, or that Respondent's website has been suspended by its hosting provider. [WIPO Overview 3.0](#), section 2.13. See *e.g. Graybar Services Inc. v. Graybar Elec, Grayberinc Lawrence*, WIPO Case No. [D2009-1017](#) ("Respondent has used the domain name to pretend that it is the Complainant and in particular to create false emails pretending that they are genuine emails coming from the Complainant and one of its senior executives"). See also *The Commissioners for HM Revenue and Customs v. Name Redacted*, WIPO Case No. [D2017-0501](#) ("In addition, the disputed domain names ... have had their web hosting suspended as a result of fraudulent activities. This is evidence of bad faith registration and use of the disputed domain names.") In this Complaint, Complainant has proffered strong evidence to establish that Respondent registered and used each of the disputed domain names in a clear attempt to impersonate Complainant's subsidiary and defraud Complainant's supplier. Specifically, Respondent sent emails from each of the "[...][@aakintl.com](#)", "[...][@aakint.com](#), and "[...][@aaknit.xyz](#)" email addresses urging Complainant's supplier to make payment to Respondent's bank account, repeatedly following up to note "as of today's banking we still have not received payment." To this end, the second and third elements of the Policy may be assessed together (as discussed further below) where clear indicia of bad faith suggests that there cannot be any Respondent rights or legitimate interests. [WIPO Overview 3.0](#), section 2.15.

In view of the absence of any evidence supporting any rights or legitimate interests in the disputed domain name, and Complainant's clear evidence that the disputed domain names have been used to send fraudulent emails to Complainant's supplier, the Panel concludes that Complainant has established the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy proscribes the following non-exhaustive circumstances as evidence of bad faith registration and use of the disputed domain name:

- i. Circumstances indicating that Respondent has registered or Respondent has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to Complainant who is the owner of the trademark to a competitor of that Complainant, for valuable consideration in excess of Respondent's documented out of pocket costs directly related to the disputed domain name; or
- ii. Respondent has registered the disputed domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or

iii. Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

iv. By using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

UDRP panels have categorically held that registration and use of a domain name for illegal activity - including impersonation, passing off, and other types of fraud - is manifestly considered evidence of bad faith within paragraph 4(b)(iv) of the Policy. [WIPO Overview 3.0](#), section 3.1.3. Use of the disputed domain names by Respondent to pretend that it is Complainant or that it is associated with Complainant "brings the case within the provisions of paragraph 4(b)(iii) of the Policy, for it shows Respondent registered the domain name primarily for the purpose of disrupting the business of a competitor, namely Complainant." See *Edelman, Inc. v. Devteam Meetey*, WIPO Case No. [D2016-0500](#) ("The bad faith of the Respondent follows from the uncontested fact that the Respondent impersonated employees of the Complainant and even used the disputed domain name in requesting a third party to pay a large amount of money to the Respondent. This can only be seen as a very clear fraudulent behavior. Registering a domain name which is confusingly similar to the trademark of a complainant and subsequently using such domain name to impersonate employees of the Complainant in an attempt to commit fraud is a clear example of registration and use in bad faith. This Panel considers such behavior as an attempt to disrupt the business of the Complainant as well as an attempt to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's trademark"); *Sumitomo Dainippon Pharma Co., Ltd., Sunovion Pharmaceuticals Inc. v. Raid Benson*, WIPO Case No. [D2018-2893](#) (Feb. 8, 2019) (finding bad faith when the domain name was used to create email addresses that were used to defraud third parties by impersonating employees of the Complainants). Again, Complainant has produced clear email evidence establishing that Respondent purposefully targeted Complainant's AAK trademark in each of the disputed domain names in bad faith and in furtherance of Respondent's illegal scheme to impersonate an employee of Complainant's subsidiary, AAK International AB, and thereby defraud Complainant's suppliers of large sums of money with false invoices.

The Panel further concludes that failure by Respondent to answer Complainant's cease and desist letter "suggests that Respondent was aware that it has no rights or legitimate interests in the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith." See *America Online, Inc. v. Antonio R. Diaz*, WIPO Case No. [D2000-1460](#) (internal citations omitted). See also *Spyros Michopoulos S.A. v. John Talias, ToJo Enterprises*, WIPO Case No. [D2008-1003](#). Furthermore, the failure of Respondent to answer this Complaint or take any part in the present proceedings, in the view of the Panel, is another indication of bad faith on the part of Respondent in the circumstances of the proceeding. See *Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#).

Moreover, where it appears that a respondent employs a privacy or proxy service merely to avoid being notified of a UDRP proceeding filed against it, UDRP panels tend to find that this supports an inference of bad faith. WIPO Overview section 3.6. Use of a privacy or proxy registration service to shield a respondent's identity and elude or frustrate enforcement efforts by a legitimate complainant demonstrates bad-faith use and registration of a disputed domain name. See *Fifth Third Bancorp v. Secure Whois Information Service*, WIPO Case No. [D2006-0696](#) (the use of a proxy registration service to avoid disclosing the identity of the real party in interest is also consistent with an inference of bad faith when combined with other evidence of evasive, illegal, or irresponsible conduct).

In view of Respondent's attempted impersonation and attempts to pass itself off as Complainant to defraud Complainant's suppliers, Respondent's failure to respond to Complainant's cease and desist correspondence or this Complaint, and Respondent's use of a proxy registration service to mask its identity, the Panel concludes that Complainant has established the third element of the Policy.

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 names, <aakint.com>, <aakintl.com>, and <aaknit.xyz>, be transferred to Complainant.

/Phillip V. Marano/

Phillip V. Marano

Sole Panelist

Date: April 5, 2022