

ADMINISTRATIVE PANEL DECISION

IPSOS v. Privacy service provided by Withheld for Privacy ehf / Draak Taube Case No. D2022-2378

1. The Parties

The Complainant is IPSOS, France, represented by Novagraaf France, France.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Draak Taube, United States of America.

2. The Domain Name and Registrar

The disputed domain name <ipsoskenya.com> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 30, 2022. On June 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On June 30, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on July 1, 2022, 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 July 1, 2022.

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 July 5, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 25, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 9, 2022.

The Center appointed Nicholas Smith as the sole panelist in this matter on August 16, 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

The Complainant is a company located in France, founded in 1975, that provides survey, market research and marketing services. The Complainant trades in 90 countries, has over 16,000 employees, 5,000 clients and an annual turnover of over EUR 1.8 billion.

The Complainant holds a number of registered trade marks in various jurisdictions consisting of the word "IPSOS" (the "IPSOS Mark"). This includes an international trade mark registration for the IPSOS Mark, registered on December 4, 2003 (registration number 833772) for services in classes 35, 38, 41 and 42, designating various countries including Kenya, Republic of Korea, Serbia and Russian Federation.

The Domain Name <ipsoskenya.com> was registered on February 18, 2022. Prior to the commencement of the proceedings, the Domain Name redirected to a website (the "Respondent's Website") that offered sponsored listings (often referred to as pay-per-click advertisements) relating to consumer opinion surveys, which are the services offered by the Complainant under the IPSOS Mark.

5. Parties' Contentions

A. Complainant

The Complainant makes the following contentions:

- (i) the Domain Name is identical or confusingly similar to the Complainant's IPSOS Mark;
- (ii) the Respondent has no rights nor any legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

The Complainant is the owner of the IPSOS Mark having registered the IPSOS Mark in various jurisdictions including the European Union and Kenya. The Domain Name wholly incorporates the IPSOS Mark along with the geographic term "kenya" and the ".com" generic Top-Level Domain ("gTLD").

There are no rights or legitimate interests held by the Respondent in respect of the Domain Name. The Complainant has not granted any license or authorization for the Respondent to use the IPSOS Mark. The Respondent does not use the Domain Name for a *bona fide* purpose or legitimate noncommercial purpose. Rather the Domain Name resolves to a page with various links to advertisements targeted at the Complainant's consumers, which does not provide the Respondent with rights or legitimate interests.

The Domain Name was registered and is being used in bad faith. Given the reputation of the IPSOS Mark, which is a coined and distinctive word, the registration of the Domain Name can only be taken as an attempt by the Respondent to gain an unfair benefit from the Complainant's reputation. The Respondent is using the Domain Name for a pay-per-click site, which amounts to bad faith use.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

To prove this element the Complainant must have trade or service mark rights and the Domain Name must be identical or confusingly similar to the Complainant's trade or service mark.

The Complainant is the owner of the IPSOS Mark, having registrations for the IPSOS Mark as a trade mark in Kenya and various other jurisdictions.

The Domain Name incorporates the IPSOS Mark in its entirety with the addition of the geographic term "kenya". Other UDRP panels have repeatedly held that where the relevant trade mark is recognizable within the disputed domain name, the addition of other terms does not prevent a finding of confusing similarity under the first element; see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel finds that the Domain Name is confusingly similar to the Complainant's IPSOS Mark. Consequently, the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

To succeed on this element, a complainant must make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. If such a *prima facie* case is made out, then the burden of production shifts to the respondent to demonstrate rights or legitimate interests in the domain name.

Paragraph 4(c) of the Policy enumerates several ways in which a respondent may demonstrate rights or legitimate interests in a domain name:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

The Respondent is not affiliated with the Complainant in any way. The Respondent has not been authorized by the Complainant to register or use the Domain Name or to seek the registration of any domain name incorporating the IPSOS Mark or a mark similar to the IPSOS Mark. There is no evidence that the Respondent is commonly known by the Domain Name or any similar name. There is no evidence that the Respondent has used or made demonstrable preparations to use the Domain Name in connection with a legitimate noncommercial or fair use or a *bona fide* offering of goods or services; the Domain Name is presently inactive and the prior use of the Domain Name for what appears to be a parking page with pay-per-click links related to survey and marketing services, which are services sold by the Complainant under the IPSOS Mark does not amount to use for a *bona fide* offering of goods or services.

The Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has had the opportunity to put on evidence of its rights or legitimate interests, including submissions as to why its conduct amounts to a right or legitimate interest in the Domain Name under the Policy. In the absence of such a Response, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

For the purposes of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the Respondent has registered or 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 trade mark or service mark or to a competitor of the Complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the Domain Name; or
- (ii) the Respondent has registered the Domain Name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct; or
- (iii) the Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 Respondent's website or location or of a product or service on the Respondent's website or location (Policy, paragraph 4(b)).

The Panel finds that the Respondent must have been aware of the Complainant and its reputation in the IPSOS Mark at the time the Respondent acquired the Domain Name. The IPSOS Mark consists of a coined word that had been used by the Complainant for at least over 40 years prior to the registration of the Domain Name. The Respondent has provided no explanation, and none is immediately obvious, why an entity would register a domain name incorporating the IPSOS Mark and redirect it to a website containing links referring to consumer survey services similar to the services offered by the Complainant unless there was an awareness of and an intention to create a likelihood of confusion with the Complainant and its IPSOS Mark. In these circumstances, the Respondent's conduct in registering the Domain Name when it was aware of the Complainant's rights and lacked rights or legitimate interests of its own amounts to registration in bad faith.

The Respondent's Website has offered what appears to be pay-per-click links purporting to consumer survey services in direct competition with the Complainant. In these circumstances where the Respondent has offered no plausible explanation for the registration of the Domain Name, the Panel finds that the Respondent has used the Domain Name to intentionally attempt to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the IPSOS Mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's Website. As such, the Panel finds that the Domain Name is being used in bad faith.

Accordingly, the Panel finds that the Respondent has registered and is using the Domain Name in bad faith under paragraph 4(a)(iii) 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 Domain Name <ipsoskenya.com> be transferred to the Complainant.

/Nicholas Smith/

Nicholas Smith

Sole Panelist

Date: August 24, 2022