

ADMINISTRATIVE PANEL DECISION

Kavak Tecnologia e Comércio de Veículos Ltda. v. Bignardi Leiloes,
Bignardi Leiloes
Case No. D2022-3316

1. The Parties

The Complainant is Kavak Tecnologia e Comércio de Veículos Ltda., Brazil, represented by Baptista Luz Advogados, Brazil.

The Respondent is Bignardi Leiloes, Bignardi Leiloes,¹ Brazil.

2. The Domain Name and Registrar

The disputed domain name <kavakcarleiloes.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 6, 2022. On September 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 7, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on September 12, 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 September 16, 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 September 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 9, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 10, 2022.

¹ At the time of the filing of the Complaint, the Respondent’s identity was masked by a privacy service.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on October 18, 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

UVI TECH, S.A.C.I. DE C.V., a Mexican corporation and parent company of the Complainant, is the owner of the following trademark registrations in Brazil (Annexes 5 and 6 to the Complaint):

- Registration No. 916293157 for KAVAK.COM and device, filed on November 11, 2018, registered on September 17, 2019, in international class 35;
- Registration No. 916293181 for KAVAK.COM and device, filed on November 11, 2018, registered on September 17, 2019, in international class 38;
- Registration No. 917617762 for KAVAK.COM and device, filed on June 28, 2019, registered on March 17, 2020, in international class 37;
- Registration No. 920583040 for the word mark KAVAK, filed on August 27, 2020, registered on July 20, 2021, in international class 9;
- Registration No. 920583105 for the word mark KAVAK, filed on August 27, 2020, registered on July 20, 2021, in international class 35;
- Registration No. 920583164 for the word mark KAVAK, filed on August 27, 2020, registered on December 14, 2021, in international class 37; and
- Registration No. 920583210 for the word mark KAVAK, filed on August 27, 2020, registered on July 20, 2021, in international class 38.

The Complainant exploits the pre-owned cars' resale market in Brazil and is the exclusive licensee of the aforementioned trademarks (Annex 7 to the Complaint). The license agreement entered between the Complainant's parent company and the Complainant grants the Complainant the right to take measures against infringing uses by third parties (clause 1, item D).

The disputed domain name <kavakcarleiloes.com> was registered on June 13, 2022, and has been used in connection with a webpage reproducing the Complainant's logo and offering auctions of second-hand vehicles. Presently, no active webpage resolves from the disputed domain name.

5. Parties' Contentions

A. Complainant

The Complainant asserts to be part of a group operating in various countries under the KAVAK and KAVAK.COM trademarks, exploiting the resale of pre-owned cars.

In the Complainant's view, the disputed domain name reproduces the Complainant's trademark with the addition of the terms "car" and "leiloes" (Portuguese for "auctions") that enhances the likelihood of confusion with the Complainant's trademark, given that it could induce Internet users into believing that the disputed domain name operates auction services for the Complainant, which is not true.

Moreover, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name given that:

- (i) the Respondent has not been commonly known by the disputed domain name, nor does it hold any rights over the KAVAK name;
- (ii) the Respondent has been using the disputed domain name to mislead the Complainant's consumers into buying pre-owned cars in fraudulent auctions as part of a fraudulent scheme to deceive customers into paying for cars that in reality do not exist (Annex 9 to the Complaint); and
- (iii) there is a high risk of consumers sharing their personal data with the Respondent.

As to the registration and use of the disputed domain name in bad faith, the Complainant states that the Respondent knew of the Complainant's trademark when registering the disputed domain name given the choice of the disputed domain name and the reproduction of the Complainant's logo on the website that resolved from the disputed domain name, being it evident that the Respondent had knowledge of the Complainant's well-known trademark in the pre-owned car resale market and sought to create an impression of affiliation or sponsorship between the Complainant and the Respondent, causing actual confusion amongst Internet users (Annex 9 to the Complaint) and even impersonating the Complainant (Annex 10 to the Complaint) by the use of the Complainant's tax payer Identification Number in a fake invoice sent to a defrauded consumer.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the 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.

The Complainant must prove in this administrative proceeding that each of the aforementioned three elements is present in order to obtain the transfer of the disputed domain name.

In accordance with paragraph 14(a) of the Rules, if the Respondent does not submit a Response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

A. Identical or Confusingly Similar

The Complainant is the exclusive licensee of the Brazilian trademark registrations for KAVAK and KAVAK.COM trademarks owned by UVI TECH, S.A.C.I. DE C.V. in Brazil (Annexes 5 and 6 to the Complaint).

Section 1.4.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), states that "[a] trademark owner's affiliate such as a subsidiary of a parent or of a holding company, or an exclusive trademark licensee, is considered to have rights in a trademark under the UDRP for purposes of standing to file a complaint. While panels have been prepared to infer the existence

of authorization to file a UDRP case based on the facts and circumstances described in the complaint, they may expect parties to provide relevant evidence of authorization to file a UDRP complaint. In this respect, absent clear authorization from the trademark owner, a non-exclusive trademark licensee would typically not have standing to file a UDRP complaint”.

The Panel finds that the disputed domain name reproduces the KAVAK trademark in its entirety with the addition of the terms “car” and “leiloes” and is therefore confusingly similar to it. It is well accepted that the first element functions primarily as a standing requirement and that the threshold test for confusing similarity involves a “reasoned but relatively straightforward comparison between the complainant’s trademark and the disputed domain name”. 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 disputed domain name. See [WIPO Overview 3.0](#), section 1.7.

The first element of the Policy has therefore been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a non-exclusive list of circumstances that indicate a respondent’s rights to or legitimate interests in a disputed domain name. These circumstances are:

- (i) before any notice of the dispute, the respondent’s use of, or 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; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, in spite of not having acquired trademark or service mark rights; or
- (iii) the respondent is 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 trademark or service mark at issue.

The Respondent, in not formally responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights to or legitimate interests in the disputed domain name. This entitles the Panel to draw any such inferences from such default as it considers appropriate pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden of proof is still on the Complainant (see [WIPO Overview 3.0](#), section 2.1).

In that sense, and as the evidence submitted clearly indicates, the Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, given that the Respondent has used the disputed domain name to redirect Internet users to a webpage reproducing the Complainant’s logo purportedly offering auction services. The Complainant has also provided evidence that indicates that the Respondent has impersonated the Complainant by unduly reproducing the Complainant’s tax payer Identification Number in fake invoices. Moreover, the composition of the disputed domain name carries a risk of implied affiliation (see [WIPO Overview 3.0](#), section 2.5.1).

In addition to that, the lack of evidence as to whether the Respondent is commonly known by the disputed domain name or the absence of any trademarks registered by the Respondent corresponding to the disputed domain name corroborates with the indication of the absence of a right or legitimate interest in the disputed domain name.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name.

The second element of the Policy has therefore been established.

C. Registered and Used in Bad Faith

The Policy indicates in paragraph 4(b) that bad faith registration and use can be found in view of:

- (i) circumstances indicating that the Respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring it to the Complainant who is the owner of a trademark relating to the disputed domain name or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) the Respondent has registered the disputed 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 Respondent has engaged in a pattern of such conduct; or
- (iii) the 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, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website or other 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.

The registration and use of the disputed domain name in bad faith can be found in the present case in view of the following circumstances:

- (i) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the disputed domain name;
- (ii) the impersonation attempt undertaken by the Respondent unduly reproducing the Complainant's tax payer Identification Number in fake invoices relating to cars sold at the website that resolved from the disputed domain name indicates a fraudulent scheme perpetrated by the Respondent and corroborate with the clear indication of the Respondent's registration and holding of the disputed domain name in bad faith, with the implausibility of any good faith use to which the disputed domain name may be put; and
- (iii) the indication of what appears to be false contact information, and hence the Center not being able to fully deliver correspondence to the Respondent.

For the reasons as those stated above, the Panel finds that the disputed domain name was registered and is being used in bad faith. The fact that presently no active webpage resolves from the disputed domain name does not prevent a finding of bad faith.

The third element of the Policy has therefore 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 <kavakcarleiloes.com> be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: October 28, 2022