

ADMINISTRATIVE PANEL DECISION

Bunsha v. Michael Japaridze
Case No. DGE2023-0007

1. The Parties

The Complainant is Bunsha, France, represented by IP Twins, France.

The Respondent is Michael Japaridze, Georgia.

2. The Domain Name and Registry

The disputed domain names <kiabi.com.ge> and <kiabi.ge> (the “Domain Names”) are registered with Caucasus Online LLC (the .GE Registry).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 18, 2023. On September 20, 2023, the Center transmitted by email to the .GE Registry a request for registry verification in connection with the Domain Names. On September 21, 2023, the .GE Registry transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the .GE Domain Name Dispute Resolution Policy (the “Policy” or “.GE Policy”), the Rules for .GE Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .GE 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 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 18, 2023. The Response was filed with the Center on October 18, 2023.

The Center appointed Nicholas Smith as the sole panelist in this matter on October 24, 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 an apparel manufacturer and distributor that operates over 560 stores in Europe, employing 10,000 people with an annual turnover of EUR 2.2 billion (in 2022). Since at least 1996 the Complainant has offered its fashion products (including through stores under this brand) under the brand KIABI. The Complainant promotes its operations through various means including from its website at “www.kiabi.com” which it has operated since 1996.

The Complainant holds an International Trademark Registration for KIABI (the “KIABI Mark”) (registration number 6577851), registered on June 27, 1996 for goods and services in classes 3, 5, 14, 18, 22, 23, 24, 25, 26, 37, and 42, designating various countries including Georgia, China, Republic of Korea, Russian Federation, and Germany.

The Domain Names were registered on September 24, 2021. The Domain Names resolve to default websites maintained by the Registrar, and there is no evidence that they have ever been used in any other manner.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Names.

Notably, the Complainant contends that:

- a) It is the owner of the KIABI Mark, having registered the KIABI Mark in various jurisdictions including Georgia. The Domain Names are identical to the KIABI Mark.
- b) There are no rights or legitimate interests held by the Respondent in respect of the Domain Names. The Complainant has not granted any license or authorization for the Respondent to use the KIABI Mark. The Respondent is not commonly known by the KIABI Mark, nor does it use the Domain Names for a *bona fide* purpose or legitimate noncommercial purpose. Rather, the Domain Names simply resolve to a default page maintained by the Registrar.
- c) The Domain Names were registered and are being used in bad faith. There is no plausible circumstance under which the Respondent could use the Domain Names, which are identical to the KIABI Mark, other than to falsely create an impression of an association with the Complainant. In such circumstances, the Respondent’s passive holding of the Domain Names amounts to use of the Domain Names in bad faith.

B. Respondent

The Respondent states that it is not the proper Respondent in the proceeding as the Domain Names are registered by and for the benefit of “JSC Probus Capital”. The Respondent has the full right to register any available digital address and is in full compliance with the existing domain registration rules in Georgia. It was the responsibility of the Complainant to secure registration of the Domain Names if it wanted to hold the Domain Names.

The Respondent’s rights or legitimate interests in the Domain Names are derived from the proper acquisition and maintenance of the Domain Names in accordance with the existing domain registration rules of Georgia, and the ongoing payment of fees to the Register.

The Complainant has failed to establish that the Domain Names are registered or used in bad faith, as there is no evidence of any bad faith behavior engaged in by the Respondent. The Respondent proposes that the dispute be settled by transfer of the Domain Names to the Complainant for a reasonable fee to be negotiated between the parties.

6. Discussion and Findings

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 trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.¹

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark 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 each of the Domain Names. Accordingly, each of the Domain Names is identical 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 under the Policy and similar proceedings (such as proceedings under the UDRP) 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.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Names. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Names.

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 Domain Names or a name corresponding to the Domain Names 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.

¹ The Panel, noting the similarities between the Policy and Uniform Domain Name Dispute Resolution Policy ("UDRP"), has cited authorities decided under the UDRP where appropriate. This includes the [WIPO Overview 3.0](#).

- The Respondent (as an individual, business, or other organization) has not been commonly known by the Domain Names. 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 Domain Names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark 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 Domain Names. In particular simply redirecting the Domain Names to a holding page maintained by the Registrar is not a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. Notwithstanding the submissions made in the Response, the mere registration (and ongoing payment for) a domain name does not grant a party rights or legitimate interests in that domain name; if this were the case then all registrants could demonstrate rights or legitimate interests in any domain name they registered; rendering the Policy pointless.

The Respondent's submission that the proceeding is filed against the wrong party is not correct and has no impact on the disposition of this proceeding. The Respondent has provided no evidence to support the assertion that the Domain Names are being held for the benefit of an entity known as "JSC Probus Capital". In its verification provided to the Center, the Registrar confirmed the registrant of the Domain Names. Furthermore, the Policy applies to the named registrant of the Domain Names, who is the Respondent in this proceeding. Finally, even if the Domain Names were held for the benefit of "JSC Probus Capital" this would not (and indeed the Respondent makes so submissions to the effect that it would) provide the Respondent with rights or legitimate interests in the Domain Names.

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

C. Registered or Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances set out below, in particular but without limitation, that 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 you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have 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 you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of the complainant; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.” (Policy, paragraph 4(b)).

The Panel finds that it is likely that the Respondent was aware of the Complainant, and its reputation in the KIABI Mark at the time each of the Domain Names were registered. The Complainant has been offering apparel under the KIABI Mark for approximately 25 years at the time of registration and had registered the domain name <kiabi.com> in 1996. There is no obvious reason, nor has the Respondent offered an explanation (despite filing a detailed Response), for the Respondent to register two domain names identical

to the KIABI Mark, unless there was an intention to create a likelihood of confusion between the Domain Names and the Complainant and the KIABI Mark. Rather than providing a good faith reason the Domain Names were registered, the Respondent simply asserts that by reason of it registering the Domain Names and continuing to make payments, the Domain Names should not be transferred from it. As noted under the "Rights and Legitimate Interests" section of the decision above, the mere registration of the subject domain name is not determinative under the Policy or the UDRP.

The Domain Names are currently inactive as, for the last 2 years, they have resolved to a page maintained by the Registrar. *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) established that a UDRP panel must examine all the circumstances of the case to determine whether a respondent is acting in bad faith in circumstances where the domain names are unused. The same principles would apply to a claim under the Policy.

The Panel is prepared to infer, based on the conduct of the Respondent, including the passive holding of the Domain Names for the last 2 years following their registration and the failure by the Respondent to provide any explanation of its conduct in registering two domain names that are identical to the KIABI Mark (other than an assertion that it holds rights by way of registration of the Domain Names, which is not the case) that the Domain Names are most likely being held for sale or pending use as a website that, without the license of the Complainant, will offer or make reference to the Complainant's products, or products that purport to compete with the Complainant's products. As such, the Panel finds that the passive holding of the Domain Names amounts to use in bad faith.

Accordingly, the Panel, while noting that the Policy only requires that a complainant show that a respondent registered or subsequently used the domain name at issue in bad faith, finds that the Respondent has registered and used the Domain Names 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 .GE Policy and 15 of the .GE Rules, the Panel orders that the Domain Names, <kiabi.com.ge> and <kiabi.ge> be transferred to the Complainant.

/Nicholas Smith/

Nicholas Smith

Sole Panelist

Date: November 7, 2023