

ADMINISTRATIVE PANEL DECISION

Kaneka Corporation v. 1111111 11111, 123231564456; Ka Kane
Case No. DCC2024-0004

1. The Parties

The Complainant is Kaneka Corporation, Japan, represented by Demys Limited, United Kingdom.

The Respondents are 1111111 11111, 123231564456, Singapore; Ka Kane, United States of America (“United States”).

2. The Domain Names and Registrars

The disputed domain names <kane-ka.cc> and <kane-ka.co> are registered with NameSilo, LLC.

The disputed domain name <kanekā.com> (<xn--kanek-jwa.com>) is registered with GoDaddy.com, LLC. In this decision, the disputed domain names are collectively referred to as the “Domain Names”, and NameSilo, LLC and GoDaddy.com, LLC are collectively referred to as the “Registrar”.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 21, 2024 against six domain names. On February 22, 2024, the Center transmitted by email to the Registrars a request for registrar verification in connection with six domain names. On February 22 and 28, 2024, the Registrars transmitted by email to the Center their verification response disclosing registrant and contact information for six domain names which differed from the named Respondent (Registration Private, Domains By Proxy, LLC / Redacted for Privacy, PrivacyGuardian.org LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 28, 2024 with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrars, requesting the Complainant to either file separate complaints for six domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity and/or that all six domain names are under common control. The Complainant requested to withdraw three domain names from the proceeding on May 25, 2024, and filed an amended Complaint only concerning the Domain Names on March 27, 2024.

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 Respondents of the Complaint, and the proceedings commenced on April 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 25, 2024. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on May 1, 2024.

The Center appointed Nicholas Smith as the sole panelist in this matter on May 8, 2024. 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 Japanese multinational company founded in 1949 that produces chemicals, plastics and fibres, amongst other products. Together with its subsidiaries it employs more than 11,500 people.

The Complainant is the owner of multiple trademark registrations for the word mark KANEKA (the “KANEKA Mark”), including a United States trademark registered on March 13, 1973 for goods in class 22 (registration number 954,742).

The Domain Names were registered between June 21, 2023 and June 26, 2023. Prior to the commencement of the proceeding, the <kane-ka.cc> Domain Name resolved to a webpage offering pay-per-click advertising unrelated to the Complainant. The remaining Domain Names each resolved to a website (“the Respondents’ Website”) prominently featuring the Complainant’s KANEKA Mark and information copied from the Complainant’s official website at “https://www.kaneka.co.jp/en/” and purported to offer financial services, namely energy trading services. The Domain Name <kanekā.com>, an internationalized domain name (“IDN”), translates as <xn--kanek-jwa.com> in Punycode. Prior UDRP panels have found IDNs and their Punycode translations to be equivalent. See, for instance, *Württembergische Versicherung AG v. Emir Ulu*, WIPO Case No. [D2006-0278](#) (finding that the domain name “<xn--wrttembergische-versicherung-16c.com> should be considered as equivalent to <württembergische-versicherung.com>”).

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 KANEKA Mark, having registered the KANEKA Mark in the United States. The Domain Names are each confusingly similar to the KANEKA Mark as they reproduce the KANEKA Mark and either add a hyphen or replace the “a” with “ā” to create a minor misspelling, then add a Top-Level Domain (“TLD”) which do not distinguish the Domain Names from the KANEKA Mark.
- b) there are no rights or legitimate interests held by the Respondents in respect of the Domain Names. The Complainant has not granted any license or authorization for the Respondents to use the KANEKA Mark. The Respondents are not commonly known by the KANEKA Mark, nor do they use the Domain Names for a bona fide purpose or legitimate noncommercial purpose. Rather the Respondents have used the Domain Names to impersonate the Complainant for the purpose of operating a misleading website

scheme to target users aware of the Complainant, such use not being bona fide or have the <kane-ka.cc> Domain Name resolve to a page with links to advertisements which also does not provide the Respondents with rights or legitimate interests.

c) the Domain Names were registered and are being used in bad faith. There are no plausible circumstances under which the Respondents could legitimately use the Domain Names. Considering the Respondents' Website prominently featured the Complainant's KANEKA Mark and copyright material, it is inconceivable that the Respondents did not have the Complainant in mind when they registered the Domain Name, which constitutes bad faith. The Domain Names are being used to impersonate the Complainant for the purposes of commercial gain, which amounts to use of the Domain Names in bad faith.

B. Respondents

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

6. Discussion and Findings

Consolidation: Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The Respondents did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.11.2.

As regards common control, the Panel notes that the <kane-ka.cc> and <kane-ka.co> domain names are held by the same Respondent and the <kanekā.com> and <kane-ka.co> domain names resolve to virtually identical websites and all three Domain Names were registered within a five-day period. Furthermore, the email addresses of the Respondents are very similar in terms of composition. It would be implausible for two unconnected entities to register the Domain Names <kanekā.com> and <kane-ka.co> within the same week and have them resolve to virtually identical websites targeting the same entity. As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party. Finally, the Panel notes that neither of the Respondents have denied any association with the other or objected to the consolidation of the proceedings requested by the Complainant.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different domain name registrants (referred to below as "the Respondent") in a single proceeding.

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 3.0](#), section 1.7.

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 KANEKA Mark is recognizable within the Domain Names. Accordingly, the Domain Names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

A domain name which consists of a misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for the purpose of the first element. Here the addition of a hyphen to or the replacement of the letter “a” with “ā” in the KANEKA Mark creates such a minor misspelling. [WIPO Overview 3.0](#), section 1.9.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available 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 such as those enumerated in the Policy or otherwise.

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;
- 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; and
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the Domain Names.

The Whois lists “Ka Kane” as registrant of record for some of the Domain Names. However, the Panel is not satisfied that the Respondent is actually commonly known under this name as opposed to simply registering some of the Domain Names under a pseudonym for the purpose of asserting rights or legitimate interests. The Respondent has provided no evidence that an entity known as “Ka Kane” exists and is legitimately

trading. Even if a respondent's name appears from the Whois record to correspond to the domain name, without additional affirmative evidence, it can be concluded that such a respondent is not commonly known by the disputed domain name under Policy, paragraph 4(c)(ii). Given the conduct set out in the next paragraph, indicating that the Respondent is actively passing off as the Complainant, the Panel finds on the balance of probabilities that the Respondent is not commonly known by some of the Domain Names and the Ka Kane name is merely a pseudonym that is part of a broader effort by the Respondent to pass off as the Complainant.

The Respondent has used the <kanekā.com> and <kane-ka.co> Domain Names to impersonate the Complainant (by the use of the KANEKA Mark and descriptive information about the Complainant copied from the Complainant's website) for the purposes of advertising its (likely fictitious) financial services (specifically energy trading services). Such conduct, involving the representation that the Respondent's Website is in some way connected to the Complainant, does not, on its face, amount to the use of the <kanekā.com> and <kane-ka.co> Domain Names for a bona fide offering of goods or services.

Finally, the use of the <kane-ka.cc> Domain Name to resolve to a website containing pay-per-click advertisements does not amount to use for a bona fide offering of goods and services in these circumstances. The [WIPO Overview 3.0](#), section 2.9, notes that:

"Applying UDRP paragraph 4(c), panels have found that the 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 capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users.

[...]

Panels have recognized that the use of a domain name to host a page comprising PPC links would be permissible – and therefore consistent with respondent rights or legitimate interests under the UDRP – where the domain name consists of an actual dictionary word(s) or phrase and is used to host PPC links genuinely related to the dictionary meaning of the word(s) or phrase comprising the domain name, and not to trade off the complainant's (or its competitor's) trademark."

In the present case, the <kane-ka.cc> Domain Name has no inherent meaning and hence the Respondent's use of the confusingly similar <kane-ka.cc> Domain Name to host a parking page with pay-per-click links does not, absent any further explanation, provide the Respondent with rights or legitimate interests in this Domain Name.

The Panel finds the second element of the Policy has been established.

C. Registered and 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, 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.

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 websites or other on-line locations, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's websites or locations or of a product or service on the Respondent's websites or locations. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

The Panel finds that the Respondent must have been aware of the Complainant and its reputation in the KANEKA Mark at the time the Respondent registered the Domain Names. The Respondent has provided no explanation, and neither it is immediately obvious, why an entity would register three Domain Names incorporating a minor misspelling of the KANEKA Mark and direct two of them to a website that reproduces the KANEKA Mark and purports to offer services under those marks unless there was an awareness of and an intention to create a likelihood of confusion with the Complainant and its KANEKA Mark.

The Respondent has used the Domain Names, being confusingly similar to the KANEKA Mark, to attract visitors to its websites, either to the Respondent's Website where it passes off as the Complainant in order to offer what purport to be energy trading services under the Complainant's marks or to a pay-per-click site where it would receive advertising revenue. Such an action satisfies the requirements of paragraph 4(b)(iv) of the Policy.

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 Domain Names <kane-ka.cc>, <kane-ka.co>, and <kanekā.com> (<xn--kanek-jwa.com>) be transferred to the Complainant.

/Nicholas Smith/

Nicholas Smith

Sole Panelist

Date: May 17, 2024