

ADMINISTRATIVE PANEL DECISION

Masco Corporation and Kraus USA Plumbing LLC v. Lijing Zhang Case No. D2023-3379

1. The Parties

The Complainants are Masco Corporation and Kraus USA Plumbing LLC, United States of America ("United States"), represented by Demys Limited, United Kingdom.

The Respondent is Lijing Zhang, China.

2. The Domain Names and Registrar

The disputed domain names <outletkraus.com> and <storekraus.com> are registered with Name.com, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 7, 2023. On August 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On August 9, 2023, 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 (Redacted For Privacy, Domain Protection Services, Inc) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 10, 2023, 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 August 11, 2023.

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 August 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 6, 2023.

The Center appointed Anne-Virginie La Spada as the sole panelist in this matter on September 14, 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 First Complainant, Masco Corporation, is an American company active in the design, manufacture and distribution of decorative architectural products and plumbing products.

The First Complainant owns various subsidiaries, including Kraus USA Plumbing LLC, the Second Complainant.

The Second Complainant designs and manufactures kitchen and bathroom sinks, faucets, and accessories.

Among other registrations, the Second Complainant owns the United States trademark registration KRAUS No. 3478540 registered on August 5, 2008, in classes 6, 11, 20. and 21.

The Second Complainant has registered the domain name <kraususa.com>.

The disputed domain names were registered on October 6, 2022. At the time of filing of the Complaint, the disputed domain names were connected to commercial websites offering for sale items presented as KRAUS products. Furthermore, the websites displayed the KRAUS logo of the Second Complainant.

The First and Second Complainants will hereafter be named together “the Complainants”.

5. Parties’ Contentions

A. Complainant

According to the Complainants, the disputed domain names are confusingly similar to their KRAUS registered trademark as it captures the entirety of its trademark with the mere adjunction of the descriptive terms “store” and “outlet”. The Complainants aver that the adornments create a likelihood of confusion, as the websites’ users will think that the disputed domain names are operated by, connected with or endorsed by the Complainants.

Further, the Complainants contend that the Respondent does not have any rights or legitimate interests in the disputed domain names. According to the Complainants the Respondent is not commonly known by the disputed domain names. The Respondent has not been licensed, contracted, or otherwise permitted by the Complainants in any way to use the KRAUS trademark or any domain name incorporating the KRAUS trademark. Furthermore, the Respondent cannot claim nominative fair use as reseller or distributor as the Complainants did not authorize the Respondent to act as an authorized distributor of their goods. The Respondent’s use of the disputed domain names to effectively impersonate the Second Complainant or imply sponsorship or endorsement of the Respondent by the Complainants, cannot moreover constitute a *bona fide* offering of goods and services.

Finally, the Complainants contend that the Respondent has used and registered the disputed domain names in bad faith. According to the Complainants, there is a likelihood of confusion, as the websites associated with the disputed domain names are confusing and a lack of any disclaimer increases the potential for confusion. Furthermore, the Complainants contend that the use to which the websites associated with the disputed domain names have been put will disrupt the Complainants’ business because of the potential sale of counterfeit, parallel import, or grey market goods. The Complainants aver that any such use will tarnish the Complainants’ KRAUS brand and marks and diminish consumers’ trust associated with it and the quality of products offered by the Complainants.

B. Respondent

The Respondent did not reply to the Complainants' contentions.

6. Discussion and Findings

6.1. Consolidation of Complaints

The Complaint was filed by two Complainants against a single Respondent. The Complainants argue that the consolidation of multiple complainants is appropriate in the present case.

Neither the Policy nor the Rules expressly provides for or prohibits the consolidation of multiple complainants. In this regard, section 4.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") states that:

"In assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation."

Both Complainants form part of the same corporate group. The Second Complainant is a wholly-owned subsidiary of the First Complainant and is the registered owner of the abovementioned KRAUS trademark.

The Panel finds that the Complainants have a specific common grievance against the Respondent as they have a common legal interest in the trademark rights on which this Complaint is based, and it is equitable and procedurally efficient to permit the consolidation of their complaints.

6.2 Substantive Issues

According to paragraph 4(a) of the Policy, a complainant must assert and prove each of the following:

- (i) the domain name registered by the respondent 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 domain name; and
- (iii) the domain name registered by the respondent has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The disputed domain names reproduce the Second Complainant's trademark KRAUS in its entirety with no alteration, and combine this trademark with the terms "outlet" and "store".

UDRP panels consider that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element of paragraph 4(a) of the Policy (see section 1.8 of the [WIPO Overview 3.0](#)).

In the present case, the trademark KRAUS is clearly recognizable in the disputed domain names. The mere addition of the terms "outlet" and "store" does not prevent a finding of confusing similarity between the disputed domain names and the Second Complainant's trademark.

UDRP panels accept that a generic Top-Level Domain ("gTLD"), such as ".com", may be disregarded when assessing whether a domain name is identical or confusing similar to a trademark (see [WIPO Overview 3.0](#), section 1.11.1).

The Complainants have satisfied the condition set forth in paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Based on the information submitted by the Complainants, the Complainants did not grant the Respondent any authorization to use the disputed domain names. Moreover, there is no evidence indicating that the Respondent is commonly known by the disputed domain names.

According to UDRP panels, a respondent's use of a domain name is not be considered "fair" if it falsely suggests affiliation with the trademark owner. Where the respondent's domain name consists of the complainant's trademark plus an additional term, panels have assessed whether the additional term suggests sponsorship or endorsement by the trademark owner. Where the additional term indicates services related to the brand, a further examination of the facts and circumstances of the case (including in particular the associated website's content) may be required to assess the risk of implied affiliation (see section 2.5.1 of the [WIPO Overview 3.0](#)).

In the present case, the disputed domain names incorporate the Second Complainant's trademark in its entirety with the addition of the terms "store" and "outlet", terms correlated to the purchase of the Complainants' goods.

The Respondent appears to be using the disputed domain names in connection with commercial websites offering for sale KRAUS branded products.

UDRP panels have recognized that resellers, distributors, or service providers using a domain name containing the complainant's trademark to undertake sales or repairs related to the complainant's goods or services may be making a *bona fide* offering of goods and services and thus have a legitimate interest in such domain name (section 2.8 of the [WIPO Overview 3.0](#)). Outlined in the "Oki Data test" (*Oki Data Americas Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)), the following cumulative requirements will be applied in the specific conditions of a UDRP case:

- (i) the respondent must actually be offering the goods or services at issue;
- (ii) the respondent must use the site to sell only the trademarked goods or services;
- (iii) the site must accurately and prominently disclose the registrant's relationship with the trademark holder; and
- (iv) the respondent must not try to "corner the market" in domain names that reflect the trademark.

In the present case, the Complainants contend that the Respondent is not part of the Complainants' distribution network, and as such the Complainants' goods on offer are likely to be either counterfeit, parallel import, or grey market goods. Noting that the Oki Data test has been applied to both authorized and unauthorized resellers, the Panel need not reach a determination as to the source of the goods, however, as the Respondent's websites offer other third-party goods for sale alongside the Complainants' goods and are designed to mimic the look and feel of the Complainants' official websites. Furthermore, the screenshots of the landing page of the websites to which the disputed domain names resolve do not feature any disclaimer concerning the relationship between the Respondent and the Complainants; the Panel also notes that the address under "Contact Us" seems not to exist, and moreover that the "FAQ" page refers to a different third party brand ("Our goal at Husqva Outlet is to ship your items out to you as soon as possible."), possibly due to sloppy use of a template used to target other brands. In the Respondent's websites, the KRAUS logo of the Second Complainants is displayed in the top of the page, creating the impression of an official website, operated or at least endorsed by the Complainants.

By failing to accurately disclose the relationship, or rather lack thereof with the Complainants, the Respondent conveyed the false impression that the Respondent is the Second Complainant itself, or an authorized retailer of the Complainants, where such is not the case.

The Panel finds accordingly that the requirements of the "Oki Data test" are not satisfied in the present case.

In view of the above, the Panel finds that the disputed domain names, which incorporates the Second Complainant's trademark in its entirety with the addition of the terms "outlet" and "store", without meeting the conditions of the "Oki Data test", falsely suggests affiliation with the Complainants, such that the Respondent's use of the disputed domain names may not be considered fair.

Finally, the Panel may draw from the lack of a Response the inferences that it considers appropriate, according to the Rules, paragraph 14(b). The Panel finds that the Complainants have established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Panel finds that the Respondent's silence corroborates the Complainants' *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names.

The Complainants have thus satisfied the condition set out in paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Given that the trademark KRAUS of the Second Complainant is distinctive and has been widely used before the registration of the disputed domain names, and that the Respondent used the Second Complainant's logo on the websites operated under the disputed domain names, the Panel accepts that the Respondent was aware of the existence of the Complainants and of the Second Complainant's KRAUS trademark at the time of the registration of the disputed domain name.

The Respondent is using prominently the logo of the Second Complainant on its websites without any indication regarding its relationship to the Complainants. Such use is apt to create the false impression that the websites are operated or endorsed by the Complainants, thus misleading, for commercial gain, consumers looking for the Complainants' websites. Accordingly, the Panel finds it likely that the Respondent intentionally created a likelihood of confusion with the Second Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website. This is a circumstance of use of a domain name in bad faith according to paragraph 4(b) of the Policy.

For the reasons set out above, the Panel finds that the Respondent has registered and used the disputed domain names in bad faith, and that the Complainants have satisfied the condition set forth in 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 disputed domain names <outletkraus.com> and <storekraus.com> be transferred to the Complainants.

/Anne-Virginie La Spada/

Anne-Virginie La Spada

Sole Panelist

Date: September 28, 2023