

ADMINISTRATIVE PANEL DECISION

Kat Burki Skincare, Inc. v. KathleenCarter
Case No. D2025-0427

1. The Parties

Complainant is Kat Burki Skincare, Inc., United States of America ("United States" or "US"), represented by Andrews Law Firm, United States.

Respondent is KathleenCarter, United States.

2. The Domain Name and Registrar

The disputed domain name <katburkibeauty.shop> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 3, 2025. On February 4, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 5, 2025, 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 (Domain Admin, Privacy Protect, LLC). The Center sent an email communication to Complainant on February 7, 2025, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on February 13, 2025.

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 Respondent of the Complaint, and the proceedings commenced on February 18, 2025. In accordance with the Rules, paragraph 5, the due date for Response was March 10, 2025. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on March 12, 2025.

The Center appointed Phillip V. Marano as the sole panelist in this matter on March 19, 2025. 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

Complainant is an online retailer of skincare, beauty, and other personal care products that was founded in 2013. Complainant offers its goods through its official <katburki.com> domain name and website. Complainant owns valid and subsisting registrations for the KAT BURKI trademark, including the trademark for KAT BURKI (Reg. No. 7649274) in the US, registered on January 14, 2025, with the earliest priority dating back to August 2008.

Respondent registered the disputed domain name on July 31, 2024. Complainant has not provided any evidence of use of the disputed domain name. The Panel visited the disputed domain name and observed that it resolved to an ostensible ecommerce website offering for sale discounted beauty products, including “eye cream[s]” and “skin serum[s]” as well as “leather eye patch[es]”, including products branded with Complainant’s trademark and third-party products of other commercial origin.¹

5. Parties’ Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Complainant asserts ownership of the KAT BURKI trademark and has adduced evidence of trademark registrations in the US, with earliest priority dating back to August 2008. The disputed domain name is confusingly similar to Complainant’s KAT BURKI trademark, according to Complainant, because: Respondent uses Complainant’s trademark in the disputed domain name; Respondent purports to sell Complainant’s products without being affiliated with Complainant or having any rights otherwise to engage in resale or wholesale of Complainant’s product.

Complainant further asserts that Respondent lacks any rights or legitimate interests in the disputed domain name based on: the lack of any authorization for Respondent to use Complainant’s KAT BURKI trademark; Respondent’s intent to mislead and divert consumers away from Complainant’s official goods; and the lack of any evidence that Respondent is commonly known by the disputed domain name.

Complainant argues that Respondent has registered and used the disputed domain name in bad faith based on: Respondent’s use of the disputed domain name to divert consumers away from Complainant’s authorized retailers; and Respondent’s intent to create a likelihood of confusion with Complainant’s KAT BURKI trademark.

B. Respondent

Respondent did not reply to Complainant’s contentions.

¹ Noting in particular the general powers of a panel articulated inter alia in paragraphs 10 and 12 of the Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)) section 4.8.

6. Discussion and Findings

To succeed in its Complaint, Complainant must establish in accordance with paragraph 4(a) of the Policy:

- i. The disputed domain name is identical or confusingly similar to a trademark in which Complainant has rights;
- ii. 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.

Although Respondent did not reply to Complainant's contentions, the burden remains with Complainant to establish by a balance of probabilities, or a preponderance of the evidence, all three elements of paragraph 4(a) of the Policy. A respondent's default would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true. UDRP panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case, e.g. where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent. See [WIPO Overview 3.0](#), sections 4.2 and 4.3; see also *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#) ("The Respondent's default does not automatically result in a decision in favor of the complainant. The Complainant must still prove each of the three elements required by Policy paragraph 4(a)").

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 Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Complainant has established rights in respect of a trademark or service mark for the purposes of the Policy.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here "beauty", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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

B. Rights or Legitimate Interests

Complainant must make out a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name, shifting the burden of production on this element to Respondent to come forward with evidence demonstrating such rights or legitimate interests. Where, as in this Complaint, Respondent fails to come forward with any relevant evidence, Complainant is deemed to have satisfied the second element of the Policy. [WIPO Overview 3.0](#), section 2.1. As a threshold matter, it is evident from the record that Respondent, identified by the Registrar as "KathleenCarter", is not commonly known by the disputed domain name or Complainant's KAT BURKI trademark.

Having reviewed the available record, the Panel finds Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Resellers, distributors, and service providers using a domain name containing Complainant's trademark (usually in conjunction with descriptive terms like "parts", "repairs", or a geographic location) to undertake sales or repairs related to Complainant's products may be making a bona fide offering of goods or services and thus may have a legitimate interest in the disputed domain name. [WIPO Overview 3.0](#), section 2.8.1. Panels apply the fact specific "Oki Data Test" to determine whether rights or legitimate interests in the disputed domain name are present in cases where all of the following elements are met:

- i. Respondent must actually offer the goods or services at issue;
- ii. 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. Respondent must not try to "corner the market" in domain names that reflect the trademark.

See *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

In this Complaint, (i) Complainant has clearly confirmed that Respondent is not an authorized distributor or reseller, and it is unclear whether the products offered on Respondent's website are actually for sale, or (more likely) whether Respondent's website is merely another fake shop created to phish for sensitive customer personal and financial data; (ii) Respondent's website ostensibly sells third-party products, e.g. from brands like "Huxley" and "Mark Hewryk" together with Complainant's products; and (iii) Respondent's website does not appear to clarify its (lack of) relationship with Complainant.

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

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy proscribes the following non-exhaustive circumstances as evidence of bad faith registration and use of the disputed domain name:

- i. Circumstances indicating that Respondent has registered or Respondent has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to Complainant who is the owner of the trademark, to a competitor of that Complainant, for valuable consideration in excess of Respondent's documented out of pocket costs directly related to the disputed domain name; or
- ii. Respondent has registered the disputed domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- iii. 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, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel notes that registration of Complainant's KAT BURKI trademark postdates the registration date of the disputed domain name. However, based on Complainant's presumptively valid federal trademark registration, and the August 2008 first use date contained therein, the Panel finds that Complainant has established rights that well predate the registration date of the disputed domain name by Respondent.

Use of a domain name incorporating Complainant's trademark to redirect Internet users to Respondent's website (where goods or services are offered in competition with Complainant) is strong evidence of bad faith under paragraph 4(b)(iv) of the Policy. [WIPO Overview 3.0](#), section 3.1.4 ("Panels have moreover found the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark: seeking to cause confusion for respondent's commercial benefit, even if unsuccessful ... the lack of a respondent's own rights to or legitimate interests in a domain name [or] redirecting the domain name to a different respondent-owned website...."). Here, the disputed domain name misappropriates Complainant's KAT BURKI trademark and resolves to Respondent's ecommerce website that appears to offer Complainant's branded products and beauty products in competition to Complainant. Accordingly, the Panel finds that the disputed domain name which incorporates Complainant's trademark and the term associated with its business will divert potential customers from Complainant's business to the website under the disputed domain name by attracting Internet users who mistakenly believe that the disputed domain name is affiliated with Complainant.

Moreover, to the extent that Respondent's website may constitute a fake shop, UDRP panels have categorically held that registration and use of a domain name for impersonation, passing off, or other types of fraud is manifestly considered evidence of bad faith within paragraph 4(b)(iv) of the Policy. [WIPO Overview 3.0](#), section 3.1.3.

As discussed above, Complainant has proffered evidence that Respondent is not an authorized distributor or reseller of Complainant's authentic beauty products. In addition, based on the Panel's limited investigation of Respondent's website, (ii) Respondent's beauty products are offered for sale at deep discounts of thirty percent, and (ii) Respondent has used a proxy service, or selected a registrar that applies default proxy services, to shield its identity and elude or frustrate enforcement efforts.

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 disputed domain name <katburkibeauty.shop> be transferred to Complainant.

/Phillip V. Marano/

Phillip V. Marano

Sole Panelist

Date: April 2, 2025