

Decision for dispute CAC-UDRP-104726

Case number	CAC-UDRP-104726
Time of filing	2022-07-13 09:19:43
Domain names	ikearetailtherapy.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	Inter IKEA Systems B.V.
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Complainant representative

Organization	Convey srl
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Respondent

Name	Fu Lei
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OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of numerous trademarks worldwide, including but not limited to the following:

- German Trademark Registration No. DE867152 for IKEA, registered on March 12, 1970;
- United States Trademark Registration No. 1118706 for IKEA logo, registered on May 22, 1979;
- United States Trademark Registration No. 1661360 for IKEA, registered on October 22, 1991;
- European Union Trademark Registration No. 000109652 for IKEA, registered on October 1, 1998;
- European Union Trademark Registration No. 000109637 for IKEA, registered on October 8, 1998;
- International Trademark Registration No. 926155 for IKEA logo, registered on April 24, 2007, designating China among other countries;
- Italian Trademark Registration No. 0001257211 for IKEA, registered on March 12, 2010; and
- Italian Trademark Registration No. 0001300174 for IKEA, registered on June 3, 2010.

FACTUAL BACKGROUND

The Complainant, Inter IKEA Systems B.V., is the worldwide IKEA franchisor responsible for developing and supplying the global IKEA range of products. IKEA is one of the most well-known home furnishing brands in the world with more than four

hundred stores. IKEA Group has roughly 225,000 employees worldwide, reaching more than fifty markets and almost a billion visitors per year.

The Complainant started using its IKEA mark more than 70 years ago. In 2021, the IKEA brand was ranked in the twenty-seventh position according to Best Global Brands of Interbrand. The Complainant also states that it holds trademark registrations in more than 80 countries around the world and the IKEA trademark has been extensively promoted, without limitation, in print advertisements, promotional materials, Internet forums acquiring a high international recognition.

The Complainant further states that it launched its website www.ikea.com in 1997 and has registered more than 441 domain names under generic Top-Level Domains (“gTLDs”) and 294 domain names under country code Top-Level Domains (“ccTLDs”) – among which are <ikea.com.pk> (which was registered in 2004), <ikea.pk> (which was registered in 2006), <ikea.com>, <ikea.net>, <ikea.us>, <ikea.cn>, <ikea.de>, <ikea.it> and <ikea.co.uk>. The IKEA trademark has also been used extensively in major social networks where the Complainant has multiple accounts on the same platform for each country. The IKEA mark is widely used and therefore distinctive and well-known around the world.

The disputed domain name was registered by the Respondent on December 16, 2018, which resolved to an active website displaying IKEA-related content and passing off as the Complainant.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

Preliminary Issue: Language of Proceedings

Paragraph 11 of the Rules provides that:

“(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.”

The language of the Registration Agreement for the disputed domain name is Chinese.

The Complainant requested that the language of the proceeding be English for the following reasons:

- (i) the Respondent appears to be able to communicate in the English language;
- (ii) the disputed domain name is in Latin characters;
- (iii) the content of the disputed domain name website was also in English, which shows that the Respondent’s target audience are English-speaking; and

(iv) requiring the Complainant to translate the Complaint would incur additional costs and cause unnecessary delays. The Respondent did not comment on the language of the proceeding.

The Panel cites the following with approval: “Thus, the general rule is that the parties may agree on the language of the administrative proceeding. In the absence of this agreement, the language of the Registration Agreement shall dictate the language of the proceeding. However, the Panel has the discretion to decide otherwise having regard to the circumstances of the case. The Panel’s discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time and costs. It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her abilities to articulate the arguments for the case.” (See *Groupe Auchan v. xmxzl*, WIPO Case No. DCC2006 0004).

Having considered the above factors, the Panel determines that English be the language of the proceeding. The Panel agrees that the Respondent appear to be familiar with the English language, taking into account the Respondent’s selection of the English-language trademark and the domain name in dispute. In the absence of an objection by the Respondent, the Panel does not find it procedurally efficient to have the Complainant translate the Complaint and evidence into Chinese.

PRINCIPAL REASONS FOR THE DECISION

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a complainant to show that a domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns the IKEA mark and that the mark was coined by its founder.

The differences between the disputed domain name and the Complainant’s IKEA trademark are the addition of a descriptive terms “retail” and “therapy” and the gTLD “.com”, which in the Panel’s view does not avoid confusing similarity with the Complainant’s trademark.

It is established that where a trademark is recognizable within the disputed domain name, the addition of a descriptive term would not prevent a finding of confusing similarity under the first element. (See WIPO Overview 3.0, section 1.8). It is further established that gTLD is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. (See WIPO Overview 3.0, section 1.11). The addition of a gTLD to a disputed domain name does not avoid confusing similarity as the use of a TLD is technically required to operate a domain name (see *Accor v. Noldc Inc.* WIPO Case No. D2005-0016; *F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.*, WIPO Case No. D2006-0451; *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003; *L’Oréal v Tina Smith*, WIPO Case No. 2013-0820; *Titoni AG v Runxin Wang*, WIPO Case No. D2008-0820; and *Alstom v. Itete Peru S.A.*, WIPO Case No. D2009-0877).

Therefore, the Panel finds that the disputed domain name is confusingly similar to the IKEA mark and the element under paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the complainant to show that the respondent has no rights or interests in respect of the domain name. Once the complainant establishes a prima facie case that the respondent lacks rights or legitimate interests in the domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the domain name (see WIPO Overview 3.0, section 2.1).

In the present case, the Complainant has demonstrated prima facie that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant submitted evidence that it did not authorize or license the Respondent to use the IKEA mark (see OSRAM GmbH. v. Mohammed Rafi/Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org, WIPO Case No. D2015-1149; Sanofi-Aventis v. Abigail Wallace, WIPO Case No. D2009-0735). The Complainant also submitted evidence that its registrations and use of the trademarks predate the registration of the disputed domain name by at least 70 years. In addition, the evidence submitted by the Complainant shows that the Respondent is not commonly known by the disputed domain name.

The Panel also notes that in the present case, the addition of the terms “retail” and “therapy” are within the Complainant’s field of commerce or indicating goods and/or services related to the brand, as the Complainant is well-known for manufacturing and selling furniture and household goods, which may trigger an inference of affiliation with the Complainant even though the Respondent is in no way affiliated with the Complainant (see WIPO Overview 3.0, section 2.5.1).

Further, in the circumstances of the present case, the Panel notes that an individual by the name of “Jack” or “sashilover” who is presumably the Respondent sent an email to the Complainant on August 27, 2021, stating, inter alia, “I am willing to transfer this domain back to your client. I purchased it at \$8,000 from a domain auction company, I am willing to sell it to you at the same price. Please let me know if you are interested in this.”. Without evidence to the contrary, it appears that the Respondent is also offering the disputed domain name for sale for its own commercial gain which does not constitute fair use of the disputed domain name (see WIPO Overview 3.0, section 2.5.2).

The Respondent did not submit a response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain name which is sufficient to rebut the Complainant’s prima facie case.

The Panel is therefore of the view that the Respondent has no rights or legitimate interests in respect of the disputed domain name and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The complainant must show that the respondent registered and is using the disputed domain name in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

In this case, the evidence shows that the Complainant’s mark has attained such goodwill and reputation such that the Respondent is unlikely to have registered the disputed domain name without sight and knowledge of the Complainant’s mark and it is implausible that there is any good faith use to which the disputed domain name may be put to. It is also the Complainant’s evidence that the Respondent could not have registered the disputed domain name without prior knowledge of the Complainant’s mark as the Respondent’s name has no connection with the Complainant’s IKEA mark which was registered long ago. The evidence shows that the disputed domain name website appeared to be passing off as the Complainant by making reference to the Complainant, the Complainant’s IKEA mark and its goods despite the Respondent not being authorized or licensed by the Complainant. This is another indicator of bad faith on the part of the Respondent (see Boursorama SA v. Estrade Nicolas, WIPO Case No. D2017-1463).

The Complainant has submitted evidence that the disputed domain name resolved to a website selling competing goods with the Complainant. The Panel also notes that prior to commencement of the proceedings, the Complainant received an email from the Respondent in response to a cease-and-desist letter where the Respondent stated that he would be willing to transfer the disputed domain name to the Complainant for \$8,000. It is also the Complainant’s evidence that the Respondent is not authorised to use its mark and sell goods purporting to be the Complainant’s on the disputed domain name website.

In the circumstances of the present case, given the Respondent’s likely knowledge of the Complainant’s famous marks, the Complainant’s significant reputation and goodwill in its marks, the failure of the Respondent to present a credible evidence-backed rationale for registering the disputed domain name, that the disputed domain name is confusingly similar to the Complainant’s mark, and that the Respondent is requesting for money in excess of the out-of-pocket costs associated with registering the disputed domain name, the Panel is of the view that the Respondent registered or acquired the disputed domain

name to primarily for the purpose of selling, renting, or otherwise transferring the domain name 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 the respondent's documented out-of-pocket costs directly related to the domain name; and/or to attract, for commercial gain, Internet users to the Respondent's web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location or of a product or service on the Respondent's web site or location.

The Panel has also taken into consideration that the Respondent did not submit a Response in this proceeding and that the Respondent used a privacy service to mask its identity during registration of the disputed domain name, which is another indication of bad faith registration and use.

Based on the evidence presented to the Panel, as presented and discussed above, the Panel draws the inference that the disputed domain name was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

- 1. **IKEARETAILTHERAPY.COM:** Transferred

PANELLISTS

Name	Mr. Jonathan Agmon
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DATE OF PANEL DECISION 2022-08-17

Publish the Decision