

Decision for dispute CAC-UDRP-105391

Case number	CAC-UDRP-105391
Time of filing	2023-05-03 09:37:17
Domain names	instapotco.com, shopinstapot.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)
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Complainant

Organization	Instant Brands LLC
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Complainant representative

Organization	Stobbs IP Ltd
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Respondents

Name	Robert Roxas
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Name	Ify Ogbechie
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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 names.

IDENTIFICATION OF RIGHTS

The Complainant is the registered owner of many trademarks for INSTANT POT, e.g. United States trademark registration no. 3887207 registered on December 7, 2010 for goods in class 11.

FACTUAL BACKGROUND

It results from the Complainant's undisputed allegations that it commercializes an INSTANT POT branded multicooker, which was launched in 2008 and has gained widespread acclaim and commercial success.

The Complainant further contends its trademark INSTANT POT be distinctive and well-known.

Furthermore, the Complainant uses the domain name <instanthome.com> to connect to its official website for advertising and commercializing its products.

The disputed domain name <instapotco.com> was registered on March 27, 2023 and the disputed domain name <shopinstapot.com> was registered on March 7, 2023. Both disputed domain names resolve to websites advertising and selling the same competing product

(i.e. an electric cooker), moreover displaying the same product image and the same “AS SEEN ON” TikTok banner, furthermore using the same online payment system.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain names should be transferred to it.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 Respondents to have no rights or legitimate interests in respect of the disputed domain names (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 names have been registered and are 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.

According to the information provided by the Registrars upon the Request for Registrar Verification sent by Online ADR Center of the Czech Arbitration Court, the disputed domain names are registered by different Registrants (Respondents): i.e. Robert Roxas Theinstapot (Canada) is the Registrant of <instapotco.com>, Ify Ogbechie (USA) is the Registrant of <shopinstapot.com>.

In its Amended Complaint the Complainant requests the Panel to consolidate the cases.

Under Paragraph 10(e) of the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules) “A Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules”.

In the Panel’s view the Complainant submitted sufficient evidence to justify the consolidation in terms of common control of the domain names or corresponding websites and fairness and equitableness of the consolidation to all parties.

As specified in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Jurisprudential Overview 3.0”) at point 4.11.2 “Panels have considered a range of factors, typically present in some combination, as useful to determining whether such consolidation is appropriate, such as similarities in or relevant aspects of (i) the registrants’ identity(ies) including pseudonyms, (ii) the registrants’ contact information including email address(es), postal address(es), or phone number(s), including any pattern of irregularities, (iii) relevant IP addresses, name servers, or webhost(s), (iv) the content or layout of websites corresponding to the disputed domain names, (v) the nature of the marks at issue (e.g., where a registrant targets a specific sector), (vi) any naming patterns in the disputed domain names (e.g., <mark-country> or <mark-goods>), (vii) the relevant language/scripts of the disputed domain names particularly where they are the same as the mark(s) at issue, (viii) any changes by the respondent relating to any of the above items following communications regarding the disputed domain name(s), (ix) any evidence of respondent affiliation with respect to the ability to control the disputed domain name(s), (x) any (prior) pattern of similar respondent behaviour, or (xi) other arguments made by the complainant and/or disclosures by the respondent(s).

The Panel considers the consolidation as appropriate, taking into consideration, in particular, the content and the layout of the websites corresponding to the disputed domain names which are almost identical. In fact, the disputed domain names resolve to webshops advertising the same competing product (i.e. an electric cooker), moreover displaying the same product image and the same “AS SEEN ON” TikTok banner, furthermore using the same online payment system. Thus, the content and layout of the websites corresponding to the disputed domain names give evidence of a common control of the domain names at issue.

On the balance of probabilities and taking into account the above circumstances of the present case, the Panel finds that the disputed domain names are under common control. The Panel is also satisfied that consolidation of these disputes is fair and equitable to all parties, and that they should be consolidated in the interest of procedural efficiency (s. *Pandora A/S v. Larry Sack, Alice Ferri, marino blasi, Sirkin Mösening, Meghan Pier, Monica Lugo, Tom Fargen*, CAC Case No. 103259).

PRINCIPAL REASONS FOR THE DECISION

1. Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must establish rights in a trademark or service mark, and that the disputed domain names are identical or confusingly similar to a trademark in which the Complainant has rights.

It results from the evidence provided, that the Complainant is the registered owner of various INSTANT POT trademarks.

Prior UDRP panels have found that a disputed domain name is confusingly similar to a complainant's trademark where at least a dominant feature of the relevant mark is recognizable in the domain name (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0") at section 1.7. This Panel shares this view and notes that the disputed domain names incorporate the dominant feature of the Complainant's trademark, i.e. "INSTAPOT", which is clearly recognizable in the disputed domain names. In addition, this is preceded by the term "shop", which is related to the Complainant's business activity, in the disputed domain name <shopinstapot.com>, whereas this is followed by the letters "co" in the disputed domain name <instapotco.com>. The addition of the term "shop" and of the letters "co" and the omission of the letters "nt" (that are part of the Complainant's trademark INSTANT POT, while not a dominant element) do not prevent a finding of confusing similarity between the disputed domain names and the Complainant's trademark since the Complainant's trademark is clearly recognizable in the disputed domain names (see WIPO Overview 3.0 at section 1.8).

Finally, the generic Top-Level Domain ("gTLD") ".com" of the disputed domain names is typically disregarded under the first element confusing similarity test (see WIPO Overview 3.0 at section 1.11.1).

In the light of the above, the Panel finds that the disputed domain names are confusingly similar to a trademark in which the Complainants have rights.

2. Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondents have no rights or legitimate interests in respect of the disputed domain names.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests to the disputed domain names.

In the Panel's view, based on the undisputed allegations stated above, the Complainant has made a prima facie case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain names.

According to the Complaint, which has remained unchallenged, the Complainant has no relationship in any way with the Respondents and did, in particular, not authorize the Respondents' use of the dominant feature of the Complainant's trademark INSTANT POT, *e.g.* by registering the disputed domain names comprising the dominant feature of said trademark.

Furthermore, the Panel notes that there is no evidence showing that the Respondents might be commonly known by the disputed domain names in the sense of paragraph 4(c)(ii) of the Policy.

Moreover, the Panel notes that the disputed domain names contain the dominant feature of the Complainant's registered trademark INSTANT POT and that trademark is not a trademark that one would legitimately adopt as a domain name unless to suggest an affiliation with the Complainant. The Panel finds it most likely that the Respondents selected the disputed domain names with the intention to take advantage of the Complainant's reputation by registering domain names containing the dominant feature of the Complainant's trademark with the intent to attract Internet users for commercial gain.

Furthermore, the nature of the disputed domain name <shopinstapot.com> carries a risk of implied affiliation, since the disputed domain name contains the dominant feature of Complainant's trademark preceded by the term "shop", which is related to the Complainant's business activity, see WIPO Overview 3.0, section 2.5.1.

It is acknowledged that once the Panel finds a prima facie case is made by a complainant, the burden of production under the second element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name (see WIPO Overview 3.0 at section 2.1). Since the Respondents in the case at hand failed to come forward with any allegations or evidence, this Panel finds, in the circumstances of this case, that the Respondents have no rights or legitimate interests in the disputed domain names.

The Panel finds that the Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

3. According to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith.

Based on the evidence submitted by the Complainant, this Panel has no doubt that the Respondents positively knew or should have

known that the disputed domain names included the dominant feature of the Complainant's trademark when it registered the disputed domain names. This is underlined by the fact that the disputed domain names are clearly constituted by the dominant feature of the Complainant's trademark preceded by the term "shop", which is related to the Complainant's business activity, in the disputed domain name <shopinstapot.com>, whereas this is followed by the letters "co" in the disputed domain name <instapotco.com>. Registration of the disputed domain names in awareness of the Complainant trademark and in the absence of rights or legitimate interests in this case amounts to registration in bad faith. In the circumstances of this case, the Panel finds that the registration of the disputed domain names was in bad faith.

Finally, the further circumstances surrounding the disputed domain names' registration and use confirm the findings that the Respondents have registered and are using the disputed domain names in bad faith (see WIPO Overview 3.0 at section 3.2.1):

- (i) the content of the websites to which the disputed domain names direct (advertising and selling the same competing product (i.e. an electric cooker),
- (ii) a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondents choice of the disputed domain names;
- (iii) the Respondents concealing their identity;
- (iv) the nature of the disputed domain name <shopinstapot.com> (a domain name incorporating the dominant feature of Complainant's mark plus the addition of the term "shop", which is related to the Complainant's business activity).

In light of the above the Panel finds that the disputed domain names have been registered and are being used in bad faith pursuant to paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **instapotco.com**: Transferred
2. **shopinstapot.com**: Transferred

PANELLISTS

Name Dr. Federica Togo

DATE OF PANEL DECISION 2023-06-23

Publish the Decision