

WIPO Arbitration and Mediation Center

ADMINISTRATIVE PANEL DECISION

Inter IKEA Systems B.V. v. [X]

Case No. DNL2018-0016

1. The Parties

The Complainant is Inter IKEA Systems B.V. of Delft, the Netherlands, represented by CSC Digital Brand Services AB, Sweden.

The Respondent is [X] of Ottawa, Canada

2. The Domain Name and Registrar

The disputed domain name <ikeaipteam.nl> (the “Domain Name”) is registered with SIDN through PDR Ltd.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 16, 2018. On the same day, the Center transmitted by email to SIDN a request for registrar verification in connection with the Domain Name. On March 19, 2018, SIDN transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the Dispute Resolution Regulations for .nl Domain Names (the “Regulations”).

In accordance with the Regulations, articles 5.1 and 16.4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on March 23, 2018. In accordance with the Regulations, article 7.1, the due date for Response was April 12, 2018. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 13, 2018.

The Center appointed Willem Hoorneman as the panelist in this matter on April 18, 2018. The Panel finds that it was properly constituted. The Panelist has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required to ensure compliance with the Regulations, article 9.2.

4. Factual Background

The Complainant is active in the sale of furniture and home furnishing products under the well-known trademark IKEA. Its business model is developed through a franchise system using an exclusive distribution system. The Complainant is the worldwide IKEA franchisor and (almost) all IKEA stores operate under franchise agreements.

The Complainant owns more than 1,500 trademark registrations for the mark IKEA, and variants of this mark, in more than 80 jurisdictions around the world, for classes 2, 8, 9, 11, 16, 18, 20, 21, 24, 25, 27, 28, 29, 30, 31, 35, 36, 38, 39, 41, 42 and 43, among

others. This includes but is not limited to the following trademark registrations for its trademark IKEA (the “Trademarks”):

- Benelux Trademark registration with registration number 0151911, registered on February 13, 1987;
- European Union Trademark registration with registration number 000109652, registered on October 1, 1998.

The Complainant has also included the trademark IKEA in more than 300 domain names worldwide, including the <ikea.com> (primary) domain name (registered on July 29, 1995).

The Domain Name was registered by the Respondent on May 11, 2017. Currently, the Domain Name resolves to an inactive website and is not being used.

5. Parties’ Contentions

A. Complainant

The Complainant is the owner of the Trademarks. The IKEA trademark is an invented name – an acronym comprising the initials of the founder’s name (Ingvar Kamprad), the farm where he grew up (Elmtaryd), and his home parish (Agunnaryd). The term “ikea” carries no meaning in the English or Dutch language other than as a trademark; IKEA being a source of origin of the Complainant’s products. Thus the mark IKEA is in possession of substantial inherent and acquired distinctiveness.

The Domain Name is confusingly similar to the Trademarks, since it incorporates the name IKEA. The addition of nondistinctive and generic term “ipteam” by the Respondent only adds to the risk of confusion given the activities of the Complainant and does not negate the confusing similarity between the Domain Name and the Complainant’s IKEA trademark, particularly bearing in mind that this trademark is instantly recognizable as a world famous trademark. The public will draw the conclusion that the Domain Name originates from the Complainant.

According to the Complainant, the Respondent has no rights or legitimate interests in the Domain Name, as it has no trademark rights or licenses for IKEA and does not trade under the name IKEA.

Because the Domain Name is confusingly similar to the famous Trademarks and the domain names registered by the Complainant that predate the Domain Name’s registration, the Complainant concludes that the Respondent must have been aware of the Trademarks and these domain names. The inactivity by the Respondent (as the Domain Name currently resolves to an inactive site and is not being used), the absence of any response to the various cease and desist letters sent by the Complainant and the absence of a plausible good-faith reason or logic for the Respondent to have registered the Domain Name, is further evidence that the Domain Name is registered and/or is being used in bad faith by the Respondent.

B. Respondent

The Respondent did not reply to the Complainant’s contentions.

6. Discussion and Findings

Pursuant to article 2.1 of the Regulations, the Complainant's request to transfer the Domain Name must meet three cumulative conditions:

- a. The Domain Name is identical or confusingly similar to a trademark or trade name protected under Dutch law in which the Complainant has rights, or other name by means of article 2.1(a) under II of the Regulations; and
- b. The Respondent has no rights to or legitimate interests in the Domain Name; and
- c. The Domain Name has been registered or is being used in bad faith.

The Respondent may demonstrate such rights or legitimate interests on its part, *inter alia*, through the circumstances mentioned in article 3.1 of the Regulations as listed below.

The Complainant may provide evidence that the Domain Name has been registered or is being used in bad faith, *inter alia*, through the circumstances mentioned in article 3.2 of the Regulations as listed below.

As the Respondent has not filed any response, the Panel shall rule on the basis of the Complaint. In accordance with article 10.3 of the Regulations, the Complaint shall in that event be granted, unless the

Panel considers it to be without basis in law or in fact.

A. Identical or Confusingly Similar

It is established case law that the country code Top-Level Domain ("ccTLD") ".nl" may be disregarded in assessing the similarity between the domain name on the one hand, and the relevant trademark on the other hand (see: *Taylor Made Golf Company, Inc. v. Lotom Group S.A.*, [WIPO Case No. DNL2010-0067](#); *Roompot Recreatie Beheer B.V. v. Edoco LTD*, [WIPO Case No. DNL2008-0008](#)).

The Domain Name is confusingly similar to the Complainant's Trademarks because the Domain Name incorporates the Trademark in its entirety. The Domain Name differs from the Trademarks only in that the term "ikea" in the Domain Name is followed by the descriptive term "ipteam". The addition of such a descriptive term does not eliminate the confusing similarity with the Trademarks (see, *Seiko EPSON Corporation v. ANEM Computers / ANEM*, [WIPO Case No. DNL2010-0024](#)). The Panel further refers to *Inter IKEA Systems B.V. v. Lei Wang*, [WIPO Case No. D2014-0139](#), finding that "the most prominent and distinctive part of the disputed domain name is the word 'ikea' which is identical to the Complainant's registered trademark IKEA. Given the fame and notoriety of the Complainant's IKEA marks, the addition of the term "new" does not provide sufficient distinction from the Complainant's trademark".

Therefore, the Panel finds that the Domain Name is confusingly similar to the Trademarks within the meaning of the Regulations. The Complainant has thus established the first element of article 2.1 of the Regulations.

B. Rights or Legitimate Interests

While the overall burden of proof rests with the Complainant, previous panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the Respondent.

Therefore a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. Once such *prima facie* case is made, a respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, the complainant is generally deemed to have satisfied the second element of article 2.1 of the Regulations.

A respondent may demonstrate such rights or legitimate interests on its part *inter alia* through any of the following non-limitative circumstances listed in article 3.1 of the Regulations:

- a. before having any notice of the dispute, the [respondent] made demonstrable preparations to use the domain name (or a name corresponding to the domain name) in connection with a *bona fide* offering of goods or services;
- b. the [respondent] as an individual, business or other organization is commonly known by the domain name;
- c. the [respondent] is making a legitimate noncommercial use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish or otherwise damage the relevant trademark, trade name, personal name, name of a Dutch public legal entity or name of an association or foundation located in the Netherlands.

Noting the asserted facts, the Panel finds that the Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name.

The Respondent has failed to address the Complainant's *prima facie* case, and the Panel sees no indication of the Respondent meeting any of the above mentioned circumstances or any other basis for a right to or legitimate interest in the Domain Name.

Based on the foregoing, the Panel is of the opinion that the Respondent has no rights to or legitimate interests in the Domain Name under the Regulations.

C. Registered or Used in Bad Faith

Article 3.2 of the Regulations provides that any of the following non-limitative circumstances are deemed to be evidence that a respondent has registered and is using a domain name in bad faith:

- (a) the domain name has been registered or acquired primarily for the purpose of selling, renting or transferring it to the complainant or to the complainant's competitors for valuable consideration in excess of the cost of registration;
- (b) the domain name has been registered in order to prevent the complainant from using it;
- (c) the domain name has been registered primarily for the purpose of disrupting the complainant's activities;
- (d) the domain name has been or is being used for commercial gain, by attracting Internet users to a website of the registrant or other online location through the likelihood of confusion which may arise with the trademark, trade name, personal name, name of a Dutch public legal entity or name of an association or foundation registered in the Netherlands as to, for example, the source, sponsorship, affiliation or endorsement of the

website of the registrant or other online location(s) or of products or services on the domain registrant's website or another online location.

The Trademarks have the status of a well-known trademark with substantial and widespread reputation throughout the world, including in the Netherlands where

the Complainant is headquartered. The Trademarks and the domain names registered by the Complainant significantly predate registration of the Domain Name by the Respondent. The Respondent is most likely to have known of the Complainant, its products, the Trademarks and/or the mentioned <ikea.com> domain name prior to registering the Domain Name.

The apparent lack of any active use (*i.e.* for the Domain Name to resolve to an active website) of the Domain Name without a direct attempt to sell or to contact the trademark holder (so-called "passive holding" by the Respondent) does not as such prevent a finding of bad faith. Bad faith "use" does not require a positive act on the part of the Respondent – instead, passively holding a domain name can constitute a factor in finding bad faith registration and use (See, *Telstra Corp. v. Nuclear Marshmallows*, [WIPO Case No. D2000-0003](#): "it is possible, in certain circumstances, for inactivity by the Respondent to amount to the domain name being used in bad faith").

Indeed, the specific cumulative circumstances in this case in which the Domain Name is confusingly similar to the (undisputedly well-known) Trademarks of the Complainant, the absence of any response to the various cease and desist letters sent by the Complainant, the use by the Respondent of the Trademarks in an email address (ikealegal@[...].com), and the absence of any evidence whatsoever of any actual or contemplated good-faith use by the Respondent of the Domain Name, are indicative of bad faith on the part of the Respondent in its registration and/or use of the Domain Name (see: *The Coca-Cola Company v. P. Engbers*, [WIPO Case No. DNL2012-0037](#), concerning the domain name <minutemaid.nl> and *Williams-Sonoma, Inc. v. E. Linders*, [WIPO Case No. DNL2013-0020](#), concerning the domain name <potterybarn.nl>). In the absence of circumstances indicating otherwise, the famous trademark IKEA is so closely linked and associated with the Complainant that the Respondent's use of this mark, or any minor variation of it, implies bad faith, where a domain name is "so obviously connected with such a well-known name and products, (...) its very use by someone with no connection with the products suggests opportunistic bad faith." See *Parfums Christian Dior v. Javier Garcia Quintas*, WIPO Case D2000-0226.

Having refrained from submitting a Response, the Respondent has failed to provide any evidence counter this suggestion.

The Panel concludes that the Complainant has fulfilled the requirement under article 2.1© of the Regulations.

7. Decision

For all the foregoing reasons, in accordance with articles 1 and 14 of the Regulations, the Panel orders that the domain name ikeaipteam.nl be transferred to the Complainant.

Willem Hoorneman

Panelist

Date: May 7, 2018

