

ADMINISTRATIVE PANEL DECISION

Itron, Inc. v. kyseo

Case No. D2023-0365

1. The Parties

The Complainant is Itron, Inc., United States of America, represented by Lee & Hayes, PC, United States of America (“U.S.”).

The Respondent is kyseo, United States of America.

2. The Domain Name and Registrar

The disputed domain name <iftron.com> (the “Disputed Domain Name”) is registered with Realtime Register B.V. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 26, 2023. On January 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On January 30, 2023, 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 (Itron.com / Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to Complainant on January 31, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on January 31, 2023.

The Center verified that the Complaint together with the amendment to the 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 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 9, 2023. Respondent did not submit a response. Accordingly, the Center notified Respondent’s default on March 10, 2023.

The Center appointed Douglas M. Isenberg as the sole panelist in this matter on March 31, 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

Complainant states that it is “a well-known world-leading technology company that offers products and services involving energy and water resource management”. Complainant further states, and provides evidence to support, that it is the following U.S. trademark registrations (the “ITRON Trademark”):

- U.S. Reg. No. 1,534,650 for ITRON for use in connection with “repair and maintenance of computer hardware and software systems” (registered on April 11, 1989)
- U.S. Reg. No. 1,519,639 for ITRON for use in connection with, *inter alia*, “data collection computer systems” (registered January 10, 1989)
- U.S. Reg. No. 1,921,754 for ITRON for use in connection with, *inter alia*, “data collection communication network systems” (registered September 26, 1995)
- U.S. Reg. No. 2,700,984 for a stylized version of ITRON for use in connection with, *inter alia*, “computer software for use in data collection and control, communications and data exchange, electronic meter reading, off-site meter reading, keyed meter reading, and meter data recorders, all for use in the utilities industry” (registered March 25, 2003)
- U.S. Reg. No. 4,429,011 for ITRON for use in connection with, *inter alia*, “flow meters and fluid meters for gas” (registered November 5, 2013)
- U.S. Reg. No. 4,335,125 for a stylized version of ITRON for use in connection with, *inter alia*, “flow meters and fluid meters for gas, water and thermal energy” (registered May 14, 2013)
- U.S. Reg. No. 4,834,753 for ITRON for use in connection with, *inter alia*, “providing temporary use of on-line non-downloadable software and software platforms accessed via global communication networks for managing water and energy costs and uses and for optimizing water and energy procurement procedures by collecting, managing, load-reduction programs, forecasting, billing, managing, analyzing, and reporting water, energy and energy-related data” (registered October 20, 2015)
- U.S. Reg. No. 4,834,754 for ITRON for use in connection with, *inter alia*, “computer hardware and peripheral devices; mobile signal transceiver unit for use with automatic meter reading and telemetry in utilities and energy industries;” (registered October 20, 2015)

Complainant also states that it is the registrant of the domain name <itron.com>, which was created on May 25, 1993.

The Disputed Domain Name was created on November 4, 2022. Complainant states, and provides documentation in support thereof, that the Disputed Domain Name “appears to direct users to a Chinese sports betting website”, but “Complainant is unable to access the website’s links due to area restrictions”.

5. Parties' Contentions

A. Complainant

Complainant contends, in relevant part, as follows:

- The Disputed Domain Name is confusingly similar to the ITRON Trademark because, *inter alia*, the Disputed Domain Name “incorporates the entirety of” the ITRON Trademark and the “mere addition of the letter ‘f’ does not significantly affect the domain name’s appearance or commercial impression, particularly in light of the inherent distinctiveness of” the ITRON Trademark.
- Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, *inter alia*, “there is no indication Respondent was previously known by the name ‘Itron’ or ‘Ifron,’ nor does the Respondent have a license or any sort of permission from Complainant to use [the ITRON Trademark] in a domain name”; and “a website which redirects users to gambling or sports betting platform cannot qualify as a bona fide offering of goods or services since it can be presumed this kind of action generates revenue for the holder of the domain name”.
- The Disputed Domain Name was registered and is being used in bad faith because, *inter alia*, “by using the domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to 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 Respondent’s web site or location or of a product or service on [Respondent’s] web site or location”; “[p]articularly where the domain name at issue is identical or confusingly similar to a highly distinctive or famous mark, panels have tended to view with a degree of skepticism a respondent defense that the domain name was merely registered for legitimate speculation (based for example on any claimed dictionary meaning) as opposed to targeting a specific brand owner”; the ITRON Trademark “well-known and distinctive” and “Complainant is the only search result on the entire first page when typing ‘Itron’ into Google”; “[i]t can be reasonably inferred Respondent knew of [the ITRON Trademark] before Respondent registered its infringing website in 2022”; the Disputed Domain Name “incorporates the entirety of” the ITRON Trademark “with only a slight misspelling, to trick consumers into thinking they are visiting Complainant’s website, but instead redirects consumers to a gambling website”; [i]t is also more likely than not that Respondent’s website operates for the commercial gain of the Respondent, or for the commercial gain of the operators of the websites the Ifron domain name redirects Consumers to, or both”; and “Respondent’s bad faith is further indicated by the fact that Respondent uses a privacy or proxy service to hide its identity”.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

Pursuant to the Policy, Complainant is required to prove the presence of each of the following three elements to obtain the relief it has requested: (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark 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. Policy, paragraph 4(a).

A. Identical or Confusingly Similar

Based upon the trademark registrations cited by Complainant, it is apparent that Complainant has rights in and to the ITRON Trademark.

As to whether the Disputed Domain Name is identical or confusingly similar to the ITRON Trademark, the relevant comparison to be made is with the second-level portion of the Disputed Domain Name only (*i.e.*, “iftron”) because “[t]he applicable Top-Level Domain (‘TLD’) in a domain name (*e.g.*, ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test”. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.11.1.

As set forth in section 1.7 of [WIPO Overview 3.0](#): “in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.” Further, as set forth in section 1.9 of [WIPO Overview 3.0](#): “A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.”

Here, the Disputed Domain Name incorporates the entirety of the ITRON Trademark with the addition of the letter “f”. Numerous previous panels have found that the addition of a single letter to a trademark in a disputed domain name does not result in a finding of no confusing similarity. See, *e.g.*, *Allstate Insurance Company v. PrivacyProtect.org / Purple Bucquet*, WIPO Case No. [D2011-0003](#) (domain name that contains “the addition of a letter... in the middle of said trademark” is “inherently confusingly similar to the trademark”); and *Philip Morris USA Inc. v. IS, ICS Inc.*, WIPO Case No. [D2016-1183](#) (one additional letter “is not enough to avoid confusing similarity”).

Accordingly, the Panel finds that Complainant has proven the first element of the Policy.

B. Rights or Legitimate Interests

Given the Panel’s finding with respect to paragraph 4(a)(iii) of the Policy, below, the Panel declines to make a finding with respect to paragraph 4(a)(ii), as doing so is unnecessary to the Panel’s decision.

C. Registered and Used in Bad Faith

Whether a domain name is registered and used in bad faith for purposes of the Policy may be determined by evaluating four (non-exhaustive) factors set forth in the Policy: (i) circumstances indicating that the registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration 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 registrant’s documented out-of-pocket costs directly related to the domain name; (ii) the registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the registrant has engaged in a pattern of such conduct; the registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the registrant has intentionally attempted to attract, for commercial gain, Internet users to the registrant’s website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the registrant’s website or location or of a product or service on the registrant’s website or location. Policy, paragraph 4(b).

Here, Complainant appears to allege that bad faith exists pursuant to paragraph 4(b)(iv) of the Policy. However, given that Complainant’s services associated with the ITRON Trademark, as set forth above, are entirely unrelated to the sports betting services associated with the website using the Disputed Domain Name, it is unclear to the Panel how user confusion may arise. While panels in previous cases have found a likelihood of confusion despite such differences, they have typically done so when there is evidence that the relevant trademark is distinctive or well-known or that the respondent has targeted the complainant. “Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.. *Les*

Editions Jalou v. D V, WIPO Case No. [D2022-4663](#). Complainant in this proceeding has provided no evidence that the Disputed Domain Name was registered or is being used to take advantage of the ITRON Trademark. Although Complainant has cited eight trademark registrations for the ITRON Trademark, the oldest of which was registered on April 11, 1989, Complainant provides no evidence of how and where Complainant has used the ITRON Trademark. For example, Complainant has provided little information about the size or scope of its business related to the ITRON Trademark beyond that found on its annexed website but states to be “a well-known world-leading technology company that offers products and services involving energy and water resource management”.

Complainant cites [WIPO Overview 3.0](#), but its citations are in the view of the Panel misplaced. For example, Complainant cites section 3.1.1, for the following: “Particularly where the domain name at issue is identical or confusingly similar to a highly distinctive or famous mark, panels have tended to view with a degree of skepticism a respondent defense that the domain name was merely registered for legitimate speculation (based for example on any claimed dictionary meaning) as opposed to targeting a specific brand owner.” However, it is unclear to the Panel that the ITRON Trademark is “a highly distinctive or famous mark”. Further, the cited section of [WIPO Overview 3.0](#) applies to paragraph 4(b)(i) of the Policy (relating to acquisition of a domain name primarily for the purpose of selling it to the trademark owner or a competitor), which appears inapplicable here and, in any event, states that factors not present or proven here are assessed in evaluating bad faith (such as, *inter alia*, “the respondent’s likely knowledge of the complainant’s rights”, “a pattern of abusive registrations by the respondent,” “website content targeting the complainant’s trademark”, and “threats to point or actually pointing the domain name to trademark-abusive content”).

It is unclear why Respondent registered the Disputed Domain Name and whether Respondent was aware of Complainant or the ITRON Trademark when it did so, and there is no evidence that Respondent has used the Disputed Domain Name in any manner related to or because of the ITRON Trademark.

The Panel recognizes that, under certain circumstances, use of a domain name confusingly similar to a complainant’s trademark in connection with a website offering gambling services may constitute bad faith. For example, in *LEGO Juris A/S v. jiarong tang*, WIPO Case No. [D2023-0432](#), the panel wrote: “By using the disputed domain name to resolve to a website containing pornographic content with gambling advertisements and where confusion with a well-known trademark is used to divert unsuspecting Internet users to such website for commercial purposes by fostering a belief that the disputed domain name belongs to, is associated with, or connected to the Complainant, amounts to bad faith.” However, in that case, the panel found that the relevant trademark, LEGO, was “registered around the world, including China, the United States of America... and the European Union”, leading to the conclusion that “[i]t is inconceivable for this Panel that the Respondent registered or has used the disputed domain name without knowledge of the Complainant’s rights, which leads to the necessary inference of bad faith”. In the instant case, however, the only evidence of Complainant’s trademark rights is for a single country, the United States, and the Complaint contains no support for its assertion that “[i]t can be reasonably inferred Respondent knew of Complainant’s distinctive Itron Marks before Respondent registered its infringing website in 2022”.

Similarly, in *Halliburton Energy Services, Inc. v. mengchao*, WIPO Case No. [D2023-0035](#), the panel wrote: “The website to which the disputed domain name resolves features links to gambling sites and pornographic material which is clearly commercial in nature. It is apparent that this is a classic typo squatting case in which the Respondent has sought to use a domain name that almost mimics the Complainant’s registered trade mark in order to confuse Internet users and to divert them to another website for its own commercial gain.” However, in that case, the relevant trademark, HALLIBURTON, was registered in “many countries” and used by a complainant that “has more than 40,000 employees, representing 130 nationalities, and operations in approximately 70 countries and revenues in 2021 of USD 15.2 billion”. Further, the disputed domain name in that case “looks and sounds almost identical to the Complainant’s mark”, leading the panel there to conclude that it was “more likely than not that the Respondent chose the disputed domain name purposefully to mimic the Complainant’s mark and to divert Internet users seeking the Complainant’s website which amounts to typo squatting and is evidence of bad faith registration”. By contrast, as stated above, the Complaint in the instant case provides no information about Complainant’s size or operations, and although the Disputed Domain Name is confusingly similar to the ITRON Trademark for purposes of paragraph 4(a)(i)

of the Policy there is no evidence that Respondent registered the Disputed Domain Name to divert Internet users seeking Complainant's website.

Accordingly, the Panel finds that Complainant has not proven the third element of the Policy.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Douglas M. Isenberg/

Douglas M. Isenberg

Sole Panelist

Date: April 20, 2023