

ADMINISTRATIVE PANEL DECISION

Kavak Tecnologia e Comercio de Veiculos Ltda. v. Sergio Macedo
Case No. D2022-0465

1. The Parties

Complainant is Kavak Tecnologia e Comercio de Veiculos Ltda., Brazil, represented by Opice Blum, Brazil.

Respondent is Sergio Macedo, Taiwan Province of China.

2. The Domain Name and Registrar

The disputed domain name <kavakleiloes.com> is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 10, 2022. On February 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 14, 2022, 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. The Center sent an email communication to Complainant on February 17, 2022 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 22, 2022.

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 23, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 15, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on March 24, 2022.

The Center appointed Lynda J. Zadra-Symes as the sole panelist in this matter on March 30, 2022. 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 the exclusive Brazilian licensee of the trademarks KAVAK and KAVAK.COM, used in connection with the purchase and sale of used cars. The trademarks were registered with the Brazilian Instituto Nacional de Propriedade Industrial (INPI) in Classes 35, 37 and 38 (File Numbers: 916293157, 917617762 and 916293181). The registrations issued on September 17, 2019 and March 17, 2020. The registered trademarks are owned by UVI TECH, S.A.P.I. DE C.V, the Mexican parent company of Complainant. Complainant is the Brazilian branch of the business branded under the KAVAK and KAVAK.COM trademarks, which operates in several countries.

Complainant's corporate name incorporates the mark KAVAK and also suggests the nature of Complainant's business focusing on purchase and sale of used cars: "KAVAK TECNOLOGIA E COMERCIO DE VEICULOS LTDA."

Complainant's Trademark License Agreement with UVI TECH, S.A.P.I. DE D.V. provides Complainant with the exclusive right to use and defend the KAVAK.COM trademarks in Brazil. The Agreement provides Complainant with the rights to monitor third parties' applications and defend the Trademarks in Brazil from infringement by means of legal prosecution and permits Complainant to take all measures it deems fit for the protection of the trademark rights and interests.

The disputed domain name was registered on October 6, 2021. Until recently, the disputed domain name resolved to a website using Complainant's name, logo, official colors and visual brand. The website at the disputed domain currently displays the following message:

"Warning: Suspected Phishing Site Ahead! This link has been flagged as phishing. We suggest you avoid it."

5. Parties' Contentions

A. Complainant

Complainant contends that the disputed domain name is confusingly similar to Complainant's KAVAK and KAVAK.COM trademarks, that Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

In order to succeed in its claim, Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainants have rights; and

(ii) Respondent has no rights or legitimate interests with respect to the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

Paragraph 15(a) of the Rules instructs the Panel to decide a complaint “on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

A. Identical or Confusingly Similar

The disputed domain name incorporates KAVAK and KAVAK.COM marks in its entirety, being marks in which Complainant has rights for the purposes of the Policy (Complainant’s marks). The only difference lies in the element “leiloes” which in Portuguese refers to the practice of “auctions”, an activity also practiced by Complainant. Also, the word “leilos” does not prevent a finding of confusing similarity. Complainant’s marks are clearly recognizable within the disputed domain name.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to Complainant’s mark.

B. Rights or Legitimate Interests

Complainant contends that it has never licensed, permitted or authorized any KAVAK.COM trademark use, nor its corporate name use, by Respondent. There is no evidence of record that Respondent is commonly known by the disputed domain name.

Respondent is not making a legitimate noncommercial or fair use of the domain name. The link “kavakleiloes.com” currently displays the following:

“Warning: Suspected Phishing Site Ahead! This link has been flagged as phishing. We suggest you avoid it.”

The record indicates that, prior to the above warning, Respondent was using the disputed domain name, together with Complainant’s name, logo, official colors and visual brand, as part of a fraudulent scheme to deceive customers into paying for cars that in reality do not exist. As further evidence of Respondent’s fraudulent use of the disputed domain name, the disputed domain name was often used along with a “/br/”, forming the link “kavakleiloes.com/br/”. This indicates Respondent’s intent to simulate a connection with Brazil (while Respondent claims to be located in China), thereby misleading Brazilian consumers into thinking they are at Complainant’s official website, which is also registered with a “.com” domain and uses a “/br” to direct the user to the Brazilian content.

There is a serious risk that Internet users will share their personal data with Respondent’s website in the mistaken belief they are dealing with Complainant.

Accordingly, the Panel finds that Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The record indicates that Respondent was using the disputed domain name in furtherance of a fraudulent scheme to lure Complainant’s customers to Respondent’s website for the purpose of obtaining personal and financial data from such customers.

Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith.

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 <kavakleiloes.com> be transferred to Complainant.

/Lynda J. Zadra-Symes/

Lynda J. Zadra-Symes

Sole Panelist

Date: April 13, 2022