

ADMINISTRATIVE PANEL DECISION

LC Waikiki Mağazacılık Hizmetleri Ticaret A.Ş. v. Amir Ali Huseyni
Case No. D2022-3549

1. The Parties

The Complainant is LC Waikiki Mağazacılık Hizmetleri Ticaret A.Ş., Türkiye, represented by Muhtaranlar Attorney Partnership, Türkiye.

The Respondent is Amir Ali Huseyni, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <iranlcwaikiki.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 September 26, 2022. On September 26, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 27, 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 the Complainant on October 3, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on October 6, 2022.

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 the Respondent of the Complaint, and the proceedings commenced on October 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 30, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 31, 2022. Due to an apparent issue with the notification, on November 2, 2022, the Center granted the Respondent until November 7, 2022, to indicate whether the Respondent would like to participate to this proceeding. The Center received emails associated with the disputed domain name on November 7, 2022.

The Center appointed Gökhan Gökçe as the sole panelist in this matter on November 9, 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

The Complainant is a Turkish footwear, clothing, home textile and accessories retail company, which owns the brand, LC WAIKIKI. The mark LC WAIKIKI originated in 1988 in France. The Complainant bought LC WAIKIKI brand in 1997 and the Complainant has been distributing its products in many countries in the world through e-commerce, retail stores, and more, all under the trademark LC WAIKIKI and variations thereof since 1997. The Complainant has 546 stores in Türkiye and 673 stores worldwide.

The Complainant owns numerous trademark registrations for LC WAIKIKI and in jurisdictions throughout the world, including Türkiye and Iran (Islamic Republic of). Such trademark registrations include but are not limited to the following:

- Turkish Trademark No. 151962, LC WAIKIKI, registered on August 23, 1994;
- Turkish Trademark No. 2007 18756, LC WAIKIKI, registered on March 25, 2008;
- Turkish Trademark No. 2012 111296, , registered on January 21, 2014;
- European Union Trade Mark No. 833269, LCW, registered on August 11, 1999;
- European Union Trade Mark No. 9080144, LC WAIKIKI, registered on November 29, 2010;
- Iranian Trademark No. 104607, LC WAIKIKI, registered on September 19, 2002.

The Complainant has also been owning and operating its website at “www.lcwaikiki.com” since 1999.

The disputed domain name was registered on January 7, 2017. The Complainant submitted evidence (Annex 5 to the Complaint) which shows that the disputed domain name was linked to a Persian website which contains the Complainant’s registered trademark and offers to sell LC WAIKIKI branded products. While this disputed domain name previously resolved to site reproducing the Complainant’s mark, at the date of the Decision, disputed domain name states the following error message: “http server test page” and re-directs to an inactive website.

On March 22, 2022, the Complainant sent a cease-and-desist letter (Annex 6 to the Complaint) to the Respondent through the Registrar, without receiving any response.

5. Parties’ Contentions

A. Complainant

The Complainant requests the transfer of the disputed domain name.

The Complainant is of the opinion that the disputed domain name is identical to its LC WAIKIKI trademark.

The Complainant explains that the Complainant does not have any direct operations in Iran (Islamic Republic of) and/or have any affiliations or partners in Iran (Islamic Republic of) who is authorized to carry out business by way of using the LC WAIKIKI trademark at neither physical nor online stores. Therefore, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name and has also registered and is using the disputed domain name in bad faith.

B. Respondent

The Respondent did not reply to the Complainant's contentions. The Center received informal e-mail communications without any substantive content from an email address associated with the disputed domain name. The Panel is of the opinion that the emails were sent by the Respondent. In its e-mail dated November 7, 2022, the Respondent stated that "we thought that because we sell the products of this brand, we would even get incentives from them. In addition, as far as I know, it is enough to be three letters different from the brand in order not to violate the copyright of the brands. We add the word Iran, so 5 letters have different content [...] if my website is against the law, I can close the website, but I asked you to give me a few months so that my efforts would not go to waste".

6. Discussion and Findings

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

Under paragraph 4(a) of the Policy, the Complainant bears the burden of showing:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See, section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the [WIPO Overview 3.0](#).

A. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar to the registered LC WAIKIKI trademarks owned by the Complainant. The disputed domain name incorporates the trademark of the Complainant in its entirety. This is sufficient to establish confusing similarity (*Magnum Piering, Inc. v. The Mudjacks and Garwood S. Wilson, Sr.*, WIPO Case No. [D2000-1525](#)).

The geographic term "Iran" which is added in the disputed domain name does not prevent a finding of confusing similarity under the first element. (*BHP Billiton Innovation Pty Ltd v. Oloyi*, WIPO Case No. [D2017-0284](#); *Accenture Global Services Limited v. Jean Jacque / Luck Loic*, WIPO Case No. [D2016-1315](#); and [WIPO Overview 3.0](#), section 1.8).

The generic Top Level Domain ("gTLD") ".com" is disregarded, as gTLDs typically do not form part of the comparison on the grounds that they are required for technical reasons only (*Rexel Developpements SAS v. Zhan Yequn*, WIPO Case No. [D2017-0275](#)).

Accordingly, the Panel finds that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Panel further finds that the Respondent has failed to demonstrate any rights or legitimate interests in the disputed domain name.

While the burden of proof on this element remains with the complainant, previous UDRP panels have recognized that this would result in the often-impossible task of proving a negative, in particular as the evidence in this regard is often primarily within the knowledge of the respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name in order to meet the requirements of paragraph 4(a)(ii) of the Policy. See *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

Additionally, in the Complaint, the Complainant clearly states that the Respondent has not been granted any license to use the Complainant's trademarks and the Respondent has failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c) or other evidence of rights or legitimate interests in the disputed domain name.

The redirection of the disputed domain name to a website offering the Complainant-branded products, without any explanation regarding its relationship to the Complainant, does not meet the standards set forth in the so-called "Oki Data test" for fair use by resellers or distributors, and constitutes neither a *bona fide* offering of goods or services, nor a legitimate, noncommercial or fair use of the disputed domain name.

Therefore, the Panel is convinced that the Respondent was well aware of the Complainant's LC WAIKIKI trademark, its business and its provided accommodation services before registering and using the disputed domain name. The Panel has no doubt that the Respondent deliberately has chosen the disputed domain name to cause confusion with the Complainant and its business among Internet users. Also, the Panel notes that the nature of the disputed domain name carries a significant risk of implied affiliation or association, as stated in section 2.5.1 of the [WIPO Overview 3.0](#).

As a conclusion, the Panel finds that the Complainant has also satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel is convinced that the Respondent was fully aware of the Complainant's trademark when it registered the disputed domain name in January 2017. At the date of registration of the disputed domain name, the Complainant's LC WAIKIKI trademark was already registered and widely used for many years. Considering the Complainant's assertions, the Complainant's trademark has also been known in Iran (Islamic Republic of) as the Complainant had operated in this territory. Therefore, the Panel agrees with the Complainant's contention that the LC WAIKIKI trademark is so famous that it is impossible for any respondent to claim that he was unaware of LC WAIKIKI prior rights.

The Respondent seeks to give an overall impression that the disputed domain name is associated with the Complainant's business, and the Panel accepts that the disputed domain name may be intended for unlawful purposes. In light of the Annex 6 of the Complaint, the disputed domain name resolved to a website that displays the LC WAIKIKI trademark and sells products that the site asserts are the Complainant's products.

The Respondent registered the disputed domain name for the purposes of operating a website specifically to sell LC WAIKIKI products. Consequently, the Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant and the Complainant's LC WAIKIKI trademark as to the source, sponsorship, affiliation, or

endorsement of the Respondent's website. Using the disputed domain name to promote similar or identical goods to the goods being offered by the Complainant is clear evidence that the Respondent registered and is using the disputed domain name with knowledge of the Complainant and of the use the Complainant is making with its trademark and indicates that the Respondent's primary intent with respect to the disputed domain name is to trade off the value of these.

By consideration of the foregoing, the Panel is of the opinion that due to the earlier rights of the Complainant in the trademark LC WAIKIKI, as well as its extensive and intensive use, the Respondent, who appears to be located in Türkiye where the Complainant is well known, was aware of the Complainant and its LC WAIKIKI trademark at the time of the registration of the disputed domain name, *e.g.*, *Ebay Inc. v. Wangming*, WIPO Case No. [D2006-1107](#); *General Electric Company v. CPIC NET and Hussain Syed*, WIPO Case No. [D2001-0087](#). Referring to *Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net*, WIPO Case No. [D2000-0226](#), the Panel believes that the awareness of the Complainant's trademark at the time of the registration of the disputed domain name must be considered as an inference of bad faith registration.

The Respondent did not respond to the Complainant's cease-and-desist letter and refused to submit a formal Response in order to provide arguments in its favor. Furthermore, the Panel is unable to determine any plausible good-faith use to which the disputed domain name may be put from the facts in this case. Having in view the other circumstances of this case, such facts constitute further evidence of bad faith.

Therefore, considering the above-mentioned circumstances, in the present case, the Panel finds that the disputed domain name has been registered and is being used in bad faith and that the Complainant has established the third element under paragraph 4(a)(iii) of the Policy.

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, <iranlcwaikiki.com> be transferred to the Complainant.

/Gökhan Gökçe/

Gökhan Gökçe

Sole Panelist

Date: November 23, 2022