

ADMINISTRATIVE PANEL DECISION

Kıta Depolama ve Dağıtım Hizmetleri Ticaret Anonim Şirketi, Kıta Ulaştırma Hizmetleri Ticaret A.Ş. v. Mado Jam
Case No. D2022-3795

1. The Parties

The Complainants are Kıta Depolama ve Dağıtım Hizmetleri Ticaret Anonim Şirketi and Kıta Ulaştırma Hizmetleri Ticaret A.Ş., Türkiye, internally represented.

The Respondent is Mado Jam, United States of America.

2. The Domain Name and Registrar

The disputed domain name <kita-logistics.com> is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 11, 2022. On October 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 11, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name (Privacy service provided by Withheld for Privacy ehf) which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainants on October 18, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amendment to the Complaint on October 18, 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 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 9, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 10, 2022.

The Center appointed Alistair Payne as the sole panelist in this matter on November 18, 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 Complainants operate an international transportation business based in Türkiye. The Complainant Kita Ulaştırma Hizmetleri Ticaret A.Ş owns a combined word and logo mark featuring as its dominant element the word mark KITA LOGISTICS which was registered under number 1334628, on November 1, 2016. The Complainants own the domain name <kitalogistics.com> which was registered on July 15, 2010.

The disputed domain name is listed as having been registered on July 6, 2022. It resolves to a website that appears to be for a trucking and logistics business called "Kita Logistics" and that includes many of the same addresses and contact details as are featured on the Complainants' website.

5. Parties' Contentions

A. Complainants

The Complainants submit that they own registered trade mark rights for the KITA LOGISTICS mark as set out above and that the disputed domain name is confusingly similar to the registered mark.

The Complainants submit that the content on their website has been fraudulently copied into the website to which the disputed domain name resolves and that the commercial reputation of the Complainants has been damaged as a result of this malicious copying. Accordingly, the Complainants say that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainants also submit that the disputed domain name was registered and is being used in bad faith. The Complainants say that the Respondent has copied the Complainants' website at <kitalogistics.com> onto its website at the disputed domain name. In particular, say the Complainants, the Respondent has fraudulently copied the Complainants' original website including the photo of the Complainants' general manager, the pictures of the trucks owned by the Complainants and the Complainants company's addresses, which have been copied exactly. The Complainants say that the only difference from the original website is that the Respondent has used its own telephone numbers for communication on the website at the disputed domain name.

The Complainants submit that fake invoices have been issued by the Respondent featuring the Complainants' logo and it has submitted an example of one such invoice in evidence. The Respondent had required the customer to pay insurance within 24 hours and had then sent an invoice within 24 hours. After it realised that this may have been a scam, the customer sought confirmation from the Complainants that the invoice was legitimate. The Complainants assert that other customers reported being the subject of scams by the Respondent. This, say the Complainants, is evidence of registration and use in bad faith.

B. Respondent

The Respondent did not reply to the Complainants' contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant Kita Ulaştırma Hizmetleri Ticaret A.Ş owns International trade mark registration number

1334628 registered on November 1, 2016 for KITA LOGISTICS and logo. The dominant element of this mark is the KITA LOGISTICS word mark and the disputed domain name wholly incorporates this mark together with a hyphen. The Panel finds as a result that the disputed domain name is confusingly similar to the Complainant's registered trade mark and that the additional inclusion of a hyphen does not prevent a finding of confusing similarity.

B. Rights or Legitimate Interests

It is apparent that the content on the website to which the disputed domain name resolves has been copied from the Complainants' website and that it is nearly identical to it. In fact, the only difference appears to be the Respondent's telephone numbers. This appears to be a plain case of the Respondent attempting to pass itself off as the Complainants to confuse Internet users into contacting it for fraudulent purposes, including collecting payment for falsely produced invoices as described below under Part C. This is not legitimate conduct and there is no evidence that the Respondent is providing any *bona fide* services from the website at the disputed domain name or that it has any other rights in the name "kita logistics". Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name and the Complaint also succeed under this element of the Policy.

C. Registered and Used in Bad Faith

The disputed domain name was registered on July 6, 2022, more than five years after the Complainant's International trade mark registration. In circumstances that the website at the disputed domain name appears almost identical to the Complainants' website and includes various images and text copied directly from the latter, there is a very strong inference that the Respondent was well aware of the Complainant's mark and business when it registered the disputed domain name but did so in bad faith and for its own fraudulent purposes as described below.

Under paragraph 4(b)(iv) of the Policy there is evidence of registration and use of the disputed domain name in bad faith where a Respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation or endorsement of the website.

The Respondent in this case is using the disputed domain name to divert Internet users to a near identical website to the Complainants' obviously for the purpose of confusing them into thinking that the website is the Complainants' own website and that they can order services or products from the Complainants through it. Based on the evidence submitted by the Complainants, such an order results in the Respondent producing a fake invoice for the products and sending it to the customer for payment. This conduct amounts not only to evidence of registration and use in bad faith of the disputed domain name under paragraph 4(b)(iv) of the Policy but is also plainly fraudulent and exactly the sort of conduct intended to be proscribed by the Policy.

In these circumstances, the Panel finds that the disputed domain name has been registered and used in bad faith and the Complaint also succeed under this element 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 <kita-logistics.com> be transferred to the Complainants.

/Alistair Payne/

Alistair Payne

Sole Panelist

Date: November 29, 2022