

ADMINISTRATIVE PANEL DECISION

Kirloskar Proprietary Limited v. zhou kai

Case No. D2023-4271

1. The Parties

The Complainant is Kirloskar Proprietary Limited, India, represented by DePenning & DePenning, India.

The Respondent is zhou kai, China.

2. The Domain Name and Registrar

The disputed domain name <kirloskarloan.services> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 13, 2023. On October 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 16, 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 (Domains By Proxy LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 17, 2023, 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 amended Complaint on October 24, 2023.

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 the Respondent of the Complaint, and the proceedings commenced on October 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 14, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 15, 2023.

The Center appointed Benoit Van Asbroeck as the sole panelist in this matter on November 23, 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

The Complainant is part of the Kirloskar Group of Companies, a group of companies manufacturing and selling industrial products since 1920, both in India, where it was first established, and abroad. The Complainant is the owner of registered trademarks in the mark KIRLOSKAR, amongst which:

United States of America Trademark No. 1143923 for , registered on December 23, 1980 in International Class 7;

Indian Trademark No. 196866 for KIRLOSKAR, registered on July 8, 1960 in International Class 7;

Indian Trademark No. 4137009 for KIRLOSKAR, registered on April 3, 2019, in International Class 9.

In a ruling in 1996, the High Court of Mumbai, India, designated the Complainant's trademark KIRLOSKAR as a well-known mark in India.

The Complainant also owns several domain names incorporating the mark KIRLOSKAR. These include the domain names <kirloskar.com>, <kirloskar.co.za>, <kirloskar.co.ke>, and <mykirloskar.com>.

The disputed domain name was registered on August 28, 2023, well after the Complainant secured rights in the mark KIRLOSKAR. According to evidence submitted by the Complainant, the disputed domain name resolves to a website ostensibly offering loan intermediary services in India under the name "Kirloskar Loan". The Respondent appears to be a certain private individual based in China.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to its KIRLOSKAR trademarks. They claim that the distinctive and dominant element in the disputed domain name is the word "Kirloskar" and that the suffix "loan" is descriptive and has no trademark value. Moreover, the Complainant asserts that the Respondent's registration and use of the disputed domain name is bound to induce members of the public and trade to believe that the Respondent has a trade connection, association, relationship with, or approval of, the Complainant when this is in fact not the case.

Furthermore, the Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant notes that they are the sole legitimate owner of the trademark KIRLOSKAR and that they have not licensed or otherwise permitted the Respondent to use the mark KIRLOSKAR or to apply for any domain name incorporating the same. In addition, the Complainant claims that the Respondent is unlawfully using the well-known status of and goodwill in the KIRLOSKAR mark to create the impression that there is a trade connection, association, or relationship between the Complainant and the disputed domain name or that it is operated with their approval.

Finally, the Complainant contends that the disputed domain name has been registered and is being used in bad faith by the Respondent. The Complainant claims that, given the well-known character of the KIRLOSKAR mark in India, its widespread use of the KIRLOSKAR mark and its trademark registrations, the Respondent should have known of the Complainant's rights in the KIRLOSKAR trademark. In addition, the Complainant asserts that the use of the disputed domain name by someone with no connection to the Complainant suggests bad faith. Moreover, the Complainant claims that the Respondent misuses the KIRLOSKAR trademark by posing as an intermediary offering credit facilities to the unwary general public using the disputed domain name. The fact that the name of one of the Complainant's group companies,

Kirloskar Solar Technologies Pvt. Ltd, is also mentioned on the website to which the disputed domain name resolves, is bound to further confuse the general public.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here "loan", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Finally, as for the applicable generic Top-Level Domain ("gTLD"), *i.e.*, the suffix ".services", the Panel holds that this can be disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity, here the impersonation/passing off of one of the Complainant's group companies (Kirloskar Solar Technologies Private Limited) and the offering of loan intermediary services under its name through a website that the disputed domain name resolves to, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark. The disputed domain name is being used for a website ostensibly offering intermediary loan services to consumers in India under the name "Kirloskar Loan". In addition, the name of one of the Complainant's group companies, Kirloskar Solar Technologies Private Limited, is mentioned under the Contact Us heading. This shows that the disputed domain name appears to have no other purpose than to confuse consumers into believing that the disputed domain name and the website to which it resolves is owned or operated by the group of companies that the Complainant belongs to. These circumstances, in combination with the Respondent's clear absence of rights or legitimate interests in the disputed domain name, are strong indicators of bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

The Panel believes that the Respondent knew or, at least, should have known at the time of registration that the disputed domain name included the Complainant's KIRLOSKAR trademark. As demonstrated by the Complainant, the High Court of Mumbai and a prior panel have previously recognised that the KIRLOSKAR trademark is well-known in India. Other prior panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith (see [WIPO Overview 3.0](#), section 3.1.4). The Panel also finds that the mention of the name of one of the Complainant's group companies, Kirloskar Solar Technologies Private Limited, on the website that the disputed domain name resolves to further demonstrates that the Respondent knew about the Complainant and its KIRLOSKAR trademark when it registered the disputed domain name. Moreover, the KIRLOSKAR trademark has been registered in several countries and existed for a long time prior to the Respondent's registration of the disputed domain name. The Respondent's knowledge of the Complainant and the KIRLOSKAR trademarks and therefore its registration in bad faith of the disputed domain name may also be inferred from these circumstances.

Panels have held that the use of a domain name for illegal activity, as detailed above, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Based on the available record, the Panel finds that the Complainant has established the third 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 <kirloskarloan.services> be transferred to the Complainant.

/Benoit Van Asbroeck/

Benoit Van Asbroeck

Sole Panelist

Date: December 7, 2023