

ADMINISTRATIVE PANEL DECISION

Kaizen Capital, LLC v. Kwan Lee
Case No. D2024-0244

1. The Parties

The Complainant is Kaizen Capital, LLC, United States of America (“US”), represented by Dentons US LLP, US.

The Respondent is Kwan Lee, Japan.

2. The Domain Name and Registrar

The disputed domain name <kanaflex.com> is registered with Sea Wasp, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 19, 2024. On January 22, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 23, 2024, 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 (Jewella Privacy – e1b23) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 25, 2024, 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 January 30, 2024.

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 February 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 22, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 28, 2024.

The Center appointed Oleksiy Stolyarenko as the sole panelist in this matter on March 13, 2024. 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 US based company established in 1952 that specializes in manufacturing and distribution primarily in North America of high-quality hoses using materials like PVC, rubber, urethane, and polypropylene.

The Complainant owns the trademark KANAFLEX that is registered in the US in connection with plastic pipes, plastic hoses, rubber hoses and rubber pipes:

- US trademark registration No. 912232 for KANAFLEX and design, registered on June 8, 1971;
- US trademark registration No. 7252828 for KANAFLEX, registered on December 26, 2023.

The Complainant also owns a registration for the domain name <kanaflexcorp.com> that was registered on June 24, 2002, and has been used by the Complainant for over 20 years to operate a website through which it promotes its products and offers information for purchasing its products.

The Respondent is reportedly an individual from Japan. The disputed domain name was registered on September 8, 1998. The disputed domain name resolves to various unrelated websites through the links that appear to be randomly generated.

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 it has established rights in the KANAFLEX trademark by virtue of registration, use and control exercised by Complainant over the nature and quality of the goods sold in connection with the KANAFLEX mark, and the extensive advertising, promotion, sale, and public acceptance thereof.

The disputed domain name reproduces the KANAFLEX mark completely making it identical or confusingly similar to the registered KANAFLEX trademark.

The Respondent has no rights or legitimate interests in the disputed domain name. No evidence indicates that the Respondent is known by the terms included in the disputed domain name, and the Respondent has not received any authorization, license, or consent, whether express or implied, to use the Complainant's trademark.

The Complainant emphasizes that the disputed domain name is used by the Respondent to direct traffic to unrelated sites, suggesting no legitimate business use but rather an attempt to trade on the Complainant's trademark and goodwill.

The Complainant alleges that the Respondent had knowledge of the Complainant's rights in the KANAFLEX trademark given its long-standing use and registration. Respectively, the Respondent registered and used the disputed domain name to create confusion and to mislead clients and potential clients of the Complainant, and the public, into falsely believing that it is the Complainant or that a relationship of source,

sponsorship, affiliation or endorsement exists between the Complainant and the Respondent or the content located at the disputed domain name. Thus, the disputed domain name has been used by the Respondent to divert internet traffic for commercial gain, creating confusion with the Complainant's mark, which is indicative of bad faith registration and use.

The Complainant seeks a decision that the disputed domain name be transferred to the Complainant.

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.

The Complainant has shown rights in respect of a trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

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

The disputed domain name features the Complainant's KANAFLEX trademark and is combined with the generic Top-level Domain ("gTLD") ".com". The gTLD is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See section 1.11.1 of the [WIPO Overview 3.0](#). Therefore, the Panel disregards the gTLD for the purposes of this comparison.

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.

According to the Complainant, the Respondent is not an authorized or licensed to use the KANAFLEX trademark in the disputed domain name. Based on the evidence provided by the Complainant, the disputed domain name resolves to a website with links to wide range of webpages from websites of third-party providers of hoses to dating websites or pages with malfunctioning or absent content. The fact that the Respondent's website under the disputed domain name refers to the categories of goods that are produced by the Complainant and redirects unsuspecting Internet users to third-party providers in direct competition with the Complainant cannot constitute fair use nor a bona fide offering of goods or services.

[WIPO Overview 3.0](#), section 2.9.

Moreover, given that the disputed domain name includes the Complainant's trademark completely, the Panel struggles to conceive any rights or legitimate interests of the Respondent in the disputed domain name because the disputed domain name effectively impersonates or suggests page sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#). Under such circumstances, any use of the disputed domain name by the Respondent only increases the possibility of the Internet users' to falsely attribute the disputed domain name to the activities of the Complainant.

The Panel did not find any evidence that the Respondent is commonly known by the disputed domain name and concludes that the Respondent is not commonly known by the disputed domain name under paragraph 4(c)(ii) of the Policy.

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's activities post-registration illustrate a pattern of behavior that aligns with the criteria for bad faith. The disputed domain name includes links that redirect to various websites, some of which offer competitive products to the Complainant's products, thereby misleading consumers and potentially diverting business from the Complainant. Respectively, the Panel finds that the Respondent knew of the Complainant's KANAFLEX trademark when registering the disputed domain name. This exploitation of the trademark's reputation for commercial gain without any demonstrated rights or legitimate interests in the trademark KANAFLEX by the Respondent signifies 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 finds here as well that the Respondent's intention has always been to use the disputed domain name to intentionally attract, for commercial gain, Internet users to the website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location (see paragraph 4(b)(iv) of the Policy).

Furthermore, the Panel finds it implausible that the disputed domain name could be used by the Respondent in good faith considering that it is identical to the Complainant's trademark.

The Respondent failed to submit a response or provide any evidence of a good faith use or to show rights or legitimate interests in the disputed domain name. Therefore, based on the reputation and intensive use of the Complainant's KANAFLEX trademark, and in the absence of the response from the Respondent providing any explanation or evidence of actual or contemplated good-faith use, the Panel finds the Respondent registered and used the disputed domain name in bad faith and that the Complainant consequently has satisfied the third element of the Policy, namely, paragraph 4(a)(iii) of the Policy.

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 <kanaflex.com> be transferred to the Complainant.

/Oleksiy Stolyarenko/

Oleksiy Stolyarenko

Sole Panelist

Date: April 2, 2024