

ADMINISTRATIVE PANEL DECISION

Doctor on Call Private Limited v. AIKACARE Health Private Limited, Mitali Kalra / Nutan Kalra
Case No. D2024-1762

1. The Parties

The Complainant is Doctor on Call Private Limited, India, represented by Lakshmikumaran & Sridharan, Attorneys, India.

The Respondent is AIKACARE Health Private Limited, Mitali Kalra / Nutan Kalra, India.

2. The Domain Name and Registrar

The disputed domain name <aika-health.com> 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 April 26, 2024. On April 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 26, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 May 24, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 13, 2024. The Response was filed with the Center on June 13, 2024.

The Center appointed Shwetasree Majumder as the sole panelist in this matter on June 25, 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 in the business of providing on-call and in-person doctor consultations and health insurance services in India. The Complainant offers these services under the mark AIQA and AIQA HEALTH. The Complainant's trademarks AIQA and AIQA HEALTH are registered trademarks in India, the details of which are as below:

- Indian Registration No. 5071661 for AIQA, registered on August 3, 2021; and
- Indian Registration No. 4897015 for AIQA HEALTH, registered on March 10, 2021

The Complainant's business website is at <aiqahealth.com>. The domain name <aiqahealth.com> was registered on March 12, 2021.

According to the Whois records, the disputed domain name was registered on May 11, 2022. The Respondent is a health tech platform offering Ayurveda doctor consultations and nutrition counseling for gut health under its mark AIKA. The Respondent is based in New Delhi, India. The Respondent offers treatment and nutrition plans, doctor consultations and workshops focused on digestive and gut health. The Respondent's health plans and offerings can be purchased via its website <aika-health.com>. The Respondent's website appears to be a functional business with client testimonials, online health consultations, corporate plans and a payment gateway for its services.

The Respondent has applied for registration of its mark AIKA in India, details of which are as below:

- Pending Indian Application No. 5453757 for AIKA class 44, dated May 19, 2022; and
- Indian Application No. 5453756 for AIKA class 05, dated May 19, 2022 (current status - lapsed).

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 disputed domain name is identical/confusingly similar to its marks AIQA and AIQA HEALTH. The Complainant contends its marks AIQA and AIQA HEALTH have been in use since March 2021 and have acquired goodwill and reputation.

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the Respondent is attempting to create confusion in the minds of customers by representing itself as a person authorized to do business in the name of the Complainant. According to the Complainant, the Respondent has no valid and subsisting rights in the mark AIKA and AIKA HEALTH. The Complainant argues that there is no justification on the Respondent's part to adopt the disputed domain name for providing services which are identical to the Complainant's services. The Complainant argues that the Respondent's intent is to piggyback on the Complainant's goodwill and reputation to deceive consumers by creating confusion. Further, it is the Complainant's assertion that registering or using the disputed domain name which is deceptively similar to the Complainant's registered marks amounts to malicious domain name grabbing and cybersquatting.

On the third element of bad faith, the Complainant argues that the very adoption of the disputed domain name is subsequent and that such adoption is dishonest. The Complainant argues that the Respondent's Indian trademark application for its mark AIKA has encountered several third-party oppositions and is yet to be granted registration. Hence, the Complainant argues, that obtaining registration of an identical or deceptively similar mark as a domain name is an act to unduly ride on the Complainant's well-known AIQA

marks. The Complainant asserts that adoption of the disputed domain name in relation to identical and similar services has been done in a deceitful manner to cause confusion.

B. Respondent

The Respondent did not reply to the Complainant's contentions. However, the Respondent did file an informal response by email dated June 13, 2024. The Respondent's statements in its email are summarized as below:

- the Respondent states that AIKA HEALTH, was chosen to embody its mission of promoting holistic health;
- the Respondent states that AIKA is a Sanskrit word which means one, unity, whole or holistic, which reflects its philosophy of combining various schools of alternative medicine;
- the Respondent states when it adopted the mark AIKA, it was unaware of the Complainant's existence, who is in the business of health insurance;
- the Respondent alleges that over 2 years of its business operations, it has invested substantial time, money, and energy into its business;
- the Respondent alleges that it has faced repeated intimidation tactics from the Complainant in the past six months; and
- the Respondent has requested dismissal of the Complaint, which it alleges to be baseless and an intimidation tactic to disrupt the Respondent's honest business operations.

The Respondent has also submitted an Annex of promotional material and photographs of its promotional events.

6. Discussion and Findings

As per paragraph 5(f) of the Rules where a respondent does not submit a formal response, in the absence of exceptional circumstances, the panel may decide the dispute based upon the Complaint. The Panel does not find any exceptional circumstances in this case preventing it from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a formal response. A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, reasonable facts asserted by a complainant may be taken as true, and appropriate inferences, in accordance with paragraph 14(b) of the Rules, may be drawn. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3.

It remains incumbent on the Complainant to make out its case in all respects under paragraph 4(a) of the Policy. Under paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements required under by a preponderance of evidence:

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

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 or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable 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.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

In light of the Panel's finding below it is unnecessary for the Panel to address the topic of the Respondent's rights or legitimate interests in the disputed domain name.

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. However, none of these circumstances are present in the instant case. Even where a complainant may not be able to demonstrate the literal or verbatim application of one of the non-exclusive scenarios listed in UDRP paragraph 4(b), evidence demonstrating that a respondent seeks to take unfair advantage of, abuse, or otherwise engage in behavior detrimental to the complainant's trademark would also satisfy the complainant's burden. See [WIPO Overview 3.0](#), section 3.1.

The Complainant's case lacks evidence that the Respondent has targeted the Complainant's mark or its business or seeks to take unfair advantage thereof. The Respondent's explanation for the adoption of the mark AIKA appears to be factually correct, in that it is indeed a Sanskrit word which means one or holistic. This Panel is of the view that based on the evidence presented by the Parties AIKA has been adopted by the Respondent independent of the Complainant's mark AIQA and AIQA HEALTH. It appears from the Response that the parties have communicated with each other in respect of the disputed domain name in the past. In this backdrop, the Complainant should have anticipated and addressed the likely or plausible defenses of the Respondent concerning its independent adoption of the mark AIKA and AIKA HEALTH, with supporting arguments and evidence in its Complaint. See [WIPO Overview 3.0](#), section 3.1. The Complainant has failed to do so.

Further, upon perusal of the Respondent's website <aika-health.com>, this Panel finds that the Respondent is not trying to ride on the Complainant's alleged goodwill or come close to the Complainant's business or intentionally cause consumer confusion. The Respondent's website has no mention of the Complainant or its marks AIQA and AIQA HEALTH. For instance, the AIKA logo is sparsely used on the Respondent's website and has no similarity with the Complainant's AIQA HEALTH stylized device on its own website. Also, the Respondent's annex shows that it has been promoting its services under the disputed domain name without trying to piggyback of the Complainant's mark AIQA.

The fact that the Respondent's trademark application for AIKA has been opposed by several third-parties, as pointed out by the Complainant, is inconsequential for purposes of a bad faith finding. The burden of proof to show the Respondent's bad faith rests on the Complainant. The Panel finds that the Complainant has failed to satisfy this burden but instead has only made allegations of bad faith against the Respondent which are unsupported by evidence. The Panel cannot find any relevant facts and circumstances in the present case, from which it can draw inferences of the Respondent's bad faith.

The evidence in the case file as presented does not indicate that the Respondent's aim in registering the disputed domain name was to profit from or exploit the Complainant's trademark.

The Panel finds the third element of the Policy has not been established.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Shwetasree Majumder/

Shwetasree Majumder

Sole Panelist

Date: July 9, 2024