

ADMINISTRATIVE PANEL DECISION

Kumon Institute of Education Co., Ltd. v. Sana Zeeshan, Kumon Studies
Case No. D2024-1885

1. The Parties

The Complainant is Kumon Institute of Education Co., Ltd., Japan, represented by Deriş Avukatlık Ortaklığı, Türkiye.

The Respondent is Sana Zeeshan, Kumon Studies, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <kumonstudies.com> is registered with OnlineNic, Inc. d/b/a China-Channel.com (the "Registrar").

3. Procedural History

The Complaint was filed in Turkish with the WIPO Arbitration and Mediation Center (the "Center") on May 3, 2024. On May 6, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 7, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on the same day, providing the registrant and contact information disclosed by the Registrar and invited the Complainant to submit an amendment to the Complaint. On the same day the Center sent an email communication to the parties, requesting (i) that the Complainant provide evidence and argumentation regarding the language of the proceeding as the Complaint has been submitted in Turkish language and the language of the registration agreement for the disputed domain name is English and (ii) that the Respondent submit a response to the Complainant's submission.

The Complainant filed an amended Complaint in English on May 9, 2024 in which it stated that "this Complaint has also been prepared in Turkish and the language of the proceeding must be Turkish".

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 May 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 30, 2024. The Respondent sent email communications to the Center on May 7, 10, and 28, 2024.

The Center appointed Zoltán Takács as the sole panelist in this matter on June 6, 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 an educational network based in Japan founded in 1958 by the Japanese educator Toru Kumon. It uses his Kumon Method to teach mathematics and reading primarily for young students.

As of 2008 the Complainant had over 26,000 owned and franchised learning centers in more than 40 countries worldwide and claimed an overall enrollment of 3.6 million students.

The Complainant owns many trademark registrations worldwide for the KUMON mark, including:

- the Japanese Trademark Registration No. 5007375 registered on December 1, 2006 for among others educational services, and
- United Kingdom Trademark Registration No. UK00001331075 registered on November 9, 1990 for educational services.

The Complainant has registered a number of domain names comprising its KUMON trademark, for instance the domain name <kumon.com> which was registered on August 15, 1997 and resolves to its international website.

The disputed domain name was registered on August 19, 2017 and appears to be resolving since registration to an English language website offering online educational services.

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 which fully incorporates its KUMON mark is confusingly similar to it;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name since it is unable to rely on any of the circumstances set out in paragraphs 4(c)(i), (ii), or (iii) of the Policy;
- the Respondent was aware of its mark at registration of the disputed domain name and has been using it to offer online educational services in direct competition with those of the Complainant which is evidence of bad faith registration and use of the disputed domain name.

The Complainant requests that the disputed domain name be transferred from the Respondent to the Complainant.

B. Respondent

The Respondent did not file a formal response so little information is known about the Respondent.

According to the Registrar's verification the Respondent is located in Lahore, Pakistan. Its website at the disputed domain name displays an office telephone number with the international dialing code for the United Kingdom.

As mentioned above the Respondent sent informal email communications to the Center on May 7, 10, 14 and 28, 2024. In summary the Respondent claimed (i) that they operate a totally separate educational model to that of the Complainant, (ii) that they invested a lot in terms of money and efforts and stated that (iii) they would withdraw the disputed domain name and the domain name <kumonstudies.com.tr> and close all social media accounts related to these domain names in exchange of USD 10,000.

The Complainant advised the Respondent and the Center that they have no interest in a settlement option and requested continuation of the proceedings.

6. Discussion and Findings

A complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely that:

- (i) the 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 domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

6.1 Effect of Court Proceedings

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

In its Complaint the Complainant referred to the lawsuits it filed before the Istanbul 2nd and 4th Civil Courts of Intellectual and Industrial Rights against the company named "Kumon Studies Eğitim Danışmanlık Turizm Sanayi ve Ticaret Limited Şirketi" concerning the domain name <kumonstudies.com.tr>. The Complainant contends that while these lawsuits are still pending the courts have issued a preliminary injunction ordering among others blockage to the website at "www.kumonstudies.com.tr" and since the corresponding domain name is on the same server with the same IP address as the disputed domain name subject to this proceeding their holders should be considered as related and the litigation before the Turkish courts and the expert examination reports taken through the litigations should be evaluated within the scope of this Complaint.

In this instance the Panel notes that for the reasons set out above it has been determined that the English be the language of this administrative proceeding. The Panel notes that the court documents referred to and submitted by the Complainant are in Turkish, which the Panel does not understand. The Panel also notes that the court proceedings referred to by the Complainant are still pending.

However, since the Panel is of the view that the Complaint is readily determinable on the basis of the facts and evidence available in English and bearing in mind that the administrative proceeding shall take place with due expedition (paragraph 10(c) of the Rules) it has decided to proceed to a decision under the Policy without taking into consideration the court documents referred to by the Complainant.

6.2 Substantive Matters

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 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 entirety of KUMON mark is reproduced and 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.

Although the addition of other terms, here the term "studies" 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.

The Panel finds that 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.

The Respondent is not affiliated with the Complainant in any way and has never been authorized by the Complainant to register and use a domain name incorporating the KUMON mark.

Yet the website at the disputed domain name prominently and frequently displays the Complainant's KUMON trademark without any authorization by the Complainant. This fact coupled with the addition of the term "studies" to the mark, which references the basic business activity of the Complainant in view of the Panel supports the finding of the risk of implied affiliation of the disputed domain name with the Complainant and thus cannot confer any rights or legitimate interests on the Respondent. [WIPO Overview 3.0](#), section 2.5.1.

The Panel finds that 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 Complainant's KUMON trademark (also being the surname of the Complainant's founder) is inherently distinctive and unique to the Complainant. The priority of the Complainant's marks significantly predates the registration of the disputed domain name.

Due to the Respondent's default and absent any explanation by the Respondent to the contrary the Panel is of the view in the circumstances of this case that the Respondent must have had the Complainant's business and trademark in mind at the time of registration of the disputed domain name and had obtained it to target the Complainant and its reputed trademark through false association, which is evidence of bad faith. Paragraph 4(b)(iv) of the Policy.

There is no logical reason for use the Complainant's reputed KUMON mark in connection with the Respondent's business other than the Respondent to benefit from any association or confusion between the Complainant and the Respondent. The addition of the term "studies" (which undeniably references the Complainant's activities) to the mark in the disputed domain name in view of the Panel further supports the Respondent's targeting of the Complainant and its mark in the circumstances of this case. [WIPO Overview 3.0](#), section 3.2.1.

The Respondent's use of the inherently misleading disputed domain name to divert Internet users to its website and offer educational services in direct competition with those of the Complainant is not a legitimate conduct and amounts to attempting to disrupt the Complainant's business. Paragraph 4(b)(iii) of the Policy.

An additional evidence of the Respondent's bad faith is the amount of the consideration (USD 10,000) in exchange of which the Respondent offered to settle the deal including the disputed domain name in its informal email communication of May 28, 2024. This amount is well in excess of the Respondent's out-of-pocket costs directly related to the disputed domain name, despite of the Respondent's offer including the domain name <kumonstudies.com.tr> (which the Respondent admitted to be the owner of) as well as the social media pages and businesses with these names. Paragraph 4(b)(i) 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 <kumonstudies.com> be transferred to the Complainant.

/Zoltán Takács/

Zoltán Takács

Sole Panelist

Date: June 20, 2024