

ADMINISTRATIVE PANEL DECISION

Ticket for the Moon v. Jean Lely
Case No. D2024-2670

1. The Parties

The Complainant is Ticket for the Moon, France, represented by Selarl Capon et Rault Avocats, France.

The Respondent is Jean Lely, France.

2. The Domain Name and Registrar

The disputed domain name <tikamoons.com> is registered with Wix.com Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 1, 2024. On July 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. The Center sent a reminder email on July 11, 2024. The same day, 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 (Unidentified defendant) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 16, 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 amendment to the Complaint on July 16, 2024.

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 July 17, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 6, 2024. Due to an administrative oversight, it appeared that the Center’s Notification emails were not copied to the Respondent at one of the email addresses. In light of the above, on August 31, 2024 the Center granted the Respondent a five-day period through September 5, 2024, in which to indicate whether it wished to participate to the proceedings. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 12, 2024.

The Center appointed Fabrice Bircker as the sole panelist in this matter on September 18, 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, Ticket for the Moon, is a French company established in 2008, active in the field of manufacturing and distributing high-quality and long-lasting furniture.

It operates under the TIKAMOON brand, which is notably protected through the following trademark registration:

tikamoon French trademark No. 4698213, applied on November 5, 2020, registered on April 30, 2021, and designating products and services of classes 11, 20 and 35.

The Complainant has also an online presence, in particular through the <tikamoon.com> domain name. This domain name was registered on March 19, 2007, and resolves to the Complainant's official website, which notably offers for sale furniture under the TIKAMOON trademark.

The disputed domain name <tikamoons.com> was registered on February 11, 2024.

It resolves to a website:

- prominently displaying the TIKAMOON trademark in the same stylized form of the abovementioned French trademark No. 4698213,
- proposing writing services of contents, in particular for online marketing and advertising purposes.

Very little is known about the Respondent, except that based on the information disclosed by the Registrar, he is apparently located in Paris, France.

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 (...) and [related] website reproduces completely and identically the verbal component of the trademarks (...) on which the Complainant holds prior rights since 2020".

Then, the Complainant submits that: "the [Respondent] has no rights to the TIKAMOON sign, which it uses in total infringement of the true owner of the rights, the company TICKET FOR THE MOON.

TICKET FOR THE MOON has never conceded the use of its trademark to a third party, and even less for the reservation of the [disputed] domain name.

It is using the [disputed] domain name to fraudulently and maliciously misappropriate the sales of TICKET FOR THE MOON, by presenting itself to the public as the true owner of the rights to the TIKAMOON sign. Therefore, by reproducing [the Complainant's] trademark in its domain name and in its website, to market services identical and similar to those covered by TICKET FOR THE MOON's earlier trademarks, the Respondent is undoubtedly seeking to mislead consumers in order to divert sales of the [Complainant's]

services to its site.

So, the Respondent has no rights or legitimate interests in [the disputed] domain name (...).”

At last, the Complainant contends that the disputed domain name has been registered and is being used in bad faith, because: “[t]he Respondent does not make commercial use in good faith. (...) by using [the disputed] domain name, [the Respondent] knowingly attempted to attract Internet users to his website for profit, by creating a likelihood of confusion with the Complainant's TIKAMOON trademarks. The Respondent could not ignore the existence of the trademarks and its domain name because the Respondent used exactly the same logo as the one used and registered as a trademark by the [Complainant]. Furthermore, the addition of the letter ‘s’ to the term ‘tikamoon’ in the [disputed] domain name has no impact, in that it has little impact in terms of pronunciation, and is mostly associated with the plural, so that the reference consumer will not pay attention to it. Finally, the “tikamoons.com” site is operated in French, as is the language used by the [Complainant] on its website, [which] is also of French nationality.”

B. Respondent

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

6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, in order to obtain a transfer of the disputed domain name, the Complainant must establish each of the following three elements:

- i. the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- 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.

Besides, paragraph 15(a) of the Rules provides that “[a] 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”.

Paragraphs 10(b) and 10(d) of the Rules also provide that “[i]n all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case” and that “[t]he Panel shall determine the admissibility, relevance, materiality and weight of the evidence”.

Besides, the Respondent’s failure to reply to the Complainant’s contentions does not automatically result in a decision in favor of the Complainant, although the Panel is entitled to draw appropriate inferences therefrom, in accordance with paragraph 14(b) of the Rules (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 4.3).

Taking the foregoing provisions into consideration the Panel finds as follows.

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.

Based on the available record (in particular, Annex 6 of the Complaint), 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 entirety of the TIKAMOON 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.

Indeed, the Panel finds the addition of the letter “s” constitutes a minor misspelling of the TIKAMOON trademark which therefore remains clearly recognizable within the disputed domain name. In this respect, it is constant that “a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. (...) Examples of such typos include (i) adjacent keyboard letters, (ii) substitution of similar-appearing characters (e.g., upper vs lower-case letters or numbers used to look like letters), (iii) the use of different letters that appear similar in different fonts, (iv) the use of non-Latin internationalized or accented characters, (v) the inversion of letters and numbers, or (vi) the addition or interspersions of other terms or numbers.” [WIPO Overview 3.0](#), section 1.9.

Regarding the generic Top-Level Domain (“gTLD”) “.com” in the disputed domain name, it is well established that a gTLD does not generally affect the assessment of a domain name for the purpose of determining identity or confusingly similarity. [WIPO Overview 3.0](#), section 1.11.1.

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.

Indeed, the Complainant contends that it has not given its consent to the Respondent to use its TIKAMOON trademark in a domain name registration or in any other manner.

Besides, there is nothing in the record of the case likely to indicate that the Respondent may be commonly known by the disputed domain name.

Furthermore, even though the disputed domain name resolves to a website pretending offering writing services, in particular for online marketing, advertising and promotional purposes, which are of a different nature of the Complainant’s core activity, namely producing and distributing furniture, it nevertheless remains that:

- a non-negligible part of the services allegedly offered by the Respondent are identical to some of those protected by the Complainant’s prior trademark, as the latter notably designates services such as “advertising” or “online advertising on a computer network”,

- as established in paragraph A above, the disputed domain name is confusingly similar with the TIKAMOON trademark,
- the website available through the disputed domain name identically and prominently reproduces the TIKAMOON trademark, including under the same stylized form that is used and registered by the Complainant.

In these circumstances, the Panel finds that the Respondent is making a commercial use of the disputed domain name that is liable to cause confusion with the Complainant's trademark.

In this respect, Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.

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 finds that:

- the TIKAMOON trademark predates the registration of the disputed domain name,
- the TIKAMOON trademark consists in a coined term and is therefore intrinsically distinctive,
- the disputed domain name is not only confusingly similar with the Complainant's trademark, but also resolves to a website where the TIKAMOON trademark is displayed in the same stylized form in which it is registered and used by the Complainant,
- as mentioned in paragraph B. above, a part of the services purportedly offered on the website to which the disputed domain name directs, are of the same nature than some of those protected by the TIKAMOON prior trademark,
- the Respondent, while invited to defend his case, has been remained silent.

In these circumstances, the Panel considers, on the balance of probabilities, the Respondent registered the disputed domain name with the Complainant's trademark in mind, and is using it to intentionally attempt to attract, for commercial gain, Internet users by creating a likelihood of confusion with the complainant's trademark.

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

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 <tikamoons.com> be transferred to the Complainant.

/Fabrice Bircker/

Fabrice Bircker

Sole Panelist

Date: September 26, 2024