

ADMINISTRATIVE PANEL DECISION

Société des Produits Nestlé S.A. v. Jose Ibarra, CALMA
Case No. D2024-3287

1. The Parties

The Complainant is Société des Produits Nestlé S.A., Switzerland, represented by Studio Barbero S.p.A., Italy.

The Respondent is Jose Ibarra, CALMA, Mexico.

2. The Domain Name and Registrar

The Domain Name <kitcat.world> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 12, 2024. On August 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On August 12, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Redacted for Privacy, Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 12, 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 August 13, 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 August 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 12, 2024.

The Center appointed Olga Zalomiy as the sole panelist in this matter on September 27, 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 part of the Nestlé Group, which operates globally across various industries, primarily in food, including baby foods, cereals, confectionery, beverages, bottled water, dairy, ice cream, prepared foods, food services, and pet food. The Complainant owns numerous trademark registrations for the KIT KAT trademark, such as:

- The International registration No. 1192348, for the KIT KAT mark, registered on October 15, 2013;
- The International registration No. 1063658, for the NESTLÉ KITKAT KIT KAT word and design mark, registered on December 20, 2010;
- Mexican registration No. 139971, for the KIT KAT mark, registered on January 10, 1968.

The Complainant registered multiple domain names that include its KIT KAT trademark, such as: <kitkat.com> registered on May 8, 1997 and <kitkat.com.mx> registered on September 21, 2000.

The Respondent, allegedly based in Mexico, registered the Domain Name on February 16, 2024. The Respondent is using the Domain Name to direct to a website displaying the KIT KAT logo alongside the term "KIT CAT" a misspelled version of the Complainant's trademark. The site also features images of the Complainant's products and promotes the sale of a cryptocurrency meme coin called "\$KITCAT".

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 Domain Name.

Notably, the Complainant contends that the Domain Name is confusing similar to the Complainant's KIT KAT trademarks because it incorporates a term "kit cat", which is misspelled version of the Complainant's well-known trademark. In the Complainant's view, a substitution of a single letter in the trademark is insufficient to prevent finding of confusing similarity. The Complainant states that the addition of the generic Top-Level Domain ("gTLD") suffix ".world" to the Complainant's mark in the Domain Name does not impact the confusing similarity, because it is disregarded from the assessment under the confusing similarity test.

The Complainant argues that the Respondent has no rights or legitimate interests in the Domain Name because the Respondent is not commonly known under the Domain Name, and has not acquired a trademark or service mark under that name. The Complainant contends that it did not grant any license or authorization to the Respondent to use its mark in the Domain Name. The Complainant asserts that the Domain Name directs to the website displaying the term 'kit cat', which is a misspelled version of the Complainant's mark and the Complainant's word and design mark KIT KAT to promote sale of the meme cryptocurrency "\$KITCAT", without providing any disclaimer as to the lack of affiliation with the Complaint. In the Complainant's view, the Respondent's actions do not amount to bona fide offering of goods or legitimate interest because the Respondent is trying to trade off the Complainant's well-known mark.

The Complainant states that the Respondent registered the Domain Name in bad faith because its registration of the Domain Name incorporating the misspelled version of the Complainant's mark and the Complainant's word and design mark indicates that it was aware of the Complainant and its trademark at the time of the Domain Name registration. The Complainant contends that the Respondent is using the Domain

Name to direct to a website that displays the Complainant's trademarks and KIT KAT bars and the slogan "The purrfect snack for those who like their treats a little bit furry and a lot bit purry" to promote a meme cryptocurrency \$KITCAT without publishing any disclaimer of non-affiliation with the Complainant, indicating that Respondent acquired the Domain Name with an intent to attract Internet users to its website for commercial gain, by intentionally creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of its website.

B. Respondent

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

6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, to succeed in this proceeding, the Complainant must prove each of the following elements with respect to the Domain Name:

- (i) the 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 Domain Name; and
- (iii) the 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 Domain Name. Accordingly, the Domain Name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. It is well-established 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". [WIPO Overview 3.0](#), section 1.9. Here, the Domain Name includes the Complainant's KIT KAT trademark with the first letter of the second word "k" replaced with the letter "c". The inclusion of the gTLD ".world" is typically disregarded in the context of the confusing similarity assessment, being a technical requirement of registration. [WIPO Overview 3.0](#), section 1.11.

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 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 Domain Name such as those enumerated in the Policy or otherwise.

The evidence on file shows that the Complainant has not licensed or permitted the Respondent to use the Complainant's KIT KAT trademark in domain names, or for any other purpose. The Respondent is not commonly known by the Domain Name. Nor is the Respondent making a legitimate noncommercial or fair use of the Domain Name, because the Domain Name directs to the website promoting a meme cryptocurrency. Finally, the Respondent did not use the Domain Name in connection with a bona fide offering of goods or services because it directs users to the website reproducing the misspelled version of the Complainant's mark, the Complainant's logo and the slogan "The purrfect snack for those who like their treats a little bit furry and a lot bit purry" to promote a meme cryptocurrency "\$KITCAT" without publishing any disclaimer of non-affiliation with the Complainant.

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 used the Domain Name containing a misspelling of the Complainant's well-known trademark to direct users to a purported meme cryptocurrency website featuring the Complainant's logo and the slogan creating an impression of an affiliation between the website and the Complainant. Consequently, the Respondent registered and is using the Domain Name to intentionally attempt to attract, for commercial gain, Internet users to the Respondent's website or other online location, by creating a likelihood of confusion with the Complainant's mark as to source, sponsorship, affiliation or endorsement of the Respondent's website or location, or of a product or service on the Respondent's website or location, which constitutes bad faith registration and use of the Domain Name for purposes of paragraph 4(a)(iii). See Policy, paragraph 4(b)(iv).

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 Domain Name <kitcat.world> be transferred to the Complainant.

/Olga Zalomiy/

Olga Zalomiy

Sole Panelist

Date: October 11, 2024