

ADMINISTRATIVE PANEL DECISION

KILOUTOU v. Renan Basparmak

Case No. D2024-3867

1. The Parties

The Complainant is KILOUTOU, France, represented by Cabinet Beau de Lomenie, France.

The Respondent is Renan Basparmak, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <vendapkiloutogroup.com> is registered with Dynadot Inc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 23, 2024. On September 23, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 24, 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 (Anonymous) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 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 September 26, 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 October 1, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 21, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 22, 2024.

The Center appointed Christian Gassauer-Fleissner as the sole panelist in this matter on October 29, 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 was established in 1980 in France and is a major provider of equipment rental services for the construction and public works sector in the European Union. Employing over 4,500 people through a network of 500 branches, the Complainant's annual turnover is over EUR 600 Million.

The Complainant is the owner of several trademarks for KILOUTOU ("KILOUTOU trademark"), including:

- European Union Trademark Registration KILOUTOU No. 003332814, registered on November 18, 2005,
- European Union Trademark Registration KILOUTOU No. 003393634 (figurative mark), registered on July 4, 2005, and
- International Trademark Registration KILOUTOU No. 1482668, registered on January 17, 2019, designating Switzerland, Algeria, and the Russian Federation.

The Complainant is also the owner of domain names including the KILOUTOU trademark, such as the domain name <kiloutou.com>, registered on May 13, 2000.

The disputed domain name was registered on January 16, 2024. At the time of decision and when the Complaint was filed, the disputed domain name resolved to a parked webpage, where the disputed domain name is offered for sale.

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.

On the first element of the Policy, the Complainant claims that the disputed domain name is confusingly similar to the KILOUTOU trademark. The disputed domain name contains the Complainant's trademark in its entirety, with the generic Top-Level-Domain ("gTLD") ".com". Furthermore, the simple juxtaposition of the easily understandable and descriptive word "group" to the trademark KILOUTOU does not allow to constitute an indivisible whole or does not allow to bring a new meaning to the whole. This simple juxtaposition "kiloutogroup" does not in any way rule out the similarities. The term "group" is in fact purely descriptive of the economic status of the Complainant while the trademark KILOUTOU remains the distinctive and dominant element. In addition, the "vendap" term in the disputed domain name does not allow to bring a new meaning to the whole, and does not rule out similarities, as the KILOUTOU trade mark still possesses an autonomous position and own perception. It is all the more so when we bear in mind that the the Complainant has recently acquired the VENDAP GROUP. The public perception of the KILOUTOU brand in the disputed domain name is all the stronger. The combination of the two elements KILOUTOU and "vendap" cannot exclude the confusing similarity. The public is led to confuse the disputed domain name with the previous KILOUTOU trademark or to consider that the disputed domain name is a variation of the previous KILOUTOU mark for new rental services offered since the merger of VENDAP with the KILOUTOU GROUP. Finally, the addition of the gTLD ".com" is purely generic, viewed as a standard registration requirement, so that it does not affect the assessment of the risk of confusion and must be excluded for the assessment of the risk of confusion.

On the second element of the Policy, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent does not have any link with the Complainant and has no authorization that allows him to use the KILOUTOU trademark. The Respondent is not known under the disputed domain name and does not have any rights on a trademark, a

company name or a commercial name containing “vendapkiloutougroup”. The Respondent does not use the disputed domain name in connection with a bona fide offering of goods or services. The disputed domain name resolves to an inactive page offering the disputed domain name for sale.

On the third element of the Policy, the Complainant asserts that the Respondent has registered and used the disputed domain name in bad faith. First of all, it is worth to note that the Respondent has voluntarily hidden his identity in the Whois database, which is an element of bad faith. Further to the WIPO notice of registrant information dated September 25, 2024, the Complainant has made a simple search on the Internet with the key word “Renan Basparmak”. It resolves immediately to the Administrative Panel Decision *Idec Energy v. Renan Basparmak*, WIPO Case No. [D2024-2079](#). In this case, the disputed domain name was transferred to Idec Energy (the complainant of the cited case). The Complainant concludes that Renan Basparmak has a habit of registering domain names in bad faith. Another simple search on the Internet as regards to the email server like the one mentioned in the Respondent’s email address also resolves immediately to another Administrative Panel Decision *Teva Pharmaceutical USA, Inc v. Firat Dicle, Hilal Altin, Almila Yagmur, and Imren Kaskarov*, WIPO Case No. [D2022-3609](#) in which 4 domain names were concerned with 4 respondents all using the same email address as Renan Basparmak. This still raises question about his good faith. Secondly, had Respondent done a global trademark search at the time of the registration of the disputed domain name, he would immediately have found several registrations for the prior KILOUTOU trademark. Furthermore, had the Respondent done a search for the “vendap kiloutou group” terms in combination or alone on Google at the time of the registration of the disputed domain name, he would immediately have found links to the official Complainant’s websites and to multiple press releases regarding the acquisition of VENDAP GROUP by the Complainant. Given the distinctiveness and well-established reputation of the Complainant’s trademark (also recognized in *KILOUTOU S.A.S v. Contact Privacy Inc. Customer 1245279263 / Bouchet Pierre-Alain*, WIPO Case No. [D2020-0545](#); and in *Kiloutou v. Domain Drop SA*, WIPO Case No. [D2006-1105](#)) it is not conceivable that the Respondent did not have in mind the Complainant’s trademark when registering the disputed domain name. Such fact suggests that the disputed domain name was registered in bad faith with a deliberate intent to create an impression of an association with the Complainant. Then, the disputed domain name is undoubtedly registered in bad faith with regard to the rights to the well reputed KILOUTOU trademark. It is more likely that the disputed domain name was registered with the aim to sell it, to disrupt the business of the Complainant or to take undue advantage of the well-established KILOUTOU trademark. To this end, the Complainant observes that the disputed domain name is already for sale at USD 2.850. And principally, the mere passive holding of the disputed domain name by the Respondent precludes the Complainant from using its prior trademark KILOUTOU in a corresponding domain name and using its prior trademark KILOUTOU in a corresponding domain name for its activities resulting from the acquisition of VENDAP GROUP. The current inactive status of the disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel’s decision be made “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”.

It has been a consensus view in previous UDRP decisions that a respondent’s default (i.e., failure to submit a response) would not by itself mean that the complainant is deemed to have prevailed; a respondent’s default is not necessarily an admission that the complainant’s claims are true (see section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”)).

The 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 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.

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.

Where the complainant's trademark is recognizable within the disputed domain name, the addition of other third-party marks (i.e., <mark1+mark2.tld>), is insufficient in itself to avoid a finding of confusing similarity to the complainant's mark under the first element. [WIPO Overview 3.0](#), section 1.12.

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.

Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element. The nature of such additional terms may however bear on assessment of the second and third elements. The entirety of the mark is reproduced within the disputed domain name, with the addition of the terms "vendap" and "group". 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](#), sections 1.7, 1.8 and 1.12.

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.

The Complainant has not authorized, licensed, or permitted the Respondent to register or use the disputed domain name or to use the KILOUTOU trademark. The Panel finds on the record that there are no indications that the Respondent is commonly known by the disputed domain name or otherwise has any rights to or legitimate interests in the disputed domain name. Further, there are no evident preparations for the use of the disputed domain name for a bona fide offering of goods or services. Rather, the disputed domain name resolves to a parked webpage, where the disputed domain name is offered for sale.

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 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.

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.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3.

Furthermore, according to paragraph 4(b)(i) of the Policy, the registration of a domain name for the purpose of selling to a complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name is evidence of registration and use in bad faith.

Considering the public presence of the Complainant, it is unlikely that the Respondent had no knowledge of the KILOUTOU trademark. The incorporation of the KILOUTOU trademark within the disputed domain name, with the addition of the terms "vendap" and "group", demonstrates the Respondent's actual awareness of the Complainant and intent to target the Complainant, particularly given the Complainant's acquisition of the VENDAP GROUP. Furthermore, the Panel notes that the Respondent was already cited as a respondent in *Idec Energy v. Renan Basparmak*, WIPO Case [D2024-2079](#), where he offered a disputed domain name including a third party's trademark for sale – also for USD 2,850 – and the Administrative Panel decision ordered to transfer the domain.

Having reviewed the available record, the Panel notes the distinctiveness and reputation of the Complainant's trademark, the composition of the disputed domain name, the Respondent's failure to submit a response, the fact that the disputed domain name resolves to a parked webpage, where the disputed domain name is offered for sale as well as the repetitive practice of the Respondent to register domains including third parties' trademarks for the purpose of selling and finds that in the circumstances of this case the non-use of the disputed domain name does not prevent a finding of bad faith under the Policy. Rather, the Respondent's intention to sell the disputed domain name indicates bad faith.

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 <vendapkiloutogroup.com> be transferred to the Complainant.

/Christian Gassauer-Fleissner/

Christian Gassauer-Fleissner

Sole Panelist

Date: November 12, 2024