

ADMINISTRATIVE PANEL DECISION

Tribal Nutrition LLC v. Matrix, Epie Steve
Case No. D2024-4231

1. The Parties

The Complainant is Tribal Nutrition LLC, United States of America, represented by Mitchell, Silberberg & Knupp, LLP, United States of America.

The Respondent is Matrix, Epie Steve, Cameroon.

2. The Domain Name and Registrar

The disputed domain name <kachavanutrition.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 14, 2024. On October 15, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 15, 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 (Domain Administrator, PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 18, 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 October 21, 2024.

The Center verified that the Complaint together with 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 22, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 11, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 18, 2024.

The Center appointed Alistair Payne as the sole panelist in this matter on November 19, 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 owns and operates the KA'CHAVA branded nutritional and dietary supplement business. It owns various trade mark registrations internationally for its KA'CHAVA mark including United States trade mark registration 4550929 registered on June 17, 2014. It also owns the domain name <kachava.com> from which it operates a website promoting and offering for sale its dietary supplements and related products.

The disputed domain name was registered on November 26, 2023 and resolves to a website which features the Complainant's stylized KA'CHAVA design and images and purports to offer for sale KA'CHAVA branded food and nutritional products. The Respondent's website purports to suggest that it has 35,000 subscribers for its weekly newsletter which offers discount coupons for its products.

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 it owns registered trade mark rights for its KA'CHAVA mark and that the disputed domain name wholly incorporates its mark and is therefore confusingly similar to it. It further says that the inclusion of the descriptive word "nutrition" in the disputed domain name does not preclude a finding of confusing similarity.

The Complainant submits that the Respondent is not a licensee of the Complainant and has not been authorised to use the Complainant's mark or to sell its KA'CHAVA branded products. It says further that there is no evidence that the Respondent ever operated a bona fide or legitimate business under the disputed domain name and that the Respondent is neither making a protected non-commercial nor a fair use of the disputed domain name. The Complainant submits that, by using the disputed domain name to resolve to a website that purportedly offers for sale KA'CHAVA branded food and nutrition products, it is misdirecting or baiting Internet users seeking to buy or learn more about the Complainant's KA'CHAVA branded products which is not a legitimate use of the disputed domain name and is not consistent with a bona fide offering of goods or services. The Complainant also notes that the Respondent has failed to respond to its cease and desist letter of October 3, 2024.

The Complainant asserts that the Respondent's use of the distinctive KACHAVA mark in the disputed domain name, the strong reputation attaching to it, its registration as a trade mark in the United States and the fact that the website at the disputed domain name offers KA'CHAVA branded products for sale implies that the Respondent must have been aware of the Complainant's mark and business when it registered the disputed domain name.

As far as use in bad faith is concerned the Complainant submits that this is a classic case of use in bad faith under paragraph 4(b)(iv) of the Policy in that the Respondent has used the disputed domain name to attract for commercial gain Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of its website or products. The Complainant says that featuring its trade mark and offering food and nutritional products identical to those offered by the Complainant and using the Complainant's mark to suggest a connection between the disputed domain name and the Complainant is evidence of registration and use in bad faith under paragraph 4(b)(iv) of the Policy.

B. Respondent

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

6. Discussion and Findings

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 entirety of the 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.

Although the addition of other terms, here, "nutrition" 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 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 submitted that the Respondent is not a licensee of the Complainant and has not been authorised to use the Complainant's mark or to sell its KA'CHAVA branded products. It has further asserted that there is no evidence that the Respondent ever operated a bona fide or legitimate business under the disputed domain name and that the Respondent is neither making a protected non-commercial or fair use of the disputed domain name. The Complainant has also submitted that by using the disputed domain name to resolve to a website that purportedly offers for sale KA'CHAVA branded food and nutrition products, it is misdirecting or baiting Internet users seeking to buy or learn more about the Complainant's KA'CHAVA branded products, which is not a legitimate use of the disputed domain name and is not consistent with a bona fide offering of goods or services. The Complainant has also noted that the Respondent has failed to respond to its cease and desist letter of October 3, 2024.

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.

In the present case, the Panel notes that the Complainant registered its distinctive KA'CHAVA trade mark many years before the Respondent registered the disputed domain name. The fact that the website at the disputed domain name offers KA'CHAVA branded products for sale, uses the Complainant's KA'CHAVA mark and various of the Complainant's product images apparently in an effort to masquerade as if the Complainant owns or has endorsed the website, suggests that it is more than likely that the Respondent was well aware of the Complainant's mark and business when it registered the disputed domain name.

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.

Under paragraph 4(b)(iv) of the Policy there is evidence of registration and use of the disputed domain name in bad faith where a Respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation or endorsement of the website.

It is apparent that the disputed domain name has been used by the Respondent to divert Internet users to its website which features the KA'CHAVA marks, appears to copy various product images from the Complainant's website, has a similar but not identical overall look to the Complainant's website and appears to offer KA'CHAVA products. This is all in circumstances that the Complainant has never authorised such use and amounts to the Respondent trying to masquerade as if its website belongs to the Complainant or is endorsed by it, apparently to confuse Internet users looking for the Complainant's website and to attract Internet users to purchase products from the Respondent's website.

The Panel therefore finds that the Respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade mark in terms of paragraph 4(b)(iv) of the Policy. Such conduct amounts to evidence of registration and use of the disputed domain name in bad faith under this section 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 <kachavanutrition.com> be transferred to the Complainant.

/Alistair Payne/

Alistair Payne

Sole Panelist

Date: December 3, 2024