

ADMINISTRATIVE PANEL DECISION

Kiloutou v. Angela Collins
Case No. DCO2022-0096

1. The Parties

The Complainant is Kiloutou, France, represented by IP Twins, France.

The Respondent is Angela Collins, United States of America.

2. The Domain Name and Registrar

The disputed domain name <kiloutou.co> is registered with Sav.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 9, 2022. On November 10, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 10, 2022, 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 (Privacy Protection) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 11, 2022, 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 November 14, 2022.

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 November 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 4, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 6, 2022.

The Center appointed Anna Carabelli as the sole panelist in this matter on December 20, 2022. 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 French company founded in 1980, specializing in equipment rental services in the field of construction, public works, and events. It offers its services through more than 500 agencies in France, Poland, Spain, Germany, and Italy.

The Complainant is the owner of several trademark registrations for KILOUTOU in various jurisdictions, including:

- International trademark KILOUTOU, No. 543426, registered on August 30, 1989, duly renewed and designating goods in international classes 19, 21 and 25
- European Union trademark KILOUTOU, No. 3332814 registered on November 18, 2005, duly renewed, and designating goods in international classes 2, 3, 7, 8, 9, 11, 12, 16, 21, 35, 37 - 45.

The Complainant also owns numerous domain name registrations containing the KILOUTOU mark, distributed among generic Top-Level Domains ("gTLD") and country code Top-Level Domains ("ccTLD").

The disputed domain name was registered on February 22, 2022. The evidence in the Complaint is that the disputed domain name resolves to an inactive page offering the disputed domain name for sale.

5. Parties' Contentions

A. Complainant

The Complainant submits and contends that:

- The Complainant is the registered proprietor of the trademark KILOUTOU, which has acquired and enjoys a significant reputation and goodwill internationally.
- The disputed domain name is identical to the Complainant's registered trademark KILOUTOU.
- The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has not authorized or somehow given consent to the Respondent to register and use the disputed domain name, and the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods and services.
- The disputed domain name was registered in bad faith. The Respondent must have known of the Complainant's mark KILOUTOU when it registered the disputed domain name. By the time the Respondent registered the disputed domain name, the Complainant already had a reputation in its trademark, which is fully adopted in the disputed domain name without the addition of any word or letter. Furthermore, a simple search for "kiloutou" on an Internet search engine yields results only related to the Complainant
- The disputed domain name is also used in bad faith. The current inactive status of the disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding. In addition, the Complainant submits that by registering the disputed domain name the Respondent prevents the Complainant from reflecting its trademark in a corresponding domain name; and by offering the disputed domain name for sale, the Respondent is attempting to benefit from the Complainant's worldwide fame for commercial gain.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel to decide the Complaint based on the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Under paragraph 4(a) of the Policy, the Complainant must prove each of the following:

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

Paragraph 4(b) of the Policy sets out four illustrative circumstances, which for the purposes of paragraph 4(a)(iii) of the Policy, shall be evidence of registration and use of a domain name in bad faith.

Paragraph 4(c) of the Policy sets out three illustrative circumstances any one of which, if proved by the Respondent, shall be evidence of the Respondent's rights to or legitimate interests in the disputed domain name for the purpose of paragraph 4(a)(ii) of the Policy above.

A. Identical or Confusingly Similar

The disputed domain name entirely incorporates the Complainant's trademark KILOUTOU and this is a sufficient element to establish confusing similarity, as held by previous UDRP panels (*e.g.*, *Banca Mediolanum S.p.A. v. Domains By Proxy, LLC / Marzia Chiarello*, WIPO Case No. [D2020-1955](#); *Virgin Enterprises Limited v. Domains By Proxy LLC, Domainsbyproxy.com / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2020-1923](#); *Patagonia, Inc. v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2019-1409](#)).

The addition of the ccTLD ".co" is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. (See section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

In the light of all the above, the Panel finds that the disputed domain name is identical or confusingly similar to the Complainant's trademark and the Complainant has established element 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant states that it has not authorized, licensed or permitted the Respondent to use the Complainant's trademarks and that the Respondent is not commonly known by the disputed domain name.

The Complainant also asserts that the Respondent cannot demonstrate any legitimate noncommercial or fair use of the disputed domain name.

The Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. As stressed by many previous UDRP decisions, in such a case the burden of production shifts to the Respondent to rebut the evidence (see [WIPO Overview 3.0](#), section 2.1).

Moreover, the Panel finds that the composition of the disputed domain name carries a high risk of implied affiliation (see [WIPO Overview 3.0](#), section 2.5.1).

By not submitting a Response, the Respondent has failed to invoke any circumstance, which could have demonstrated any rights or legitimate interests in the disputed domain name under paragraph 4(c) of the Policy.

Therefore, the Panel finds that the Complainant has established paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must establish that the disputed domain name has been registered and is being used in bad faith.

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 (see section 3.2.2 of the [WIPO Overview 3.0](#)) with a deliberate intent to create an impression of an association with the Complainant.

The current inactive status of the disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding. As stressed by many previous UDRP decisions, "While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put". (See section 3.3 of the [WIPO Overview 3.0](#); *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

Each of these considerations points to the Respondent's passive holding of the disputed domain name being in bad faith. Specifically: (i) the Complainant's trademark is distinctive and well-established, (ii) the Respondent has failed to submit a response to the Complaint or provide any evidence of good-faith use, (iii) the Respondent has registered the disputed domain name through a privacy service. Under the circumstances of the case, this fact suggests the Respondent's has taken steps to conceal its identity and supports an inference of bad faith (see section 3.6 of the [WIPO Overview 3.0](#)), (iv) the disputed domain name resolves to an inactive web page offering the disputed domain name for sale, and (v) there is no conceivable good faith use to which the inherently misleading disputed domain name could be put by the Respondent.

Therefore, the Complainant has established paragraph 4(a)(iii) 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, <kiloutou.co> be transferred to the Complainant.

/Anna Carabelli/

Anna Carabelli

Sole Panelist

Date: January 3, 2023