

ADMINISTRATIVE PANEL DECISION

Instramed Industria Médico Hospitalar Ltda. v. Jaewan Lee
Case No. D2024-0032

1. The Parties

The Complainant is Instramed Industria Médico Hospitalar Ltda., Brazil, represented by GuerraIP, Brazil.

The Respondent is Jaewan Lee, Republic of Korea.

2. The Domain Name and Registrar

The disputed domain name <instramed.com> is registered with Inames Co. Ltd., (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 5, 2024. On January 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 23, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On January 26, 2024, the Center informed the parties in Korean and English, that the language of the registration agreement for the disputed domain name is Korean. On January 29, 2024, the Complainant confirmed its request that English be the language of the proceeding. The Respondent objected to the Complainant’s request.

The Center verified that 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 February 7, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 27, 2024. The Respondent sent an email communication to the Center on February 7, 2024. The Complaint requested for suspension of the proceedings on February 20, 2024. On February 23, 2024, the Center notified Parties of suspension of the proceedings. On March 11, 2024, the Respondent sent an email communication to the Center. On March 18, 2024, the proceedings

were reinstated upon the request of the Complainant and the new due date for Response was March 24, 2024. On March 26, 2024, the Center notified the Parties that it would proceed to panel appointment.

The Center appointed Kathryn Lee as the sole panelist in this matter on April 5, 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 Brazilian company established in 1986. The Complainant develops and manufactures cardiac monitors, cardioverters, and defibrillators, and sells its products in European, Latin American, Asian, and Oceanian markets. The Complainant owns trademark registrations in Brazil for the mark INSTRAMED as follows:

- Trademark Registration Number 826416136, registered on January 22, 2008;
- Trademark Registration Number 830447769, registered on November 6, 2012; and
- Trademark Registration Number 830447776, registered on November 6, 2012.

The Respondent appears to be an individual with an address in the Republic of Korea.

The disputed domain name was registered on February 5, 2015, and is linked to a parking page displaying pay-per-click links to “credit card online payment,” “online bill payment,” and “bill pay.” The parking page also displayed an offer to sell the disputed domain name, which, according to the Complainant, when clicked, forwards to a new page displaying an offer in the Portuguese language to sell the disputed domain name for 50,000 USD.

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 is identical to the INSTRAMED mark in which the Complainant has rights.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain names and confirms that it has not authorized or licensed rights to the Respondent in any respect. The Complainant also contends that it has found no evidence that the Respondent is commonly known as “instramed.”

Finally, the Complainant contends that the disputed domain name was registered and used in bad faith. The Complainant states that the disputed domain name resolves to a website which does not have actual content and only displays pay-per-click links. The Complainant further states that the website displays an offer to sell the disputed domain name, and clicking on the offer forwards to a new page in Portuguese offering the disputed domain name for sale for 50,000 USD. The Complainant contends that the Respondent registered the disputed domain name with the intent of making exorbitant profit from its sale. The Complainant also notes that the Respondent was the respondent in at least five other domain name cases, all of which resulted in the transfer of the domain names to the complainants.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions, but submitted a response stating that he doubts that the Complainant has legitimate rights to the disputed domain name, but that he has no particular desire to maintain the disputed domain name, and is willing to simply assign it to the Complainant. The proceedings were suspended to allow for a settlement discussion, but at the end, the Respondent asked that he not be contacted as he does not know how to transfer the disputed domain name. Accordingly, the proceedings resumed.

6. Discussion and Findings

Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Korean. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that the Complainant is Brazilian and does not know the Korean language, and translating the Complainant into Korean will incur great expense and inconvenience.

The Respondent requested to have documents in Korean because he was unable to understand the documents in English.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1). Here, both Parties were permitted to and in fact did present their cases in the language of their preference. Further, the disputed domain names are composed of letters of the Latin alphabet and displayed pay-per-click links in English. And the Respondent's responses to the Complainant showed that he was quite capable of understanding and communicating in English.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

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.

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 identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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.

Further, the Respondent’s use of the disputed domain name for a domain parking page with pay-per-click links does not in the circumstances represent a bona fide offering of goods or services given that the disputed domain name is identical to the Complainant’s trademark and such use trades on the reputation and goodwill associated with the mark. See [WIPO Overview 3.0](#), section 2.9.

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 registered the disputed domain name which consists solely of the Complainant’s trademark INSTRAMED and displayed an offer for sale in Portuguese, the language of the Complainant. This highly suggests that the Complainant registered the disputed domain name in order to one day sell it to the Complainant for a profit.

Also, by linking the disputed domain name with a parking page displaying pay-per-click links, the Respondent has created a likelihood of confusion and benefited commercially from the confusion of Internet users that visit the site by mistake as per paragraph 4(b)(iv) of the Policy.

Not only that, the Panel takes note of the various prior UDRP decisions rendered against the Respondent that indicates a pattern of bad faith conduct on part of the Respondent as described under paragraph 4(b)(ii) of the Policy, e.g., *AIDA Cruises - German Branch of Costa Crociere S.p.A. v. Jaewan Lee*, WIPO Case No. [D2012-1772](#); *Accor, SoLuxury HMC v. Jaewan Lee*, WIPO Case No. [D2009-0574](#); *Bayerische Motoren Werke AG v. Jaewan Lee*, WIPO Case No. [D2019-3161](#); *New Era Oil (UK) Limited v. Jaewan Lee*, WIPO Case No. [D2010-1408](#); and *Equifax Inc. v. Jaewan Lee*, WIPO Case No. [D2021-1628](#).

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 <instramed.com> be transferred to the Complainant.

/Kathryn Lee/

Kathryn Lee

Sole Panelist

Date: April 16, 2024