

ADMINISTRATIVE PANEL DECISION

Masco Corporation and Kraus USA Plumbing LLC v. Gi anda Case No. D2024-0505

1. The Parties

The Complainants are Masco Corporation, United States of America (“the First Complainant”) and Kraus USA Plumbing LLC, United States of America (“United States”) (“the Second Complainant”), represented by Demys Limited, United Kingdom.

The Respondent is Gi anda, China.

2. The Domain Name and Registrar

The disputed domain name <onlinekraus.com> is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 2, 2024. On February 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 8, 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 (Redacted For Privacy, Domain Protection Services, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 9, 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 February 12, 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 February 13, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 5, 2024.

The Center appointed Benoit Van Asbroeck as the sole panelist in this matter on March 13, 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 First Complainant is an American designer, manufacturer and distributor of decorative architectural products and plumbing products, founded in 1929. The Second Complainant is an American designer and manufacturer of kitchen and bathroom sinks, faucets and accessories, founded in 2007. The Second Complainant is a wholly-owned subsidiary of the First Complainant.

The Second Complainant owns trademarks in the mark KRAUS, amongst which:

- United States Trademark No. 3478540 for  registered on August 5, 2008, in International Classes 6, 11, 20, and 21;
- European Union Trademark No. 011259181 for KRAUS, registered on June 23, 2013, in International Classes 6, 11, 20, and 21; and
- Chinese Trademark No. 11970558 for KRAUS, registered on January 14, 2017, in International Class 11.

The Second Complainant also owns the domain name <kraususa.com>, from which it operates its official website, and several social media accounts for the KRAUS brand.

The Respondent appears to be an individual located in China. The disputed domain name was registered on September 26, 2023, well after the Second Complainant secured rights in the mark KRAUS. According to evidence submitted by the Complainants, the disputed domain name resolves to a website that is a look-a-like of the Second Complainant's official website, using a similar website structure, the same black and white color scheme, prominently displaying the Second Complainant's KRAUS trademark throughout the website, using product photographs and other graphical illustrations as well as product descriptions from the Second Complainant's official website, using the same favicon as the one used on the Second Complainant's website, and incorporating a reference to KRAUS in the HTML title tag of the website. Evidence provided by the Complainants shows that the website appears to offer the Second Complainant's products (such as kitchen and bathroom sinks, taps and accessories) at a heavy discount. In addition to the Second Complainant's products, the evidence shows that the website also offers third-party products from the Complainants' competitors such as Grohe, Grevosea, Yamazaki. Finally, the provided screenshots of the Respondent's website do not contain a disclaimer clarifying the lack of relationship between the Respondent and the Complainants.

5. Parties' Contentions

A. Complainants

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, regarding the first element of the Policy, the Complainants contends that the Second Complainant has rights in the mark KRAUS and that the disputed domain name is confusingly similar to this mark. They point out that the disputed domain name incorporates the KRAUS mark in its entirety and only differs by the addition of the term "online", which does not affect the confusing similarity. Finally, the Complainants note that the generic Top-Level Domain ("gTLD") ".com" is required only for technical reasons and, as in common in proceedings under the UDRP, can be ignored for the purposes of comparison of the disputed domain name to the Complainants' marks.

Regarding the second element of the Policy, the Complainants contend that the Respondent lacks a right or legitimate interest in the disputed domain name. The Complainants claim to have found no evidence that the Respondent has been commonly known as “kraus” or “online kraus” prior to or after the registration of the disputed domain name. Furthermore, the Complainants confirm that the Respondent is not a licensee of the Complainants and has not received any permission or consent from the Complainants, either together or singly, to use their KRAUS mark. Moreover, the Complainants claim to have found no evidence that the Respondent owns any trademarks incorporating the term “kraus” or “online kraus”. Equally, the Complainants state that they have found no evidence that the Respondent has ever traded legitimately under the name “kraus” or “online kraus”.

In addition, the Complainants contend that the Respondent is not making a legitimate noncommercial or fair use of the domain name. They state that the Respondent cannot claim a legitimate “fair use” interest as the nature of the disputed domain name carries a risk of implied affiliation. The Complainants also point out that the Respondent cannot claim to make any fair use as a reseller, distributor, or service provider of the Complainants’ products since they are not an authorized distributor of their goods, including KRAUS products, and do not have permission to use their name and KRAUS mark in the disputed domain name and their product photographs on the website associated with the disputed domain name. Furthermore, the Complainants contend that the website to which the disputed domain name resolves, fails the Oki Data test on at least three of the four cumulative requirements since i) the Respondent is not part of the Complainants’ distribution network, and as such the Complainants’ goods on offer are likely to be either counterfeit, parallel import or grey market goods; ii) the Respondent’s website offers other third-party goods for sale alongside the Complainants’ goods; and (iii) the Respondent’s website does not accurately and prominently disclose its relationship (or, more accurately, non-relationship) with the Complainants. On the contrary, by, inter alia, using identical favicons and similar website titles, copying the “look and feel” of the Second Complainant’s official website and using the Complainants’ product photographs, the Complainants contend that the Respondent is intentionally attempting to mislead Internet users into believing that the Respondent’s website is authorized or endorsed by the Complainants. Finally, the Complainants contend that such misleading and confusing use of the Respondent’s website could neither relate to a genuine, bona fide offering of goods and services and such use could not grant the Respondent a legitimate interest in the disputed domain name.

With respect to the third element of the Policy, the Complainants contend that the Respondent has registered and used the disputed domain name in bad faith for the following reasons. The Complainants claim that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainants’ KRAUS mark as to the source, sponsorship, affiliation, or endorsement of its website as per paragraph 4(b)(iv) of the Policy. In support of this, the Complainants point out that the disputed domain name is, at first glance, confusing to Internet users. In addition, the Complainants claim that the content of the Respondent’s website is also confusing since this website uses the KRAUS mark, has the same similar look and feel as the Complainant’s own corporate style, includes photos and other graphical elements from the Complainants’ website, uses the Second Complainant’s “K” logotype, and the HTML title tag identifies the website as being “Kraus”. According to the Complainants this demonstrates the Respondent’s intention to mislead Internet users into believing its website is an authorized website, or at least affiliated with or endorsed by the Complainants. Furthermore, the Complainants note that the Respondent’s website lacks any disclaimer that would dispel the confusion regarding the disputed domain name and the associated website. In addition, the Complainants observe that the Respondent is - in addition to the Complainants’ products - promoting competing third-party goods on its website. The Complainants point out that by creating a likelihood of confusion with the Complainants’ mark the Respondent is diverting potential customers looking for the Complainants’ products to its own website while also promoting competing third-party goods for its own commercial gain. Finally, the Complainants contend that the use of a privacy service and the provision of false contact information by the Respondent is also indicative of bad faith.

B. Respondent

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

6. Discussion and Findings

A. Consolidation of the Complainants

The Complainants request a consolidation of their complaints since they have a common grievance against the Respondent. According to section 4.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), “[i]n assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation.”

The Panel notes that the Complainants are closely related since they form part of the same corporate group: the Second Complainant is a wholly-owned subsidiary of the First Complainant. In addition, the Complainants claim that the disputed domain name takes unfair advantage of both of the Complainants’ reputation and is confusingly similar to the Second Complainant’s registered trademarks in the KRAUS mark. Accordingly, the Panel concludes that the Complainants have a common grievance against the Respondent. Since there is a single disputed domain name and given the almost identical facts, the Panel believes that it would therefore also be procedurally efficient to deal with both matters in one proceeding. Moreover, the Panel takes into account that the Respondent will not be prejudiced by the Complaint being brought jointly by both Complainants since the Respondent had been given adequate opportunity to respond to the Complaint and challenge the request for consolidation of the Complainants but decided not to do so.

The Panel grants the request for consolidation of the Complainants.

B. 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 Complainants’ trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainants have shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. One of the KRAUS trademarks that the Complainants rely on is figurative, however this can also be taken into account to show “rights in a mark” since the dominant portion of this trademark is the word “Kraus”. It is a consensus view of UDRP panels, with which the Panel agrees, that trademark registrations with design elements can prima facie satisfy the requirement that a complainant shows “rights in a mark” so long as the textual elements are not overtaken. [WIPO Overview 3.0](#), section 1.10.

The entirety of the KRAUS 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 “online”, 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.

Finally, as for the applicable gTLD, i.e., the suffix “.com”, the Panel holds that this can be disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds the first element of the Policy has been established.

C. 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 responded to the complaint and therefore failed to rebut 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 that the Respondent does not use the disputed domain name in connection with a bona fide offering of services and has not made a legitimate noncommercial or fair use of the disputed domain name. The evidence submitted by the Complainants shows that the disputed domain name resolves to a website that is a look-a-like of the Second Complainant’s official website, using a similar website structure, the same black and white color scheme, prominently displaying the Second Complainant’s KRAUS trademark throughout the website, using product photographs and other graphical illustrations as well as product descriptions from the Second Complainant’s official website, using the same favicon as the one used on the Second Complainant’s website, and incorporating a reference to KRAUS in the HTML title tag of the website. This website appears to offer the Second Complainant’s products (such as kitchen and bathroom sinks, taps and accessories) at a heavy discount as well as third-party products from the Complainants’ competitors such as Grohe, Grevosea, Yamazaki. Furthermore, the images of the Respondent’s website that the Complainants submitted do not contain a disclaimer clarifying the lack of relationship between the Respondent and the Complainants. Moreover, the Complainants confirmed that the Respondent is not part of their distribution network, and as such the Complainants’ goods on offer are likely to be either counterfeit, parallel import, or grey market goods. Accordingly, the Panel agrees with the Complainants that the Respondent’s website does not meet the requirements of the Oki Data test. This kind of use of the disputed domain name does not represent a bona fide offering and does not support rights or legitimate interests in the disputed domain name. Moreover, Panels have held that the use of a domain name for illegal activity, here attempts to impersonate the Complainants, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

In addition, the Complainants claim to have found no evidence that the Respondent has been commonly known as “kraus” or “online kraus” prior to or after the registration of the disputed domain name or that they own any trademarks or other rights in the terms “kraus” or “online kraus”. The Panel notes that the Respondent failed to respond to the Complaint and the evidence on record therefore does not contain any evidence of the same either. Furthermore, Panel has taken note of the Complainants’ confirmation that they have not licensed, authorized, or permitted the Respondent to register domain names incorporating the Complainants’ trademarks and has not seen any evidence that would suggest the contrary. In the absence of any license or permission from the Complainants to use their trademarks, the composition of the disputed domain name, and the fact that the disputed domain name resolves to a look-a-like version of the Second Complainant’s website, no actual or contemplated bona fide or legitimate use of the disputed domain name could reasonably be claimed (see, e.g., *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#); and *LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. [D2010-0138](#)).

The Panel finds the second element of the Policy has been established.

D. 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 intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Second Complainant's KRAUS mark (paragraph 4(b)(iv) of the Policy). As the Panel found above under the first element, the disputed domain name is confusingly similar to Second Complainant's KRAUS mark. In addition, as discussed in detail under the second element above, the Respondent attempted to impersonate the Complainants by its registration and use of a disputed domain name that resolves to a look-a-like website of the Second Complainant's official website offering similar products at a heavy discount, as well as third-party products from the Complainants' competitors such as Grohe, Grevosea, Yamazaki, without a disclaimer clarifying the lack of relationship between the Respondent and the Complainants. These circumstances, in combination with the Respondent's clear absence of rights or legitimate interests in the disputed domain name, are strong indicators of 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 held that the use of a domain name for illegal activity, here the impersonation of the Complainants (as detailed under the second element) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Furthermore, the Panel believes that the Respondent knew or, at least, should have known at the time of registration that the disputed domain name included the Second Complainant's KRAUS trademarks. As demonstrated by the Complainants, such trademarks were registered many years before the registration of the disputed domain name in several countries, including in the country of residence of the Respondent, China. In addition, the disputed domain name incorporates the KRAUS mark in its entirety and includes the descriptive term "online", which does not dispel the confusing similarity. Moreover, as detailed under the second element above, the disputed domain name resolves to a look-a-like website of the Second Complainant's official website. This indicates that the Respondent had the Complainants and the Second Complainant's trademarks in mind when registering the disputed domain name. The Respondent's knowledge of the Complainants and the KRAUS trademarks and therefore its registration in bad faith of the disputed domain name may accordingly also be inferred from these circumstances. [WIPO Overview 3.0](#), section 3.2.2.

Finally, the WHOIS details provided show that the Respondent used a privacy service. In addition, as demonstrated by documentation in the case file confirming that the courier service was unable to deliver a copywritten Notice of the Complaint due to a "bad address", the Respondent also provided false address details. These facts can be used as further indicators of bad faith. [WIPO Overview 3.0](#), section 3.6.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy. The Panel finds that the Complainants have 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, <onlinekraus.com>, be transferred to the Second Complainant.

/Benoit Van Asbroeck/

Benoit Van Asbroeck

Sole Panelist

Date: March 27, 2024