

ADMINISTRATIVE PANEL DECISION

Kin, Inc. v. wang xiansheng
Case No. D2022-1767

1. The Parties

The Complainant is Kin, Inc., United States of America (“United States”), represented by Fross Zelnick Lehrman & Zissu, PC, United States.

The Respondent is wang xiansheng, China.

2. The Domain Names and Registrar

The disputed domain names <kohllsonline.com>, <kohllsstore.com>, <kohlsinventory.com>, <kohlsnet.com>, <kohls-online.com>, and <kohls-store.com> (the “Domain Names”) are registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 16, 2022. On May 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On May 18, 2022, 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.

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 May 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 8, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 9, 2022.

The Center appointed Dawn Osborne as the sole panelist in this matter on June 15, 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 owns the trade mark KOHL'S registered, *inter alia*, in the United States for retail services since 1993.

The Domain Names, all registered in 2022, are currently not pointed to active websites. The "www.kohlsnet.com" and "www.kohlsstore.com" websites used the KOHL'S trade mark in logo form as a masthead, displayed an image of a KOHL'S department store, and otherwise appeared to be websites originating from the Complainant. The website associated with the Domain Name <kohllsonline.com> offered similar goods to those at "www.kohlsstore.com", using a different layout but still featuring the Complainant's word mark as a copyright notice that stated "Copyright 2022 © KOHL'S". There is no evidence that the other three Domain Names (<kohlsinventory.com>, <kohls-online.com> and <kohls-store.com>) were ever associated with active websites, but seem to resolve to a hosting provider's parking page.

5. Parties' Contentions

A. Complainant

The Complainant's contentions can be summarised as follows:

The Complainant owns the trade mark KOHL'S registered, *inter alia*, in the United States for retail services since 1993.

The first of the Domain Names, all registered in 2022, that came to the Complainant's attention was <kohlsnet.com>. When the Complainant originally discovered this Domain Name, it was being used in connection with a website that was passing itself off as the Complainant's own "www.kohls.com" website. The "www.kohlsnet.com" website used the KOHL'S trade mark in logo form as a masthead, displayed an image of a KOHL'S department store, and otherwise appeared to be a website originating from the Complainant.

Upon discovery of the <kohlsnet.com> Domain Name and associated website, the Complainant filed a complaint with the hosting provider on February 16, 2022, asking that hosting services be terminated. The hosting provider terminated the website at "www.kohlsnet.com" on or before February 24, 2022, but the website was reactivated shortly thereafter. The Complainant filed a second complaint with the hosting provider for the Domain Name <kohlsnet.com> on February 25, 2022. The website at "www.kohlsnet.com" was then disabled once more and remains inactive.

Despite having seen the website at "www.kohlsnet.com" terminated, the Respondent proceeded thereafter to register five additional Domain Names. The Domain Name <kohlsinventory.com> was registered on February 20, 2022, after the Complainant submitted its first complaint with the hosting provider for the Domain Name <kohlsnet.com>. The remaining Domain Names <kohllsonline.com>, <kohlsstore.com>, <kohls-online.com>, and <kohls-store.com> were registered between March 4, 2022 and March 7, 2022, after the website at "www.kohlsnet.com" had been terminated twice.

The website associated with the Domain Name <kohlsstore.com> appeared identical to the website that appeared at the Domain Name <kohlsnet.com> before that website was terminated: it displayed the KOHL'S trade mark in logo form as a masthead, an image of a KOHL'S department store, and otherwise appeared to be a website originating with the Complainant. The website associated with the Domain Name <kohllsonline.com> offered similar goods to those at the Domain Name <kohlsstore.com>, using a different layout but still featuring the Complainant's word mark as a masthead and a copyright notice that stated "Copyright 2022 © KOHL'S". The other three Domain Names (<kohlsinventory.com>, <kohls-online.com> and <kohls-store.com>) do not appear to have been associated with active websites.

Not only is the Whois information for these later-registered Domain Names identical to that for the Domain Name <kohlsnet.com>, but each of the Domain Names that had active websites associated with the Domain Names used the same template as the “www.kohlsnet.com” website before termination for their terms of service.

The Domain Names registered in 2022 are confusingly similar to the Complainant’s trade mark without its apostrophe which cannot be expressed in a domain name and adding only generic terms and/or a hyphen and/or misspelling the Complainant’s mark and adding the generic Top-Level Domain (“gTLD”) “.com”, none of which alterations are sufficient to prevent said confusing similarity.

The Respondent does not have rights or legitimate interests in the Domain Names, is not commonly known by the Domain Names and is not authorised by the Complainant.

None of the Domain Names appear to currently point to active websites.

The uses made by the Respondent are not a *bona fide* offering of goods or services or a legitimate noncommercial fair use. They are registration and use in opportunistic bad faith causing confusion amongst Internet users. The Domain Names other than <kohlsnet.com> were registered after the Complainant had objected to the Respondent’s use of the <kohlsnet.com> Domain Name, placing the Respondent on clear and unequivocal notice of the Complainant’s rights and its objections to the Respondent’s registration and use of the Domain Names incorporating the Complainant’s KOHL’S mark. The fact that the Respondent has registered a number of domain names containing the Complainant’s distinctive mark with a reputation in actual knowledge of the Complainant’s rights demonstrates a pattern of activity.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Domain Names consist of the Complainant’s KOHL’S mark (which is registered, *inter alia*, in the United States for retail services since 1993) or a misspelling of that mark, in every case without its apostrophe, and adding only a hyphen and/or the terms “online,” “store,” “inventory” or “net” and the gTLD “.com”.

In general domain names which incorporate an entire mark or a close misspelling of it are considered confusingly similar to that mark, while adding terms and/or a hyphen and a gTLD generally creates no distinction between a complainant’s mark and a disputed domain name under paragraph 4(a)(i) of the Policy. Omission of punctuation that cannot be expressed in domain names such as the possessive apostrophe in the Complainant’s mark in this case does not prevent confusing similarity between a domain name and a complainant’s mark.

Accordingly, the Panel holds that the Domain Names are confusingly similar to the Complainant’s registered mark.

As such the Panel holds that paragraph 4(a)(i) of the Policy has been satisfied.

B. Rights or Legitimate Interests

The Respondent is not authorised by the Complainant and does not appear to be commonly known by the Domain Names.

All of the Domain Names are not currently pointing to active websites. Inactive use does not demonstrate a *bona fide* offering of goods or services or a legitimate noncommercial or fair use.

Although no longer active “www.kohlsnet.com” and “www.kohllsstore.com” used the Complainant’s mark and logo as a masthead and a photograph of the Complainant’s store to purport to offer competing services. The website at “www.kohllsonline.com”, also no longer active, did use a different layout, offered similar products and featured a copyright notice that states “Copyright 2022 © KOHL’S”. The Panel finds this use confusing. As such it cannot amount to the *bona fide* offering of goods and services. The use of these Domain Names is commercial so cannot be legitimate noncommercial fair use.

The Respondent has not answered this Complaint and has not provided any explanation.

As such the Panelist finds that the Respondent does not have rights or a legitimate interests in the Domain Names and that the Complainant has satisfied the second limb of the Policy.

C. Registered and Used in Bad Faith

The use of the Domain Names that were pointed to active websites as detailed above either used the Complainant mark or logo as a masthead or referred to the Complainant in the copyright notice. Further the Complainant registered the Domain Names apart from <kohlsnet.com> after the Complainant complained about the website attached to <kohlsnet.com>. All of this taken together shows that the Complainant had actual knowledge of the Complainant’s rights and business before registration of any of the Domain Names and demonstrates a pattern of activity and competing behaviour.

In the opinion of the Panelist, the use made of the Domain Names which were pointed to active websites of the Respondent was confusing and disruptive in that visitors to the websites might reasonably believe they were connected to or approved by the Complainant as they offered competing services under the Complainant’s mark and/or logo as a masthead and/or used a photograph of the Complainant’s store and/or made reference to the Complainant in copyright notices for the websites.

Accordingly, in relation to the Domain Names which were used for active sites the Panel holds that the Respondent intentionally attempted to attract for commercial gain Internet users to his websites by creating a likelihood of confusion with the Complainant’s trade mark as to the source, sponsorship, affiliation or endorsement of the websites and services offered on them likely to disrupt the business of the Complainant.

None of the Domain Names are currently pointing to active websites. The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant seeks to profit from or exploit the trade mark of another. Registration and passive holding of a domain name containing a mark with a reputation in actual knowledge of that trade mark owner’s rights is bad faith registration and use. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

As such, the Panelist believes that the Complainant has made out its case that the Domain Names were registered and are being used in bad faith and has satisfied the third limb 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 Domain Names, <kohllsonline.com>, <kohllsstore.com>, <kohlsinventory.com>, <kohlsnet.com>, <kohls-online.com>, and <kohls-store.com>, be transferred to the Complainant.

/Dawn Osborne/

Dawn Osborne

Sole Panelist

Date: June 23, 2022