

ADMINISTRATIVE PANEL DECISION

LKQ Corporation v. david Yeckovich

Case No. D2023-2674

1. The Parties

Complainant is LKQ Corporation, United States of America (“United States”), represented by Irwin IP LLC, United States.

Respondent is David Yeckovich, United States.

2. The Domain Names and Registrar

The disputed domain names <lkq1.com>, and <lkq1.org> (the “Domain Names”) are registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 21, 2023. On June 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On June 22, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Names which differed from the named Respondent (Domains by Proxy, LLC) and contact information in the Complaint. The Center sent an email to Complainant on July 12, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on July 17, 2023.

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 Respondent of the Complaint, and the proceedings commenced on July 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 8, 2023. Respondent did not submit any formal response.

However, certain emails from persons (identifying as “David” and “Linda”) were received by the Center on June 27, 2023, July 4, 2023, and July 13, 2023, and the senders claimed to be the owner of the Domain Names, and requested copy of the Complaint.

On July 19, 2023, July 20, 2023, July 25, 2023, further emails were received from another person ("Cindy" with a "carsforsale.com" email address), stating that she does not own the Domain Names and her firm does not host the associated websites, and requesting removal from the correspondence. On August 23, 2023, Cindy emailed the Center again, asking to be removed from correspondence related to this dispute.

On August 1, 2023, and August 4, 2023, emails were received from yet another person ("Jalen"), in which Jalen stated that his firm manages a website (at "www.osmm.org") for a non-tech-savvy client, Our Sorrowful Mother's Ministry. In these emails, Jalen states that he does not know why the Domain Names currently resolve to the "www.osmm.org" website, and his client has no use for the Domain Names and no interest in this dispute. On August 23, 2023, Jalen sent another email to the Center, reiterating his client's position and asking what, if anything, his client is supposed to do about two Domain Names in which the client has no interest.

On August 2, 2023, an email was received by Respondent ("David"), stating that the Domain Names resolve to religious websites with anti-abortion content. Accordingly, the Center notified the Commencement of Panel Appointment Process on August 15, 2023.

The Center appointed Robert A. Badgley as the sole panelist in this matter on August 23, 2023. 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.

On August 25, 2023, Respondent ("David") sent another email to the Center, stating:

"Please look at our domain names lkq1.com and lkq1.org websites they are about religion. We are an anti-abortion organization, We believe we have saved over 200,000 babies' lives over the last 20 years, Our LKQ stands for Lord, King Queen. This complaint against us is frivolous and unfounded. The complainant stated we sell rosaries, we do not sell rosaries, but we have given away over one million rosaries since 2000. Look at our websites, the plaintiff apparently accepts the practice of killing babies through abortion, We are against the killing of babies through abortions, someone has to protect the most vulnerable - babies. vulnerable. Our Sorrowful Mother's Ministry".

4. Factual Background

Complainant describes itself as "a leading U.S. provider of alternative and specialty parts to repair and accessorize automobiles and other vehicles". Complainant now operates under the LKQ mark in 25 countries.

Complainant holds a registered trademark for LKQ with the United States Patent and Trademark Office ("USPTO"), Reg. No. 4,221,221, registered on October 9, 2012 in connection with "recycled auto parts supply services," with a 1998 date of first use in commerce. Complainant also holds USPTO Reg. No. 3,589,998 for the design mark LKQ CORPORATION, registered on March 17, 2009 in connection with "recycled auto parts supply services".

At its commercial website at <lkqonline.com>, Complainant states: "LKQOnline is the nation's largest online provider of aftermarket parts and recycled original equipment (OE) auto parts from these various car brands."

Complainant also operates a website at <lkqpickyourpart.com>, which operation Complainant describes as "the nation's largest buyer of used vehicles."

The Domain Name <lkq1.org> was registered on July 29, 2017, and the Domain Name <lkq1.com> was registered nine days later, on August 7, 2017.

For a time, the Domain Names resolved to a website purporting to be affiliated with the business "CarsForSale.com, Inc". At that site, according to Complainant, Respondent "offered to purchase vehicles

from others.” In a February 10, 2022 filing with the Mississippi Secretary of State, Respondent represented himself to be the manager of a company named LKQ Global, LLC, whose business, according to this filing, was “motor vehicle parts (used) merchant wholesalers”.

Complainant’s counsel sent Respondent a cease-and-desist letter on May 26, 2022. Respondent’s firm (LKQ Global LLC) initially appeared amenable to transferring the Domain Names to Complainant, but Respondent went silent in September 2022, and was not responsive to Complainant’s May 11, 2023 follow-up email.

On June 29, 2022, Complainant’s counsel sent CarsForSale.com, Inc. a cease-and-desist letter, asserting that the Domain Name <lkq1.org> resolved to the CarsForSale.com website in violation of Complainant’s trademark rights. CarsForSale.com, Inc. appears to have taken down the website in response to the cease-and-desist letter and advised Complainant’s counsel that CarsForSale.com, Inc. did not own the Domain Name <lkq1.org>.

More recently, according to July 19, 2023 screenshots included in the record, the Domain Names were redirected to a religious website, “www.osmm.org”, operated by Our Sorrowful Mother’s Ministry (“OSMM”). As noted above, OSMM, through its website manager Jalen, disavows any affiliation with Respondent and any interest in the Domain Names. Notwithstanding that disavowal by OSMM, in his August 25, 2023 email to the Center, Respondent refers to “OSMM” as “our organization”. There is no evidence in the record to support Respondent’s claim to be affiliated with OSMM.

In a June 2023 church bulletin for a Florida-based church, Respondent placed an advertisement, as a “parishioner” which described Respondent’s business as “Cash Buyer for All Antique & Classic Cars”.

5. Parties’ Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Names.

B. Respondent

Respondent did not formally reply to Complainant’s contentions. Respondent’s August 2, 2023, and August 25, 2023 emails to the Center, quoted above in the “Procedural History” section, constitutes Respondent’s entire substantive commentary in response to the allegations and arguments set forth in the Complaint.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to each of the Domain Names:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel concludes that Complainant has rights in the trademark LKQ through registration and use demonstrated in the record. The Panel also concludes that the Domain Names are confusingly similar to

that mark. The additional number “1” in the Domain Names does not alter the fact that the LKQ mark remains clearly recognizable within the Domain Names. Complainant has established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

For each of the Domain Names, pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel concludes that Respondent lacks rights or legitimate interests in connection with the Domain Names. The record shows that Respondent has been in the business of buying and/or selling automobiles and/or parts for several years, and as such operates in an overlapping area of commerce with Complainant. Respondent has never disputed the renown of Complainant’s LKQ trademark, and has never denied having knowledge of the mark when he registered the two Domain Names. Nor has Respondent ever disputed the allegation in Complainant’s cease-and-desist letter that social media posts proved that there was actual consumer confusion between the LKQ mark and Respondent’s website accessible via the Domain Names.

The Panel also finds Respondent’s last-minute claim that, for Respondent, LKQ means “Lord King Queen,” to be frivolous. There is no support for this claim, and there is no explanation why, in 2022 and perhaps earlier, Respondent’s automobile parts company was called LKQ Global LLC. The Panel also believes the disavowal by OSMM of any relationship with Respondent or any interest in the Domain Names which, it appears, were redirected to the OSMM website without that organization’s knowledge. The Panel finds it more likely than not that Respondent redirected the Domain Names to the OSMM website as a pretext to obscure his previously infringing uses of the Domain Names.

On the record presented, the Panel finds it more likely than not that Respondent’s motives *vis-à-vis* the Domain Names was to trade off the renown of Complainant’s established LKQ trademark for commercial gain in his own similar business. Such a use of the Domain Names is clearly not legitimate.

Complainant has established Policy paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

For each of the Domain Names, paragraph 4(b) of the Policy provides that the following circumstances, “in particular but without limitation,” are evidence of the registration and use of the Domain Name in “bad faith”:

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or

- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that Respondent registered and used the Domain Names in bad faith under the Policy. The Panel incorporates its discussion above in the "Rights or Legitimate Interests" section. As discussed above, on this record, the Panel finds that Respondent targeted Complainant's mark when registering the Domain Names, and sought to create a false impression of affiliation with Complainant in order to enhance his own commercial gain. This constitutes bad faith use within the meaning of the above-quoted Policy paragraph 4(b)(iv).

Complainant has established Policy paragraph 4(a)(iii).

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 <lkq1.com> and <lkq1.org> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: September 1, 2023