

## **ADMINISTRATIVE PANEL DECISION**

Synformulas GmbH v. Domain Admin

Case No. D2023-2757

### **1. The Parties**

The Complainant is Synformulas GmbH, Germany, represented by Boehmert & Boehmert, Germany.

The Respondent is Domain Admin, United States of America.

### **2. The Domain Names and Registrar**

The disputed domain names <kijimealiquid.com>, and <kijimearegularisplus.com> (the “Domain Names”) are registered with Dynadot, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 28, 2023. On June 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On June 29, 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 (Redacted For Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 13, 2023, 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 amendment to the Complaint on July 13, 2023.

The Center verified that the Complaint together with the amendment to 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 July 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 6, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 7, 2023.

The Center appointed Wolter Wefers Bettink as the sole panelist in this matter on August 16, 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.

#### **4. Factual Background**

The Complainant is active in the field of probiotics, focusing on research into intelligent bacteria for the treatment of patients with allergies and gastrointestinal diseases. The Complainant's key product is a preparation for the treatment of irritable bowel syndrome, which has been launched in 2011 under the brand KIJIMEA, which in 2020 had annual sales in Europe of more than EUR 60 million. The product is currently offered in 10 countries around the world.

The Complainant owns a number of trade marks, including (hereafter the "Trade Mark"):

- European Union trade mark KIJIMEA, registered under No. 008998486 on January 21, 2011

On March 24, 2023, the Complainant filed trade mark applications for new variations of its KIJIMEA product (hereafter the "Applications"):

- European Union trade mark KIJIMEA LIQUID, application No. 018852950, registered on July 13, 2023; and
- European Union trade mark KIJIMEA REGULARIS PLUS, application No. 018853004, registered on July 13, 2023.

The Domain Names have been registered on March 24, 2023. The Domain Names do not resolve to a website and have been offered for sale for a price of EUR 4,558.45 each.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant states that it is the registered owner of the Trade Mark, which consists of the term "kijimea", and that the Domain Names are confusingly similar to the Trade Mark, as the Trade Mark is recognizable within the Domain Names.

According to the Complainant, the added term "liquid" in the Domain Name <kijimealiquid.com> is descriptive indicating that the product is provided in liquid form. Likewise, the term "plus" in the Domain Name <kijimearegularisplus.com> is descriptive, while the element "regularis" will be perceived as a separate constituent of that Domain Name, besides the Trade Mark, which remains the distinctive element of both Domain Names.

The Complainant submits that it has not licensed or otherwise permitted the Respondent to use the Trade Mark or to register the Domain Names incorporating the Trade Mark and that the Respondent is not making a legitimate noncommercial or fair use of the Domain Names. The Complainant contends that the Respondent offers the Domain Names for sale for a price of EUR 4,558.45 each which is in excess of the Respondent's out-of-pocket costs for the registration of the Domain Names, while they were registered on the same day the Complainant filed the Applications. According to the Complainant, this shows that the Domain Names were registered primarily for the purpose of selling the Domain Names to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's out-of-pocket costs directly related to the Domain Names and that the Respondent therefore acted in bad faith under the Policy. Such use of the Domain Names cannot be considered a fair use and does not establish a legitimate interest on behalf of the Respondent, the Complainant purports.

The Complainant submits that it is evident from the Respondent's conduct that the Respondent knew of the Trade Mark when registering the Domain Names, as at that time the Trade Mark had been registered and intensively used for more than a decade. The Complainant also points to the fact that the Domain Names were registered on the same date that the Complainant filed the Applications, as evidence that the Respondent was aiming at the Trade Mark when registering the Domain Names, with the sole objective to sell the Domain Names at a price in excess of the Respondent's out-of-pocket registration costs. The Complainant concludes that the Respondent both registered and used the Domain Names in bad faith pursuant to Paragraph 4(b) (i) of the Policy.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar**

The Complainant has shown that it has registered rights in the Trade Mark. The Domain Names are confusingly similar to the Trade Mark as they incorporate KIJIMEA of which the Trade Mark consists, in its entirety. The addition of the term "liquid" in the Domain Name <kijimealiquid.com> and the terms "regularis" and "plus" in the Domain Name <kijimearegularisplus.com> does not prevent a finding of confusing similarity between the Domain Names and the Trade Mark (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8; see also, *inter alia*, *TPI Holdings, Inc. v. Carmen Armengol*, WIPO Case No. [D2009-0361](#), and *F. Hoffmann-La Roche AG v. John Mercier*, WIPO Case No. [D2018-0980](#)). Moreover, the Domain Names are identical to the Applications. The generic Top-Level Domain ".com" is typically disregarded under the confusing similarity test, since it is a technical registration requirement (see [WIPO Overview 3.0](#), section 1.11.1). Therefore, the Panel finds that the Domain Names are identical and/or confusingly similar to the trade marks in which the Complainant has rights.

### **B. Rights or Legitimate Interests**

Under paragraph 4(c) of the Policy, the second element a complainant has to prove is that a respondent lacks rights or legitimate interests in a domain name. This may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. In order to satisfy the second element, the Complainant has to make out a *prima facie* case that the Respondent does not have rights or legitimate interests in the Domain Name. If the Complainant succeeds in doing so, 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. If the Respondent fails to come forward with such relevant evidence, the Complainant is deemed to have satisfied the second element (see [WIPO Overview 3.0](#), section 2.1).

Based on the evidence and the undisputed submissions of the Complainant, the Panel concludes that the Respondent has no connection or affiliation with the Complainant, the Respondent has not received the Complainant's consent to use the Trade Mark as part of the Domain Names, and the Respondent has not acquired any trade mark rights in the Domain Names. In assessing whether the Respondent has rights or legitimate interests in the Domain Names, it should also be taken into account that (i) since the Domain Names incorporate the Trade Mark in its entirety with descriptive terms added, they carry a high risk of implied affiliation ([WIPO Overview 3.0](#), section 2.5.1); and (ii) the Respondent has not provided any evidence, nor is there any indication in the record of this case, that the Respondent is commonly known by the Domain Names. Furthermore, in view of the fact that the Domain Names are offered for sale for an amount in excess of the out-of-pocket registration costs, the Respondent is not making a legitimate noncommercial or fair use of the Domain Names, nor does such use constitute a *bona fide* offering of goods

or services.

In view of all of the above, the Panel concludes that the Complainant has established that the Respondent has no rights or legitimate interests in the Domain Names.

### **C. Registered and Used in Bad Faith**

Based on the undisputed information and the evidence provided by the Complainant, the Panel finds that there is bad faith registration. At the time of registration of the Domain Names, the Respondent was or should have been aware of the Complainant and the Trade Mark, since:

- the Respondent's registration of the Domain Names occurred some 11 years after the registration of the Trade Mark;
- the Domain Names incorporate KIJIMEA, of which the Trade Mark consists, in its entirety, and this is not a generic term, nor a name that it is likely that a registrant would spontaneously think of when registering a domain name;
- a simple trade mark register search, or even an Internet search, prior to registration of the Domain Names would have informed the Respondent of the existence of the Trade Mark.

With regard to bad faith use, the Panel finds that the following circumstances taken together warrant a finding of bad faith use of the Domain Names:

- the probability that the Respondent was aware or should have been aware of the Complainant's rights in the Trade Mark;
- the lack of a Response to the Complaint; and
- the offer to sell the Domain Names for an amount in excess of the out-of-pocket registration costs

Therefore, the Panel concludes on the basis of all of the above circumstances, taken together, that the Domain Names have been registered and are being used in bad faith.

### **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 names <kijimealiquid.com> and <kijimearegularisplus.com> be transferred to the Complainant.

*/Wolter Wefers Bettink/*

**Wolter Wefers Bettink**

Sole Panelist

Date: August 31, 2023