

ADMINISTRATIVE PANEL DECISION

Kimley-Horn and Associates, Inc. v. Name Redacted Case No. D2023-3634

1. The Parties

The Complainant is Kimley-Horn and Associates, Inc., United States of America (“United States”), represented by Nelson Mullins Riley & Scarborough, L.L.P., United States.

The Respondent is Name Redacted.¹

2. The Domain Name and Registrar

The disputed domain name <kimley-hcrn.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 29, 2023. On August 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 31, 2023, the Registrar transmitted by email to the Center its verification response, disclosing registrant and contact information for the disputed domain name that differed from the named Respondent (Domains by Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 4, 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 amended Complaint on September 5, 2023.

The Center verified that the Complaint, as amended, 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”).

¹ The Respondent appears to have used the name of a third party when registering the disputed domain name. Considering the potential identity theft, the Panel has redacted the Respondent’s name from this Decision. In addition, the Panel has attached as Annex 1 to this Decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and it has indicated Annex 1 to this Decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on September 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 28, 2023. The Respondent did not submit a Response and, accordingly, the Center noticed the Respondent's default on October 2, 2023.

The Center appointed Steven Auvil as the sole panelist in this matter on October 13, 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

According to the Complaint, the Complainant, Kimley-Horn and Associates, Inc, is a premier planning, engineering, and design consulting firm offering full services in a wide range of disciplines. Since 1967, the Complainant has continuously used the KIMLEY-HORN mark in connection with the marketing, advertising, and promotion of the Complainant's services. Because of its continuous and substantial investment in and use of the KIMLEY-HORN mark, the Complainant has acquired substantial brand recognition and goodwill in the marketplace.

According to the Complaint, the Complainant owns trademarks and service marks in connection with the KIMLEY-HORN brand, including, United States Registration No. 2788474 (registered December 2, 2003), and United States Registration No. 4685771 (registered February 10, 2015).

The Complainant also owns and uses the domain name <kimley-horn.com>.

The disputed domain name <kimley-hcn.com> was registered on August 7, 2023. According to the Complaint, the Respondent has used the disputed domain name as a host website featuring sponsored pay-per-click ("PPC") advertisements, when viewed on a mobile device, and on a GoDaddy landing page, when viewed on a desktop.

5. Parties' Contentions

A. Complainant

The Complainant alleges that the disputed domain name is confusingly similar to its KIMLEY-HORN mark because it is comprised solely of an obvious misspelling of the KIMLEY-HORN mark in which the Respondent substituted the letter "o" in the HORN element with the letter "c", a similarly appearing character. The Complainant contends that the disputed domain name is virtually identical to the Complainant's own <kimley-horn.com> domain name.

The Complainant also asserts that the Respondent has no rights or legitimate interests in the disputed domain name because the Respondent is not commonly known by the disputed domain name. The Complaint also alleges that the Complainant did not authorize the Respondent to use the KIMLEY-HORN mark and the Respondent is not a licensee of the KIMLEY-HORN mark. Additionally, the Complainant asserts that the Respondent is neither using the disputed domain name in connection with a *bona fide* offering of goods or services nor making a legitimate noncommercial or fair use of the disputed domain name. The Complainant alleges that the Respondent's sole intention with respect to registering the disputed domain name was to attract visitors to the website based on initial-interest confusion, primarily for the Respondent's own financial gain by generating revenue through the PPC ads on the website.

The Complainant further asserts that the Respondent registered and used the disputed domain name in bad faith with the sole intention of attempting to attract, for commercial gain, Internet users to the website and intended to do so via the initial interest confusion the Respondent knew the disputed domain name would create with the Complainant's KIMLEY-HORN mark.

Additionally, the Complainant asserts in the Complaint that given the notoriety of the KIMLEY-HORN mark, the Respondent knew of, or should have known, of the Complainant and the Complainant's rights in the KIMLEY-HORN mark when the Respondent registered the disputed domain name, evidencing bad faith in that there is no other plausible explanation for the Respondent's registration of the disputed domain name.

The Complainant requests that the disputed name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules: "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable." Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following to obtain relief:

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

In view of the Respondent's failure to submit a Response, the Panel is entitled to accept as true the allegations set forth in the Complaint, unless the evidence is clearly contradictory, and to derive reasonable inferences from the evidence presented. See *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#).

Based on the foregoing guidance, the Panel makes the following findings and conclusions based on the allegations and evidence contained in the Complaint and reasonable inferences drawn from the evidence presented.

A. Identical or Confusingly Similar

The evidence submitted by the Complainant supports the conclusion that the Complainant has protectable rights in KIMLEY-HORN. The Complainant owns two trademark registrations for KIMLEY-HORN. The Panel therefore finds that the Complainant has rights in the KIMLEY-HORN mark. *Kimley-Horn and Associates, Inc. v. Rachel Zona*, WIPO Case No. [D2023-1465](#).

Domain names that consist of a common, obvious, or intentional misspelling of a trademark are considered by panels to be confusingly similar to the relevant mark for purposes of the first element. See section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel observes that the Respondent apparently substituted the letter "c" for the letter "o" in the Complainant's KIMLEY-HORN mark to create the disputed domain name. Thus, this appears to be a classic case of "typosquatting," which UDRP panels have held support a finding of confusing similarity. *Kimley-Horn and Associates, Inc. v. McDougald, Brandon*, WIPO Case No. [D2022-3794](#).

Additionally, as set forth in section 1.11.1 of [WIPO Overview 3.0](#), the applicable generic Top-Level Domain (e.g., ".com", ".site", ".info", ".shop") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. As such, the use of ".com" in the disputed

domain name has no bearing on establishing identity or confusing similarity here. See *Calzaturificio Casadei S.p.A. V. Nancy Salvaggio*, WIPO Case No. [D2019-2329](#); *Ally Financial Inc. v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2020-2037](#).

Furthermore, the absence of a hyphen between “kimley” and “horn” in the disputed domain name does not prevent a finding of confusingly similar with the Complainant’s mark. *Kimley-Horn and Associates, Inc. v. Rachel Zona*, WIPO Case No. [D2023-1465](#).

In sum, considering the absence of a response from the Respondent, the Panel finds that the Complainant has proven that the disputed domain name is confusingly similar to the Complainant’s mark. Therefore, the first element of paragraph 4(a) of the Policy is met.

B. Rights or Legitimate Interests

From the Complainant’s allegations and evidence as well as the inferences drawn from the evidence, the KIMLEY-HORN mark is a distinctive and well-known mark registered by the Complainant. The Complainant alleges that it did not license or otherwise authorize the Respondent’s use of the KIMLEY-HORN mark as a domain name and that they have no affiliation, association, sponsorship, or connection with the Respondent. The Panel finds that the Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

Section 2.1 of [WIPO Overview 3.0](#) provides that “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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.” Here, the Respondent did not respond to the Complaint.

Moreover, given the inherently misleading nature of the disputed domain name due to its typosquatting nature, it is evident that the Respondent seeks to mislead Internet users expecting to find the Complainant. In view of the use of the disputed domain name for PPC links, the Respondent’s commercialization of this misleading disputed domain name cannot confer rights or legitimate interests upon the Respondent.

Under the circumstances, the Panel finds that the Respondent in fact has no rights or legitimate interests in the disputed domain name and that the second element of paragraph 4(a) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Section 3.1.4 of [WIPO Overview 3.0](#) provides that “[p]anels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.” Additionally, section 3.2.1 of [WIPO Overview 3.0](#) provides that “[p]articular circumstances panels may take into account in assessing whether the respondent’s registration of a domain name is in bad faith include: (i) the nature of the domain name (e.g., a typo of a widely-known mark, or a domain name incorporating the complainant’s mark plus an additional term such as a descriptive or geographic term, or one that corresponds to the complainant’s area of activity or natural zone of expansion) [...] (vi) a clear absence of rights or legitimate interests coupled with no credible explanation for the respondent’s choice of the domain name, or (viii) other indicia generally suggesting that the respondent had somehow targeted the complainant.”

Here, as noted above, the disputed domain name incorporates the entirety of the Complainant’s registered and well-known KIMLEY-HORN mark with the exception of an apparent typo, changing the letter “o” in horn to a letter “c.” Considering this and the other the circumstances, including the failure of the Respondent to respond to the Complaint and the Respondent’s apparent use of fraudulent details when registering the disputed domain name, the Panel finds that the Respondent knew of the Complainant’s KIMLEY-HORN

mark at the time of registering the disputed domain name and endeavored to unfairly capitalize on the mark for commercial gain. The Panel, therefore, finds that the disputed domain name was registered and used in bad faith and that the third element of paragraph 4(a) of the Policy is satisfied. *Kimley-Horn and Associates, Inc. v. Privacy service provided by Withheld for Privacy ehf/ Swickard Management Company*, WIPO Case No. [D2021-2615](#).

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, <kimley-hcrn.com>, be transferred to the Complainant.

/Steven Auvil/

Steven Auvil

Sole Panelist

Date: October 27, 2023