

## **ADMINISTRATIVE PANEL DECISION**

KIN, Inc. v. Xu Hai Min  
Case No. D2022-0975

### **1. The Parties**

The Complainant is KIN, Inc., United States of America (“United States” or “U.S.”), represented by Fross Zelnick Lehrman & Zissu, P.C., United States.

The Respondent is Xu Hai Min, China.

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

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

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on March 21, 2022. On March 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 23, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on March 25, 2022, 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 in English on March 30, 2022.

On March 25, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On March 25, 2022, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on April 1, 2022. In accordance with the

Rules, paragraph 5, the due date for Response was April 21, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 22, 2022.

The Center appointed Francine Tan as the sole panelist in this matter on April 27, 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, KIN, Inc., was founded in 1962 in the State of Nevada, United States. The Complainant is the owner of the KOHL'S trade mark. The Complainant's retail stores under the KOHL'S trade mark offer moderately-priced apparel, shoes, accessories, beauty, and home products. The Complainant states that Kohl's is one of the largest stores by retail sales in the United States. Prior to the launch of the Complainant's retail stores in 1962, the Kohl's trade name was used by the Complainant's predecessor in interest, Maxwell Kohl, in connection with Kohl's Food Stores group of grocery stores since 1951.

The Complainant currently operates more than 1,100 Kohl's retail stores. It also operates its business through its ecommerce website "www.kohls.com" as well as the Complainant's commerce mobile phone applications, which are available for download at both Apple and Google Play app stores. The Complainant also offers a Kohl's branded credit card for its customers to apply for and use. Over the past five years, the Complainant's average net annual sales have exceeded USD 18 billion.

The Complainant states it owns numerous trade mark registrations for KOHL'S in the U.S. and other jurisdictions (including China). In the U.S., the registrations include Trade Mark Registration Nos. 1772009 (registered on May 18, 1993), 2047904 (registered on March 25, 1997), and 2292684 (registered on November 16, 1999).

The Complainant states that it has extensive and strong common law rights in the KOHL'S trade mark, developed through decades of extensive use and promotion of the mark. The Complainant advertises and promotes its KOHL'S trade mark on social media and networking websites, including but not limited to, Facebook, Twitter, Pinterest, Instagram, and YouTube. As a result of its extensive advertising and promotional efforts, as well as the amount, volume, and geographic extent of sales made under the KOHL'S mark, the Complainant has gained widespread recognition and significant goodwill therein.

The disputed domain name was registered on July 9, 2002 and resolves to a parked page with pay-per-click ("PPC") links to third-party websites, many of which compete directly with the Complainant.

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

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

The disputed domain name is confusingly similar to the Complainant's KOHL'S mark. The disputed domain name comprises the Complainant's KOHL'S mark in its entirety, without the apostrophe and with the addition of the term "jobs". The exclusion of the apostrophe in the disputed domain name is irrelevant for the purposes of determining similarity since it is impossible to include an apostrophe in a domain name. The addition of the term "jobs" fails to eliminate any confusion between the disputed domain name and the KOHL'S trade mark but would, instead, increase the likelihood of confusion since Internet users would perceive that it leads to a website which provides information about working for the Complainant. The generic Top-Level Domain ("gTLD") ".com" need not be taken into consideration when determining confusing similarity.

The Respondent has no rights of legitimate interests in the disputed domain name. The registration of the disputed domain name took place after the Complainant had made extensive use of its KOHL'S mark and

after the Complainant obtained trade mark registrations of its mark around the world. There is no relationship between the Complainant and the Respondent, which would give rise to any license, permission, or authorization by which the Respondent could own or use the disputed domain name. The Complainant never authorized the Respondent to use the KOHL'S mark or any marks confusingly similar thereto, for any purpose, including as a domain name. The Respondent's only use of the disputed domain name is in connection with a parked website. Even if the Respondent has plans to use the disputed domain name for some other purpose, for which no evidence has been submitted by the Respondent, such use could not be legitimate since the Respondent has no relationship with the Complainant.

The Respondent has registered and used the disputed domain name in bad faith. There is no basis for the Respondent to have chosen the disputed domain name unless the Respondent was seeking to create an association with the Complainant. The disputed domain name incorporates the Complainant's KOHL'S mark and the term "jobs", which is a clear reference to the Complainant and employment at the Complainant's business or stores. The Respondent selected the disputed domain name to ride on the Complainant's rights and reputation. Given the fame of the Complainant's KOHL'S trade mark and the fact that the disputed domain name clearly references the Complainant's business, any visitors to the disputed domain name website are likely to believe, mistakenly, that the disputed domain name is owned by, related to, or associated with the Complainant. The Complainant's KOHL'S mark is immediately recognizable in the disputed domain name and the Respondent's use of the disputed domain name shows its familiarity with the mark and the fame associated therewith. The Respondent's registration and use of the disputed domain name therefore establishes opportunistic bad faith registration and use.

Although the disputed domain name was created in July, 2002, it appears to have been acquired by the Respondent at a much later date. An archived Whois report shows the change in ownership to have been saved on April 3, 2020.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1 Preliminary Issue: Language of the Proceeding**

The language of the Registration Agreement for the disputed domain name is Chinese.

The Complainant requested that the language of the proceeding be English. The reasons are that:

- (i) the disputed domain name is in the English language, incorporating the English word "jobs"; and
- (ii) the website to which the disputed domain name resolves is entirely in the English language.

The Respondent did not comment on the language of the proceeding.

Paragraph 11(a) of the Rules provides that:

"Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding."

The intention of paragraph 11(a) of the Rules is to allow panels some flexibility and discretion to consider the entire circumstances of each case, to ensure fairness between the parties, while at the same time not undermining the mandate for the proceeding to be administered in an expeditious manner. The relevant circumstances for consideration can include the parties' comfort level with the respective languages, the

expenses to be incurred and possibility of delay in the proceeding if translations are required, as well as the language of the domain name in dispute and of the resolving website.

Having considered the relevant factors and interests of the respective Parties in this case, the Panel determines that it would be appropriate for English be the language of the proceeding. The Panel is persuaded that the Respondent appears to be familiar and comfortable with the English language, taking into account his selection of the disputed domain name which comprises letters of the English alphabet and the English word “jobs”. In the absence of any objection and justification therefor by the Respondent, the Panel does not find it procedurally efficient to have the Complainant translate the Complaint into Chinese.

## **6.2 Substantive Issues**

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

The Complainant has established it has rights in the KOHL’S mark. The Panel agrees that the omission of the apostrophe and addition of the term “jobs” in the disputed domain name do not prevent a finding of confusing similarity with the Complainant’s trade mark. The KOHL’S trade mark is identifiable in the disputed domain name. The gTLD “.com” is a technical requirement for domain name registrations and generally does not have any impact on the issue of the identity or confusing similarity between the disputed domain name and the Complainant’s trade mark.

The Panel accordingly finds that the first element of paragraph 4(a) of the Policy has been satisfied.

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

The Panel finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant’s use of the KOHL’S trade mark (including that of its predecessor) dating back to 1951 and registrations of the KOHL’S trade mark long predate the registration date of the disputed domain name. The Complainant did not license nor authorize the Respondent to use the word “Kohl’s” as a trade mark or in a domain name. Neither is there evidence that the Respondent is commonly known by the disputed domain name. The use of the disputed domain name which incorporates the Complainant’s mark and the term “jobs” for a website containing PPC links does not constitute a legitimate noncommercial or fair use of the disputed domain name within the meaning of paragraph 4(c)(iii) of the Policy nor does it constitute a *bona fide* offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy. The Panel is persuaded that in this case, the disputed domain name was chosen by the Respondent probably with the intention to create confusion and/or convey an affiliation between the disputed domain name and the Complainant.

Having established a *prima facie* case, the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name. The Respondent failed to respond to or rebut the Complainant’s assertions in this proceeding, from which the Panel has drawn an adverse inference.

In the circumstances, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel therefore finds that the second element of paragraph 4(a) of the Policy has been satisfied.

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

The circumstances of this case suggest that the Respondent targeted the Complainant and its KOHL’S trade mark. There is no apparent reason for the Respondent to register the disputed domain name since it does not appear to be known by the name “Kohl’s” or “Kohl”, or to possess trade mark rights in either of these words, except to ride off the reputation and goodwill in the Complainant’s KOHL’S trade mark and to create some kind of confusion with the Complainant’s trade mark and business. 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” (see section 3.1.4 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition).

Further, the nature of the disputed domain name would lead Internet users into believing that the website associated with the disputed domain name may provide information about working for the Complainant. Moreover, the disputed domain name resolves to a website containing PPC links related to job applications.

In the absence of any evidence to the contrary, the Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith.

The Panel therefore finds that the third element of paragraph 4(a) of the Policy has been satisfied.

## **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 <kohlsjobs.com> be transferred to the Complainant.

*/Francine Tan/*

**Francine Tan**

Sole Panelist

Date: May 11, 2022