

ADMINISTRATIVE PANEL DECISION

J A Kemp LLP v. david baneim, Real estate agency in London, England
Case No. D2022-1355

1. The Parties

The Complainant is J A Kemp LLP, United Kingdom (“UK”), internally represented.

The Respondent is david baneim, Real estate agency in London, England, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <jakamp.com> is registered with Hosting Concepts B.V. d/b/a Registrar.eu (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 14, 2022. On April 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 18, 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 May 2, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant requested to suspend the proceeding on May 9, 2022 and the Center confirmed the suspension on May 13, 2022. On June 1, 2022, the Complainant filed an amendment to the Complaint and requested the reinstatement of the proceeding. The proceeding was reinstated on June 2, 2022.

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 June 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 23, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 27, 2022.

The Center appointed Tuukka Airaksinen as the sole panelist in this matter on July 7, 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 is a UK-based European Patent and Trade Mark Attorney firm specialized in intellectual property rights and domain name litigation, which has been founded in 1946 in London and expanded afterwards to Munich, Oxford, Cambridge and Paris.

The Complainant is the owner of the trademark J A KEMP, which is registered as a European Union trademark Under no. 16621559 as of September 20, 2017.

The disputed domain name was registered on April 7, 2022, and it resolves to an error page.

5. Parties' Contentions

A. Complainant

The disputed domain name is confusingly similar to the Complainant's trademark as it contains a highly similar representation of its trademark J A KEMP. The alteration of the Complainant's trademark, *i.e.* replacing the letter E with the letter A does not diminish the similarities at stake, especially taking into account the fact that the pronunciation of the sign would remain the same with the letter A instead of the letter E. The Complainant's trademark is clearly recognizable in the disputed domain name.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not authorized to use the Complainant's trademark and there is no affiliation between the Complainant and the Respondent. There is no evidence of use, or demonstrable preparations to use, the disputed domain name in connection with the *bona fide* offering of goods or services. There is also no evidence suggesting that the Respondent is commonly known by the disputed domain name.

The disputed domain name has been used for phishing. The disputed domain name was used to impersonate the Complainant in an email to one of the Complainant's clients.

The disputed domain name was used to impersonate a senior credit controller employed by the Complainant, in correspondence with a China-based law firm. An email was sent from an address including the terms "accounts receivable" and connected to the disputed domain name ("[...]@jakamp.com") asking the recipient to pay the Complainant's invoice to a new account, not controlled by the Complainant. The Complainant's employee who was impersonated by the Respondent uses a very similar email including the terms "accounts receivable" and "[...]@jakemp.com", when corresponding in respect of payments of the Complainant's invoices.

B. Respondent

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

6. Discussion and Findings

In order to obtain the transfer of a domain name, a complainant must prove the three elements of paragraph 4(a) of the Policy, regardless of whether the respondent files a response to the complaint or not. The first element is that the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights. The second element the complainant must prove is that the respondent has no

rights or legitimate interests in respect of the domain name. The third element the complainant must establish is that the domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires that the Complainant establishes that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. Consequently, the Complainant must prove that it has rights to a trademark, and that the disputed domain name is identical or confusingly similar to this trademark.

According to section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), "[t]he applicable Top Level Domain ('TLD') in a domain name (e.g., '.com', '.club', '.nyc') is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test".

Furthermore, "A domain name which consists of a common, obvious, or intentional misspelling of a trademark is 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 3.0](#).

The disputed domain name is confusingly similar to the Complainant's trademark, which is clearly recognizable in the disputed domain name. Replacing the letter "E" in the Complainant's trademark with the letter "A" in the disputed domain name does not change the overall similarity of the signs especially as their pronunciation remains the same.

This means that the disputed domain name is confusingly similar with the Complainant's trademark and hence the first element of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires that the Complainant establish that the Respondent has no rights or legitimate interests to the disputed domain name.

It is widely accepted among UDRP panels that once a complainant has made a *prima facie* case showing the absence of the respondent's rights or legitimate interests in a disputed domain name, the burden of production shifts to the respondent to come forward with evidence of such rights or legitimate interests. If the respondent fails to do so, the complainant is deemed to have satisfied the second element of the Policy. See, e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#); and section 2.1 of the [WIPO Overview 3.0](#).

The Complainant has credibly submitted that the Respondent is neither affiliated with the Complainant in any way nor has it been authorized by the Complainant to use and register the disputed domain name, that the Respondent has no rights or legitimate interests in the disputed domain name, and that the Respondent has not made and is not making a legitimate noncommercial or fair use of the disputed domain name, and is not commonly known by the disputed domain name in accordance with paragraph 4(c)(ii) of the Policy.

Because the disputed domain name has been used for fraudulent purposes, it is evident that the Respondent has not used or intended to use the disputed domain name for any legitimate or rightful purpose.

Accordingly, the Panel finds that the Complainant has made a *prima facie* case that has not been rebutted by the Respondent. Considering the Panel's findings below, the Panel finds that there are no other circumstances that provide the Respondent with any rights or legitimate interests in the disputed domain name. Therefore, the Panel finds that the second element of the Policy is fulfilled.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the Complainant establish that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy provides that the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of the disputed domain name in bad faith:

“(i) circumstances indicating that [the respondent has] registered or has acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of [the respondent’s] documented out-of-pocket costs directly related to the domain name; or

(ii) [the 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 [the respondent has] engaged in a pattern of such conduct; or

(iii) [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent’s] website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of [the respondent’s] website or location or of a product or service on [the respondent’s] website or location.”

The disputed domain name currently does not resolve to an active website, but to an error page. However, considering that the disputed domain name has been used for fraudulent purposes, *i.e.* the Respondent has sent an email pretending to be an employee of the Complainant in order to mislead the Complainant’s client to transfer money to a new account, likely controlled by the Respondent, the Panel finds that the disputed domain name was registered and is being used in bad faith.

Therefore, the Panel finds that the third element of the Policy is fulfilled

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 <jakamp.com> be transferred to the Complainant.

/Tuukka Airaksinen/

Tuukka Airaksinen

Sole Panelist

Date: July 21, 2022