

ADMINISTRATIVE PANEL DECISION

Krispy Kreme Doughnut Corporation, HDN Development Corporation v.
Privacy Service Provided by Withheld for Privacy ehf / SALEH BAHJAT
Case No. D2022-2376

1. The Parties

The Complainants are Krispy Kreme Doughnut Corporation and HDN Development Corporation, United States of America (“United States”), represented by Kilpatrick Townsend & Stockton LLP, United States.

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / SALEH BAHJAT, United States.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 29, 2022. On June 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 30, 2022, the Registrar transmitted by email to the Center its verification response 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 Complainants on July 1, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint on July 1, 2022.

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 of the Complaint, and the proceedings commenced on July 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 26, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 27, 2022.

The Center appointed William F. Hamilton as the sole panelist in this matter on August 3, 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 HDN Development Corporation is a subsidiary of Complainant Krispy Kreme Corporation. The Complainants have a mutual interest in the KRISPY KREME trademark (the “Mark”). Accordingly, the two Complainants will be referred to collectively in this decision as the “Complainants.”

The Mark is internationally recognized. The amended Complainant and its Annexes establish that the Mark is used in more than twelve hundred retail locations in more than thirty countries around the world. The Complainants’ Mark branded products are made with Complainants’ proprietary equipment and sold primarily through company-owned stores, domestic franchises, and international franchises. In 2021, the Complainants spent over USD 39 million in the marketing of their Mark branded products and services resulting in total revenues of more than USD 1.384 billion.

Since 1998, the Complainants have owned and used the domain name <krispykreme.com>.

The Complainants own more than four hundred trademark and service mark registrations for the Mark worldwide, including many on the Principal Register of the United States Patent and Trademark Office Registration, the earliest of which is Registration No. 0938245 dated July 18, 1972.

The disputed domain name was registered on September 15, 2021. The Annexes to the amended Complainant establish that at the time of the filing of the Complainant the disputed domain name resolved to a website featuring the Complainants’ Mark and the Complainants’ famous registered mark.



The disputed domain name as of this writing does not resolve to an active website.

5. Parties’ Contentions

A. Complainant

The Complainants assert that the disputed domain name is confusingly similar to the Mark because the disputed domain name is composed of the Complainants’ Mark and the dictionary term “franchising.”

The Complainants assert that the Complainants have never authorized the Respondent to use the disputed domain name, that the Respondent is not generally known by the disputed domain name, and that the Respondent has never engaged in any *bona fide* commercial activity in connection with the disputed domain name.

The Complainants assert that the Respondent registered and used the disputed domain name in bad faith as part of a scheme to trick unsuspecting persons to provide information and money to the Respondent while believing they were dealing with the Complainants hoping to obtain a Mark branded franchise.

B. Respondent

The Respondent did not reply to the Complainants’ contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainants must satisfy the Panel that:

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

A. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar to the Complainants' Mark.

The disputed domain name is composed entirely of the Complainants' Mark with the addition of the word "franchising". A domain name which wholly incorporates a complainant's registered mark is sufficient to establish confusingly similarity for the purposes of the Policy when, as here, the addition to the Mark is a generic or dictionary term. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7; *Nomura International Plc / Nomura Holdings, Inc. contre Global Domain Privacy / Nicolas Decarli*, WIPO Case No. [D2016-1535](#) (transferring <nomura-bank.com>). See also [WIPO Overview 3.0](#), section 1.8 ("where the relevant trademark is recognizable with the disputed domain name, the additions of other terms (whether descriptive, geographic, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element"); *Nomura International Plc and Nomura Holdings, Inc. v. Whois Privacy Protection Service, Inc. / PUK SERVICES*, WIPO Case No. [D2015-2036](#) (transferring <nomuralabuan.com>); *Nomura International Plc. v. Name Redacted*, WIPO Case No. [D2021-0654](#).

The generic Top-Level Domain ("gTLD") of the disputed domain name, in this case ".com", may be disregarded for the purposes of assessment under the first element, as it is viewed as a standard registration requirement. See [WIPO Overview 3.0](#), section 1.11.1. *Monster Energy Company, a Delaware Corporation v. J.H.M. den Ouden*, WIPO Case No. [D2016-1759](#) (transferring <monsterenergy.world>).

The Complainants have met their burden under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainants have specifically disavowed providing the Respondent with permission to use the disputed domain name or the Mark. The Respondent is not affiliated with the Complainants in any way and does not have any business relationship with the Complainants. There is no evidence that the Respondent has conducted any *bona fide* business under the disputed domain name or is commonly known by the disputed domain name. *Compagnie de Saint Gobain v. Com-Union Corp.*, WIPO Case No. [D2000-0020](#).

The Complainants have thus established a *prima facie* case in its favor, which shifts the burden of production on this point to the Respondent. The Respondent, however, has failed to come forth with any evidence showing any rights or legitimate interests in the disputed domain name.

Furthermore, the disputed domain name carries a risk of implied affiliation with the Complainants. See [WIPO Overview 3.0](#), section 2.5.1. The association of the word "franchising" attached to the Mark clearly suggests to that the disputed domain name will resolve to a website offering franchises. Indeed, the disputed domain name resolves to a website deceptively offering Mark branded franchises for sale once an applicant has completed a detailed applications containing personal and financial information and submitted a large sum of money.

The facts and circumstances presented to the Panel demonstrate that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Complainants have met their burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Under paragraph 4(b) of the Policy, bad faith may be established by any one of the following scenarios:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name 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 its website or other on-line 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 Panel finds the disputed domain name was registered and is being used in bad faith.

On the evidence presented, it is obvious that the disputed domain name was registered and used in bad faith as part of a scheme to bilk money and personally identify information from unsuspecting persons who wished to obtain a franchise from the Complainants. The Annexes to the amended Complainant actually show unsuspecting persons receiving and responding to fraudulent emails utilizing the disputed domain name. The Respondent's disputed domain name and its intentionally deceptive website present a classic case of fraud and misrepresentation. The utilization of a disputed domain name in such a scheme is paradigmatic bad faith registration and use. *Pfizer Inc. v. Sarthak Kapoor*, WIPO Case No. [D2019-0292](#); *Desko GmbH v. Mustafa Mashari*, WIPO Case No. [D2015-0817](#). Under the circumstances of this case, the fact that the disputed domain name no longer resolves to an active website is of no consequence for the purposes of this decision and a finding of bad faith registration and use.

Moreover even disregarding the foregoing analysis, it is difficult to conceive of any use that the Respondent might make of the disputed domain name without the Complainants' consent that would not involve bad faith. *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *Verner Panton Design v. Fontana di Luce Corp.*, WIPO Case No. [D2012-1909](#) ("where the reputation of a complainant in a given mark is significant and the mark bears strong similarities to the disputed domain name, the likelihood of confusion is such that bad faith may be inferred"); *DPDgroup International Services GmbH & Co. KG v. Wise One, Wilson TECH*, WIPO Case No. [D2021-0109](#); *Monster Energy Company v. PrivacyDotLink Customer 116709 / Ferdinand Nikolaus Kronschnabl*, WIPO Case No. [D2016-1335](#).

The Complainants have met their burden under paragraph 4(a)(iii) of the Policy.

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 <krispykremfranchising.com> be transferred to the Complainants.

/William F. Hamilton/

William F. Hamilton

Sole Panelist

Date: August 17, 2022