

ADMINISTRATIVE PANEL DECISION

Keller Group plc v. Alan Cummins
Case No. D2023-0775

1. The Parties

The Complainant is Keller Group plc, United Kingdom (“U.K.”), represented by Barker Brettell LLP, U.K.

The Respondent is Alan Cummins, Mexico.

2. The Domain Name and Registrar

The disputed domain name <kellergroupplc.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 21, 2023. On February 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 February 23, 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 February 28, 2023.

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 March 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 23, 2023.

The Center appointed Fabrizio Bedarida as the sole panelist in this matter on March 24, 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 in this proceeding, a U.K. company established in 1860, is a large independent ground engineering contractor, providing technically-advanced and cost-effective foundation, retention, and soil treatment solutions. It has operations in more than 40 countries across six continents.

The Complainant owns the KELLER trademarks.

The Complainant is, *inter alia*, the owner of:

- U.K. trademark registration number 3190599 for the KELLER trademark, registered on March 17, 2017.
- U.K. trademark registration number 3190602 for the KELLER device trademark, registered on March 17, 2017.
- European Union trademark registration number 1413014 for the KELLER trademark, registered on July 18, 2017.
- European Union trademark registration number 1385425 for the KELLER device trademark, registered on July 18, 2017.

The disputed domain name was registered on September 19, 2022.

According to the evidence provided with the Complaint, the disputed domain name does not direct to any active website, but it has been used to impersonate a representative of the Complainant to perpetrate financial fraud through email communications.

5. Parties' Contentions

A. Complainant

The Complainant claims that the disputed domain name contains the Complainant's trademark KELLER and the company name Keller Group plc in their entirety.

The Complainant further states that the Respondent has no rights or legitimate interests whatsoever with respect to the disputed domain name. No license or authorization of any other kind has been given by the Complainant to the Respondent to use the KELLER trademark.

Moreover, the Complainant asserts that KELLER is a renowned trademark, used since 1860, and consequently the Respondent was aware of the rights the Complainant has in the KELLER trademark at the time of the registration.

The Complainant also affirms that although the Respondent is not using the disputed domain name to host a legitimate website, the Respondent has however used the disputed domain name for a corresponding email address from "@kellergroupplc.com", and that the email has an address that was used to impersonate an alleged representative of the Complainant in order to perpetrate financial fraud. In support of this argument the Complainant has provided copies of emails originating from an address from "[...]"@kellergroupplc.com" which bear the official KELLER logo and contact information in their signature and of a contract negotiated with a third party by an alleged "senior purchase buyer" of the Complainant using the business email address

"[...]@kellergroupplc.com". The Complainant thus asserts that the Respondent's passive holding of the disputed domain name as well as the use of the disputed domain name to perpetrate financial fraud constitutes bad faith pursuant to Policy paragraph 4(b)(ii) and 4(b)(iv).

The Complainant thus concludes that the Respondent tried to benefit from the Complainant's renowned trademark, and that the disputed domain name has been registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

In order for the Complainant to obtain a transfer of the disputed domain name, paragraphs 4(a)(i) – (iii) of the Policy require that the Complainant must demonstrate to the Panel that:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and page 4

(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has established rights in the KELLER trademark.

The disputed domain name contains the Complainant's trademark KELLER combined with the terms "group" and "plc".

This Panel agrees with the Complainant's assertion that addition of the above terms in the disputed domain name does not prevent a finding of confusing similarity between the Complainant's trademark and the disputed domain name.

See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.8: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element". Furthermore, the applicable generic Top-Level Domain ("gTLD") ".com" is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.

Therefore, the Panel finds the disputed domain name to be confusingly similar to the KELLER trademark in which the Complainant has rights.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

This Panel finds that the Complainant has made a *prima facie* case that the Respondent does not have rights or legitimate interests in the disputed domain name. The Respondent has no connection or affiliation with the Complainant, and the Complainant has not licensed or otherwise authorized the Respondent to use or register any domain name incorporating the Complainant's trademark. The Respondent does not appear to engage in any legitimate noncommercial or fair use of the disputed domain name, nor any use in connection with a *bona fide* offering of goods or services, but is rather misrepresenting itself as the

Complainant for apparent fraudulent purposes. In addition, the Respondent does not appear to be commonly known by the disputed domain name or by a similar name.

Moreover, the Respondent has not replied to the Complainant's contentions, claiming any rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel, on the basis of the evidence presented, accepts and agrees with the Complainant's contentions that the disputed domain name was registered and has been used in bad faith.

The Panel is of the opinion that the Respondent was aware of the Complainant's trademark registrations and rights to the KELLER mark when it registered the disputed domain name.

The Complainant's trademark has been registered and used for many decades and is a renowned trademark. Hence, the registration of the disputed domain name does not seem to be a coincidence, and thus indicates that the Respondent knew of the Complainant's trademark and intentionally intended to create an association with the Complainant and its business at the time of the registration of the disputed domain name.

A decisive and *per se* sufficient factor supporting the conclusion of bad faith registration and use of the disputed domain name can be found in the use of the disputed domain name to impersonate an alleged representative of the Complainant in order to perpetrate financial fraud.

In fact, as clearly expressed in *Nelson Mullins Riley & Scarborough LLP v. Contact Privacy Inc. Customer 1246819098 / Debbi Scott*, WIPO Case No. [D2020-1404](#), the Respondent's impersonation of the Complainant using an email address originating from a disputed domain name "...for an apparent phishing scam... is very far from giving rise to any right or legitimate interest in the Disputed Domain Name on the part of the Respondent. Indeed, on the contrary, it signals that whatever interest the Respondent might have had in the Disputed Domain Name could not be legitimate".

The failure to respond to the Complainant's contentions, and the Respondent's lack of any rights or legitimate interests in the disputed domain name, further supports a finding of bad faith.

Accordingly, the Panel finds, on the basis of the evidence presented, that the Respondent registered and is using the disputed domain names in bad faith.

Therefore, the Complainant has satisfied 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, <kellergroupplc.com> be transferred to the Complainant.

/Fabrizio Bedarida/

Fabrizio Bedarida

Sole Panelist

Date: April 7, 2023