

ADMINISTRATIVE PANEL DECISION

Kvasir Technologies ApS v. Tech Ops, FutureSpark
Case No. D2023-2886

1. The Parties

The Complainant is Kvasir Technologies ApS, Denmark, represented by Chas. Hude A/S, Denmark.

The Respondent is Tech Ops, FutureSpark, United States of America (“United States”), represented by Lewis & Lin, LLC, United States.

2. The Domain Name and Registrar

The disputed domain name <kvasir.com> is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 6, 2023. On July 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 7, 2023, 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 (Dynadot, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 7, 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 July 10, 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 July 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 7, 2023. The Response was filed with the Center on August 7, 2023.

The Center appointed Edoardo Fano as the sole panelist in this matter on August 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.

The Panel has not received any requests from the Complainant or the Respondent regarding further submissions, waivers or extensions of deadlines, and the Panel has not found it necessary to request any further information from the Parties.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

4. Factual Background

The Complainant is Kvasir Technologies ApS, a Danish company operating in the field of biofuel technology, and owning the following trademark registrations for KVASIR:

- European Union Trade Mark Registration No. 018495794 for KVASIR, applied for on June 17, 2021, and registered on October 22, 2021;
- United States Trademark Registration No. 7,103,040 for KVASIR, applied for on October 26, 2021, and registered on July 11, 2023.

The Complainant also operates on the Internet, its website being “www.kvasirtechnologies.com”.

The Complainant provided evidence in support of the above.

In July 2022, the Complainant tried to buy the disputed domain name in an auction at DropCatch.com, without winning the action.

According to the Whois records, the disputed domain name was registered on July 25, 2022, and it resolves to a webpage in which there is a reference to the current Complaint as well as to the DropCatch.com auction bidding history of July 2022 concerning the disputed domain name. However, the Complainant has provided evidence that before the Complaint was filed the disputed domain name resolved to a webpage in which it was offered for sale for USD 124,700.

The Respondent is Tech Ops, FutureSpark, a United States company acquiring and developing or reselling valuable and brandable domain names, owning the disputed domain name after winning it as the highest bidder at an auction at DropCatch.com in July 28, 2022, for the price of USD 7,175.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that disputed domain name is identical to its trademark KVASIR.

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name, since the Respondent is not commonly known by the disputed domain name and is not using the disputed domain name for legitimate reasons, but instead is trying to sell it to the highest bidder.

Finally, the Complainant submits that the Respondent has registered and is using the disputed domain name in bad faith, since the Respondent is trying to sell the disputed domain name to the highest bidder because of the value that other parties have brought to the name KVASIR.

B. Respondent

The Respondent contends that the Complainant has not satisfied all the elements required under the Policy for a transfer of the disputed domain name and therefore requests the denial of the relief requested in the Complaint.

Notably, the Respondent acknowledges as undisputable that the disputed domain name is identical to the Complainant's trademark KVASIR. However, the Respondent asserts that in the Norse mythology "Kvasir" is a poet, often regarded as the wisest of all men and also as a God, and that the Complainant is not the only company having trademark rights on the term "Kvasir", but instead there are several trademark registrations all over the world, as well as several domain name registrations, consisting of or including the term "Kvasir", in respect of various goods and/or services.

Moreover, the Respondent submits that its business is to acquire the most valuable and brandable domain names, as it did in the past by registering also other names corresponding to Gods and mythological figures, and therefore to have the right to register the disputed domain name for its potential, since it consists of a nonexclusive term: the Respondent purchased the disputed domain name on July 28, 2022, by making the winning bid in a public auction held on DropCatch.com, an auction in which also the Complainant participated under a masked identity and lost.

Finally, the Respondent has provided sworn testimony that it had no knowledge of the Complainant or its trademark and did not register the disputed domain name to target the Complainant. The Respondent asserts that it had never heard of the Complainant and its trademark prior to the current proceeding, and therefore it did not target the Complainant. The Respondent contends to have registered the disputed domain name in good faith as it consists of the name of a Norse God and because of its great potential. The Respondent is not using the disputed domain name in bad faith when trying to sell it to the highest bidder, since selling a common, dictionary word domain name is recognised to be a legitimate, good faith use of a domain name. Furthermore, the Respondent does not use the disputed domain name to compete with the Complainant in any way, nor to divert users looking for the Complainant, and the Respondent has never contacted the Complainant in order to sell the disputed domain name.

The Respondent requests that the Panel issue a finding of Reverse Domain Name Hijacking since the Complainant brought this Complaint without any genuine evidence of targeting or awareness of the Complainant at the time that the disputed domain name was registered. It also states that the Complainant brought this Complaint after losing an auction to purchase the disputed domain name.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements, which the Complainant must satisfy in order to succeed:

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

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

It is also well accepted that a generic Top-Level Domain (“gTLD”), in this case “.com”, is typically ignored when assessing the similarity between a trademark and a domain name. [WIPO Overview 3.0](#), section 1.11.1.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, 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. [WIPO Overview 3.0](#), section 2.1.

The Complainant in its Complaint, and as set out above, has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. It asserts that the Respondent, who is not currently associated with the Complainant in any way, is not commonly known by the disputed domain name and is not making a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name, but instead is trying to sell it to the highest bidder.

The *prima facie* case presented by the Complainant is enough to shift the burden of production of evidence to the Respondent to demonstrate that it has rights or legitimate interests in the disputed domain name.

As mentioned above, the Respondent claims to have registered the disputed domain name for its inherent value as a valuable dictionary word “.com” domain name and as part of its business of investing in such domain names.

As discussed further under the third element below, the Panel considers that the Respondent selected and acquired the disputed domain name because of its perceived value, rather than because it corresponds to the Complainant’s trademark, and at the same time the Panel considers it unlikely that the Respondent was aware of the Complainant’s trademark at the time it selected and acquired the disputed domain name.

As stated in section 2.1 of the [WIPO Overview 3.0](#), “[...] Over the course of many UDRP cases, panels have acknowledged further grounds which, while not codified in the UDRP as such, would establish respondent rights or legitimate interests in a domain name. For example, generally speaking, panels have accepted that aggregating and holding domain names (usually for resale) consisting of acronyms, dictionary words, or common phrases can be *bona fide* and is not per se illegitimate under the UDRP”.

The Panel does not consider that the right to register such dictionary words is unlimited since, by knowing of a complainant’s trademark, and registering a domain name that copies the trademark, or by using it to target the trademark owner, the registrant of that domain name would put at risk its claim to have acquired rights or

legitimate interests in the domain name. However, in the present case, the Panel deems that the above factors are absent as there is no evidence suggesting that the Respondent has targeted the Complainant. [WIPO Overview 3.0](#), section 2.10.1.

Based on the available record, the Panel finds the second element of the Policy has not been established.

C. Registered and Used in Bad Faith

Although the Panel's finding under the above section 6.B would be sufficient to enable a decision to be reached in relation to this Complaint, the Panel also finds that there is no evidence that the disputed domain name has been registered and used in bad faith.

Paragraph 4(b) of the Policy provides that "for the purposes of paragraph 4(a)(iii) of the Policy, 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 a 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 the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or
- (ii) that [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) that [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that 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 Complainant claims the Respondent has registered and is using the disputed domain name in bad faith, since the Respondent is trying to sell the disputed domain name to the highest bidder because of the value that other parties have brought to the name "kvasir". On the other hand, the Respondent submits that the disputed domain name was not registered and is not used in bad faith, since the Respondent was not aware of the Complainant's trademark at the time it registered the disputed domain name, nor was the disputed domain name registered with an intent to profit from or otherwise abuse the Complainant's trademark rights, but instead in order to sell it in the ordinary course of its legitimate business in good faith.

The Panel finds that the Complainant has not provided adequate evidence in order to demonstrate that the Respondent targeted its trademark when registering the disputed domain name, or better still when purchasing it in a public auction.

As stated in section 3.2.2 of the [WIPO Overview 3.0](#) "[...] On the other hand, where the complainant's mark is not inherently distinctive and it also corresponds to a dictionary term or is otherwise inherently attractive as a domain name (e.g., it is a short combination of letters), if a respondent can credibly show that the complainant's mark has a limited reputation and is not known or accessible in the respondent's location, panels may be reluctant to infer that a respondent knew or should have known that its registration would be identical or confusingly similar to the complainant's mark."

Therefore, the Panel finds that the Respondent did not register the disputed domain name to target the Complainant and its trademark. In view of the above, also the offer for sale of the disputed domain name to the highest bidder is not an evidence of the Respondent's bad faith registration and use of the disputed

domain name.

Based on the available record, the Panel finds the third element of the Policy has been established.

D. Reverse Domain Name Hijacking

Paragraph 15(e) of the UDRP Rules provides that, if “after considering the submissions the Panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the Panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.”

The Rules define Reverse Domain Name Hijacking (“RDNH”) as “using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name”.

The Respondent has sought a finding of RDNH be made against the Complainant.

The Panel also bears in mind that the Complainant in this case is represented by Counsel and, therefore, it should be held to a higher standard. [WIPO Overview 3.0](#), section 4.16

As stated in section 4.16 of the [WIPO Overview 3.0](#) “[...] Reasons articulated by panels for finding RDNH include: (i) facts which demonstrate that the complainant knew it could not succeed as to any of the required three elements – such as the complainant’s lack of relevant trademark rights, clear knowledge of respondent rights or legitimate interests, or a clear knowledge of a lack of respondent bad faith (see generally section 3.8) such as registration of the disputed domain name well before the complainant acquired trademark rights, [...] (vii) filing the complaint after an unsuccessful attempt to acquire the disputed domain name from the respondent without a plausible legal basis [...]”.

As detailed in the above analysis of the second and third elements, the Panel finds that the Complainant and its Counsel have contravened the above RDNH bases, because of their knowledge of a lack of the Respondent’s bad faith directed towards the Complainant, making the assertion that the Respondent must have been targeting the Complainant highly unlikely. Finally, as it has been stated in previous decisions, a complainant is at risk of a RDNH declaration when its attempt to try and buy a domain name is not successful, and it tries to obtain it by using, or rather “abusing”, the UDRP.

7. Decision

For the foregoing reasons, the Complaint is denied and the Panel declares that the Complaint was brought in bad faith in an attempt at Reverse Domain Name Hijacking.

/Edoardo Fano/

Edoardo Fano

Sole Panelist

Date: September 1, 2023