

## **ADMINISTRATIVE PANEL DECISION**

Kevin Murphy Professional Pty. Ltd. v. alex zender  
Case No. D2023-4393

### **1. The Parties**

The Complainant is Kevin Murphy Professional Pty. Ltd., Australia, represented by 101domain.com, United States of America (“United States”).

The Respondent is alex zender, United States.

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

The disputed domain name <kevinmurphyus.com> is registered with Key-Systems GmbH (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 23, 2023. On October 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 25, 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 (On behalf of kevinmurphyus.com OWNER) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 30, 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 October 31, 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 November 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 23, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 28, 2023.

The Center appointed Zoltán Takács as the sole panelist in this matter on December 6, 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**

Founded by the renowned hair stylist Kevin Murphy, the Complainant is one of the most globally recognized professional hair care companies.

The Complainant has been operating in the professional hair care industry since 2004. Its hair salons present in 40 countries and nearly all of its products are distinctively labeled with the “Kevin Murphy” brand name.

The Complainant is among others owner of the United States Trademark Registration No. 4623077 for the word mark KEVIN MURPHY, registered since October 21, 2014, for variety of goods and services.

The Complainant also maintains a portfolio of approximately 50 domain names consisting of its trademark KEVIN MURPHY. Its primary website at “www.kevinmurphy.com.au” provides an online marketplace for customers to browse broad ranges of KEVIN MURPHY branded hair care products and services.

The disputed domain name was registered on November 11, 2022, and was used in connection with a fraudulent scam designed to defraud consumers looking for the Complainant and its KEVIN MURPHY trademarked products. On February 19, 2023, the hosting provider suspended the disputed domain name for the reported fraudulent activity and currently the disputed domain name does not resolve to an active website.

#### **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:

- the disputed domain name, which fully incorporates its KEVIN MURPHY trademark, is confusingly similar to the Complainant’s trademark because the addition of the term “us”, which is the common abbreviation for the United States, is not sufficient to distinguish the disputed domain name from the trademark;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- the Respondent has unlawfully used the disputed domain name to confuse and defraud customers looking for the Complainant, issuing false invoices and invalid corporate certificates.

The Complainant requests that the disputed domain name be transferred from the Respondent to the Complainant.

##### **B. Respondent**

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

## 6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel's decision be made "on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

A complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely that:

- (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the 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 confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here "us", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Complainant was made aware of the registration and use of the disputed domain name due to numerous customer complaints reporting falsified invoicing and false company certificates tied to the disputed domain name. One of the Complainant's customers filed a formal complaint after being defrauded for significant amount of money reflected in the false invoices.

Panels have held that the use of a domain name for illegal activity, here impersonating the Complainant and perpetrating financial fraud, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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

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

Having reviewed the record, the Panel finds that the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

In the present case, the Panel notes that the Respondent used the disputed domain name to perpetrate a financial scam. The Complainant produced evidence that the Respondent impersonated the Complainant and tricked its customers into purchase of large quantities of products by issuing falsified reseller certificates and fake invoice statement. Such use demonstrates the Respondent's clear knowledge of, and intent to target, the Complainant.

After one of the defrauded customers filed a formal complaint, the hosting provider has suspended the disputed domain name.

Panels have held that the use of a domain name for illegal activity, here impersonating the Complainant and perpetrating financial fraud constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

While the disputed domain name has ultimately been suspended, the inactive use of the disputed domain name does not prevent a finding of bad faith given the impersonating nature and prior use of the disputed domain name.

Based on the available record, the Panel finds that the Complainant has established the third element 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 <kevinmurphyus.com> be transferred to the Complainant.

*/Zoltán Takács/*

**Zoltán Takács**

Sole Panelist

Date: December 20, 2023