

## **ADMINISTRATIVE PANEL DECISION**

Lotus SAS v. Domain is For Sale, Call 1-833-878-5115  
Case No. D2024-1995

### **1. The Parties**

The Complainant is Lotus SAS, France, represented by Coriolan, France.

The Respondent is Domain is For Sale, Call 1-833-878-5115, United States of America (“U.S.”), represented by Law Offices of Grant G. Carpenter, U.S.

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

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 14, 2024. On May 16, 2024, 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 confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 May 22, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 11, 2024. The Response was filed with the Center on June 7, 2024.

The Center appointed Adam Taylor as the sole panelist in this matter on June 18, 2024. 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, located on the French island of La Réunion in the Indian Ocean, is a property management company that has offered holiday rental intermediary services under the mark KEYLODGE since 2018.

A company called Lotus Developpment SAS, owns a figurative French trade mark No. 4810008 for KEYLODGE, filed on October 20, 2021, registered on February 11, 2022, in classes 35, 36, 43, and 45.

The Complainant operates a website at “www.keylodge.fr”.

The disputed domain name was registered on April 13, 2000.

The record shows that as of May 10, 2024, the disputed domain name was listed for sale in various places including for USD 3,999 and USD 4,598.85.

#### **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 Respondent has never used the disputed domain name for any commercial or noncommercial activity; the Respondent acquired the disputed domain name “primarily for the purpose of selling, renting or otherwise transferring it”; the Respondent's offering of the disputed domain name for sale constitutes bad faith use; any use of the disputed domain name is likely to create a likelihood of confusion with the Complainant's mark; the Respondent has used a privacy service; and the Respondent has engaged in a pattern of cybersquatting.

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

The Respondent contends that the Complainant has failed to satisfy all three of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Respondent contends that: the disputed domain name was registered 21 years before the Complainant registered its trade mark in 2021 and the Complainant has provided no evidence of earlier rights; the disputed domain name, which consists of two common words, is generic and descriptive; the registration of such terms can be part of a legitimate business strategy; the disputed domain name is not a passive holding in bad faith; the Respondent prevailed in all but one of many UDRP cases filed against it; the Complainant is guilty of reverse domain name hijacking as that the 21-year temporal disparity indicates that the Complainant knew or should have known that it could not prove one of the essential UDRP elements.

#### **6. Discussion and Findings**

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- 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 trade mark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has produced evidence of the trade mark referred in section 4 above. It appears that this mark is owned by a different entity to the Complainant but one which is most likely part of the same corporate group. In these circumstances, and in the absence of any objection from the Respondent, the Panel thinks it reasonable to infer that the Complainant has rights in the trade mark for the purpose of standing to file the Complaint. [WIPO Overview 3.0](#), section 1.4.1.

Accordingly, the Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

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.

The Panel finds the first element of the Policy has been established.

### **B. Rights or Legitimate Interests**

It is unnecessary for the Panel to consider this element in view of the Panel's conclusion under the third element below.

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

The Panel finds that the Respondent did not register the disputed domain name in bad faith, targeting the Complainant or its trade mark rights, because the Complainant had no trade mark rights at the time that the Respondent registered the disputed domain name. [WIPO Overview 3.0](#), section 3.8.1.

Except for limited circumstances involving registration of a domain name to capitalise on nascent trade mark rights, panels will not normally find bad faith on the part of the respondent where a respondent registers a domain name before the complainant's trade mark rights accrue. [WIPO Overview 3.0](#), section 3.8.1.

It is not in dispute that the Respondent acquired the disputed domain name in 2000, whereas the Complainant's earliest claimed trade mark rights only arose in 2018.

As the Complainant and its rights did not exist in 2000, the disputed domain name could not have been registered in bad faith. This is fatal to the Complainant's case – irrespective of the nature of any later use of the disputed domain name – because the Complainant is required to prove both registration and use in bad faith.

Contrary to the Complainant's claim, there is nothing objectionable about registering a domain name for sale in the absence of any intent to target the Complainant or a competitor, which could not have happened in this case as the Complainant did not exist in 2000.

Similarly, none of the following are relevant despite the Complainant's assertions otherwise: that the Respondent has never used the disputed domain name for any commercial or noncommercial activity; that future use of the disputed domain name may create likelihood of confusion with the Complainant's mark (if such be the case), that Respondent used a privacy service; or if the Respondent has engaged in a pattern of cybersquatting (as to which the Panel makes no finding).

The Panel finds the third element of the Policy has not been established.

#### **D. Reverse Domain Name Hijacking (“RDNH”)**

Paragraph 15(e) of the 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”. RDNH is defined under the Rules as “using the UDRP in bad faith to attempt to deprive a registered domain-name holder of a domain name”. The mere lack of success of the complaint is not, on its own, sufficient to constitute reverse domain name hijacking. [WIPO Overview 3.0](#), section 4.16.

The reasons articulated by panels for finding RDNH, as set out in section 4.16 of [WIPO Overview 3.0](#), include the following:

1. facts which demonstrate that the complainant knew it could not succeed as to any of the required three elements – such as clear knowledge of a lack of respondent bad faith ... including registration of the disputed domain name well before the complainant acquired trade mark rights;
2. facts which demonstrate that the complainant clearly ought to have known it could not succeed under any fair interpretation of facts reasonably available prior to the filing of the complaint, including relevant facts on the website at the disputed domain name or readily available public sources such as the Whois database; and
3. unreasonably ignoring established Policy precedent notably as captured in the [WIPO Overview 3.0](#) – except in limited circumstances which prima facie justify advancing an alternative legal argument.

The Panel consider that the above factors apply in this case.

The Complaint acknowledges that the disputed domain name was registered in 2000. The Complaint adds that the disputed domain name was “updated” on January 11, 2023, but does not contend that the disputed domain name changed hands at that time. To the Panel, this unexplained reference to the “updated” date indicates that the Complainant’s representatives knew that they were advancing on shaky ground.

Furthermore, the Complaint contains many references to previous UDRP decisions, indicating that the Complainant’s representatives were likely familiar with established Policy precedent including the need to demonstrate the existence of trade mark rights as of the date of the registration of the disputed domain name, and that they therefore knew that their case was bound to fail.

Based on the available record, the Panel finds that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.

#### **7. Decision**

For the foregoing reasons, the Complaint is denied. Moreover, the Panel finds that the Complaint has been brought in bad faith and constitutes an attempt at Reverse Domain Name Hijacking.

*/Adam Taylor/*

**Adam Taylor**

Sole Panelist

Date: July 2, 2024