

## **ADMINISTRATIVE PANEL DECISION**

KIN, Inc. v. Arti Ramelan, InNetMedia

Case No. D2022-1707

### **1. The Parties**

Complainant is KIN, Inc., United States of America (“United States”), represented by Fross Zelnick Lehrman & Zissu, P.C., United States.

Respondent is Arti Ramelan, InNetMedia, Indonesia.

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

The disputed domain name <kohlsfeedbackcom.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 10, 2022. On May 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 11, 2022, 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 Complainant on May 12, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on May 12, 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 Respondent of the Complaint, and the proceedings commenced on May 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 5, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on June 7, 2022.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on June 15, 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**

Complainant is a company organized under the laws of the United States that is active in the retail industry. It was founded in 1962 and named after its predecessor in interest, Maxwell Kohl. Currently, Complainant operates more than 1,100 retail stores and also sells its products through its e-commerce website at "www.kohls.com".

Complainant has provided evidence that it is the registered owner of numerous trademarks relating to its brand KOHL'S, *inter alia*, but not limited, to the following:

- Word mark KOHL'S, United States Patent and Trademark Office (USPTO), registration number: 1,772,009, registration date: May 18, 1993, status: active;
- Word mark KOHL'S, USPTO, registration number: 2,047,904, registration date: March 25, 1997, status: active.

Moreover, Complainant has evidenced to own the domain name <kohls.com> which resolves to Complainant's aforementioned official website at "www.kohls.com", where Complainant promotes its products and related services for online sale.

Respondent, according to the disclosed Whois information for the disputed domain name, is a resident of Indonesia who registered the disputed domain name on May 23, 2019, which currently redirects to a website at "www.survey3.medallia.com", prominently displaying Complainant's KOHL'S trademark, thereby inviting Internet users to complete a survey allegedly on the users' recent visits to Complainant's stores and website, which is totally unrelated to and not authorized by Complainant.

Complainant requests that the disputed domain name be transferred to Complainant.

#### **5. Parties' Contentions**

##### **A. Complainant**

Complainant submits that the disputed domain name is confusingly similar with Complainant's KOHL'S trademark, as it consists of nothing more than the latter, and both the omission of the apostrophe as well as the addition of the generic term "feedback" fail to eliminate confusion. Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) there exists no relationship between Complainant and Respondent that would give rise to any license, permission, or authorization by which Respondent could own or use the disputed domain name, and (2) the disputed domain name has been and is being used in connection with a website that prominently displays Complainant's KOHL'S stylized trademark and asks visitors to complete a survey in exchange of receiving a KOHL'S gift card, though the server is wholly unaffiliated with Complainant and the results of the survey are not shared with it. Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since (1) Complainant's KOHL'S trademark is immediately recognizable and well-known, thereby exclusively identifying Complainant and its goods and services, and Respondent obviously selected and is using the disputed domain name to trade on Complainant's trademark rights and related reputation, (2) Respondent's adoption and use of Complainant's KOHL'S trademark in the disputed domain name and Respondent's creation of a website that falsely purports to solicit feedback about Complainant in exchange for a gift card shows both Respondent's familiarity with Complainant's trademark and Respondent's recognition of the fame connected thereto, (3) Respondent intends to take advantage of a

common typing mistake likely to be made by Internet users seeking information and resources relating to Complainant, and (4) Respondent obviously is engaged in a pattern of similarly fraudulent activities, having registered several other infringing domain names featuring the famous trademarks of other well-known American companies, including Walmart, JC Penney, and Walgreen's.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

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

Respondent's default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a Response as it considers appropriate.

### **A. Identical or Confusingly Similar**

The Panel concludes that the disputed domain name is confusingly similar to the KOHL'S trademark in which Complainant has rights.

The disputed domain name incorporates Complainant's KOHL'S trademark in its entirety, simply omitting the apostrophe (') which cannot be a valid part of a second-level domain name. Numerous UDRP panels have recognized that where a domain name incorporates a trademark in its entirety, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that trademark (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7). Moreover, it has been held in many UDRP decisions and has become a consensus view among panelists (see [WIPO Overview 3.0](#), section 1.8), that the addition of other terms (whether *e.g.* descriptive or otherwise) would not prevent the finding of confusing similarity under the first element of the UDRP. Accordingly, the addition of the term "feedback" and the Top-Level-Domain ("TLD") ".com", here as part of the second-level domain name, does not dispel the confusing similarity arising from the incorporation of Complainant's KOHL'S trademark in the disputed domain name.

Therefore, Complainant has established the first element under the Policy as set forth by paragraph 4(a)(i).

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

The Panel is further convinced on the basis of Complainant's undisputed contentions that Respondent has not made use of the disputed domain name in connection with a *bona fide* offering of goods or services, nor has Respondent been commonly known by the disputed domain name, nor can it be found that Respondent has made a legitimate noncommercial or fair use thereof without intent for commercial gain.

Respondent has not been authorized to use Complainant's KOHL'S trademark, either as a domain name or in any other way. Also, there is no reason to believe that Respondent's name somehow corresponds with the disputed domain name and Respondent does not appear to have any trademark rights associated with

the (family) name “Kohl” on its own. To the contrary, Respondent has been in the past using the disputed domain name to either feature a website or redirect to websites which prominently displays Complainant’s KOHL’S trademark without any authorization to do so, thereby inviting Internet users to complete a survey allegedly on the users’ recent visits to Complainant’s stores and website, which in fact is totally unrelated to and not authorized by Complainant, and doing so supposedly for some commercial gain in context with a kind of phishing scheme. Such making use of the disputed domain name obviously neither qualifies as *bona fide* nor as legitimate noncommercial or fair within the meaning of the Policy.

Accordingly, Complainant has established a *prima facie* case that Respondent has no rights or legitimate interests in respect of the disputed domain name. Now, the burden of production shifts to Respondent to come forward with appropriate evidence demonstrating to the contrary (see [WIPO Overview 3.0](#), section 2.1). Given that Respondent has defaulted, it has not met that burden.

Therefore, the Panel finds that Complainant has also satisfied paragraph 4(a)(ii) and, thus, the second element of the Policy.

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

The Panel finally holds that the disputed domain name was registered and is being used by Respondent in bad faith.

The circumstances of this case leave no doubt that Respondent was fully aware of Complainant’s rights in the KOHL’S trademark (notwithstanding its claimed reputation) when registering the disputed domain name and that the latter is clearly directed thereto. Moreover, using the disputed domain name, which is confusingly similar to Complainant’s KOHL’S trademark, to run (or redirect to) a website which prominently displays such trademark without any authorization to do so, thereby inviting Internet users to complete a survey allegedly on the users’ recent visits to Complainant’s stores and website, which in fact is totally unrelated to and not authorized by Complainant, supposedly for some commercial gain in context with a kind of phishing scheme, is a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusion with Complainant’s well-reputed KOHL’S trademark as to the source, sponsorship, affiliation or endorsement of Respondent’s website. Such circumstances are evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

In this context, it also carries weight in the eyes of the Panel that Respondent seems to have provided false or incomplete contact information for the disputed domain name since, according to the email correspondence between the Center and the postal courier DHL, the Written Notice on the Notification of Complaint dated May 16, 2022, could not be delivered. This fact at least throws a light on Respondent’s behavior which supports the Panel’s bad faith finding.

Therefore, the Panel concludes that Complainant has also satisfied the third element under the Policy set forth by paragraph 4(a)(iii).

## **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 <kohlsfeedbackcom.com> be transferred to Complainant.

/Stephanie G. Hartung/

**Stephanie G. Hartung**

Sole Panelist

Date: June 29, 2022