

ADMINISTRATIVE PANEL DECISION

Kimley-Horn and Associates, Inc. v. McDougald, Brandon Case No. D2022-3794

1. The Parties

Complainant is Kimley-Horn and Associates, Inc., United States of America (“United States”), represented by Nelson Mullins Riley & Scarborough, L.L.P., United States.

Respondent is McDougald, Brandon, United States.

2. The Domain Name and Registrar

The disputed domain name <kimley-hron.com> is registered with Wild West Domains, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 11, 2022. On October 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 12, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on October 18, 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 October 19, 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 October 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 9, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on November 10, 2022.

The Center appointed Jeffrey D. Steinhardt as sole panelist in this matter on November 17, 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

Among Complainant's trademark registrations is United States Trademark Registration Number 2,788,474 for the service mark KIMLEY-HORN, in International Classes 36 and 42 registered on December 2, 2003, with a January 1, 1994 first use in commerce.

The disputed domain name was registered June 19, 2020 and does not route to an active webpage.

5. Parties' Contentions

A. Complainant

Complainant avers that it has continuously used the KIMLEY-HORN marks for its very large planning, engineering and design consulting firm since 1967.

Summarizing its legal contentions, Complainant alleges that (1) the disputed domain name is confusingly similar to Complainant's KIMLEY-HORN trademarks, (2) Respondent has no rights or legitimate interests in the disputed domain name, and (3) the disputed domain name was registered and is being used in bad faith, all in violation of the Policy.

Complainant also relates that it has suffered various phishing and business email compromise ("BEC") scheme attacks over the past few years, some of which culminated in Complainant bringing successful UDRP proceedings against the perpetrators.

In support of its positions on rights or legitimate interests and bad faith in this proceeding, Complainant avers that it is "more likely than not that Respondent's registration and use of the [disputed] Domain Name are suggestive of Respondent's intent to potentially use the [disputed] Domain Name for malicious purposes such as phishing or fraud [...]."¹

On the above grounds, Complainant requests transfer of the disputed domain name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

The Rules require the Panel to decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable. Rules, paragraph 15(a). Complainant must establish each element of paragraph 4(a) of the Policy, namely:

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

Complainant must establish these elements even if Respondent does not submit a response. See, e.g., *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#). In the absence of a Response, the Panel may also accept as true the reasonable factual allegations in the Complaint. E.g., *ThyssenKrupp USA, Inc. v. Richard Giardini*, WIPO Case No. [D2001-1425](#) (citing *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#)).

¹ Complainant avers that the disputed domain name is associated with an email server, providing one exhibit supporting that averment.

A. Identical or Confusingly Similar

The Panel agrees with Complainant's allegation that the disputed domain name <kimley-hron.com> is confusingly similar to Complainant's KIMLEY-HORN marks.

The Panel observes that Respondent simply reversed the sequence of the letters "o" and "r" in Complainant's KIMLEY-HORN service mark to create the disputed domain name <kimley-hron.com>. This is a typical case of "typosquatting," commonly found by UDRP panels to support a finding of confusing similarity.

The Panel therefore rules that the disputed domain name is confusingly similar to Complainant's marks. See, e.g., WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, section 1.9 ("[WIPO Overview 3.0](#)") (domain names that consist of common, obvious, or intentional misspellings of trademarks are considered by panels to be confusingly similar to the relevant marks).

The Panel concludes that the first element of paragraph 4(a) of the Policy is established.

B. Rights or Legitimate Interests

The Panel also concludes that Respondent has no rights or legitimate interests in the disputed domain name.

The Policy contains a non-exhaustive list of circumstances that may demonstrate when a respondent has rights or legitimate interests in a domain name. The list includes: (1) using the domain name in connection with a *bona fide* offering of goods and services; (2) being commonly known by the domain name; or (3) making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers. Policy, paragraphs 4(c)(i) – (iii).

A complainant must show a *prima facie* case that a respondent lacks rights or legitimate interests in a disputed domain name, after which the burden of rebuttal passes to the respondent. See, e.g., *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#). The absence of rights or legitimate interests is established if a complainant makes out a *prima facie* case and the respondent enters no response. *Id.*, (citing *De Agostini S.p.A. v. Marco Cialone*, WIPO Case No. [DTV2002-0005](#)).

The Panel accepts the Complaint's undisputed allegations that Respondent has no authorization or license to use its trademarks in the disputed domain name. The Panel further accepts the Complaint's allegations that Respondent is not commonly known by the disputed domain name.

Since the record indicates that the disputed domain name does not route to an active webpage, the Panel finds that Respondent is not making a *bona fide* use of the disputed domain name. In light of the Complaint's allegations and the evidence, the Panel holds that Respondent is not making a legitimate or fair use of the disputed domain name.

Complainant establishes a *prima facie* case. Omitting to submit a response, Respondent has neither contested nor rebutted that *prima facie* case.

The Panel holds, therefore, that Respondent has no rights or legitimate interests in use of the disputed domain name.

C. Registered and Used in Bad Faith

The Panel finds that the third element of paragraph 4(a) of the Policy, bad faith registration and bad faith use, is also established, as elaborated below.

UDRP panels may draw inferences about bad faith in light of the circumstances, including passive holding, failure to respond to a complaint and other circumstances. *E.g.*, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); [WIPO Overview 3.0](#) section 3.2.1.

Respondent was undoubtedly aware of Complainant's distinctive KIMLEY-HORN mark, which had been registered and enjoyed widespread use for many years before Respondent registered its confusingly similar disputed domain name. The Panel finds that Respondent's typosquatting shows that Respondent registered the disputed domain name in bad faith, to create confusion or unfairly to exploit the value of Complainant's marks.

The Panel holds that Respondent's failure to respond to the Complaint and passive holding of the disputed domain name evidence Respondent's use of the disputed domain name in bad faith.

Accordingly, the Panel concludes that paragraph 4(a)(iii) of the Policy is satisfied.²

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 <kimley-hron.com> be transferred to Complainant.

/Jeffrey D. Steinhardt/

Jeffrey D. Steinhardt

Sole Panelist

Date: December 1, 2022

² In its rulings on rights and legitimate interests and bad faith under the Policy, the Panel declines to rely on the Complaint's allegations and limited evidence respecting potential preparations by Respondent for phishing or fraudulent schemes. Ample other circumstances support the Panel's conclusions above.