

ADMINISTRATIVE PANEL DECISION

Spinelli Kilcollin v. Xpo Web

Case No. D2023-1391

1. The Parties

The Complainant is Spinelli Kilcollin, United States of America ("United States"), represented by Gottlieb, Rackman & Reisman, PC, United States.

The Respondent is Xpo Web, Portugal.

2. The Domain Name and Registrar

The disputed domain name <spinelikilcollin.com> (the "Domain Name") is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 30, 2023. On March 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 31, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 3, 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 amendment to the Complaint on April 6, 2023.

The Center verified that the Complaint together with the amendment to 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 April 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 15, 2023.

The Center appointed Wolter Wefers Bettink as the sole panelist in this matter on May 22, 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

The Complainant is a designer and retailer of jewelry and other goods, including houseware and started selling jewelry in 2010.

The Complainant holds, *inter alia*, the following trade marks (the "Trade Marks"):

- United States trade mark SPINELLI KILCOLLIN, registered under No. 5380785 on January 16, 2018;
- United States trade mark SPINELLI KILCOLLIN, registered under No. 5973717 on January 28, 2020; and
- United States trade mark SPINELLI KILCOLLIN, registered under No. 6706925 on April 19, 2022.

On November 14, 2022, the Complainant sent by email a cease-and-desist letter to the Respondent and a follow up letter on December 5, 2022, to which no response was received.

The Respondent registered the Domain Name on October 17, 2022. The Domain Name does not resolve to a website.

5. Parties' Contentions

A. Complainant

The Complainant submits that the Domain Name is confusingly similar, since it is an obvious and intentional misspelling of the Trade Marks, the letter "l" missing in the SPINELLI part thereof, and therefore a typical example of typosquatting.

The Complainant states that it has not licensed, authorized or otherwise sanctioned the use of the Trade Marks by the Respondent, while there is nothing to support that the Respondent was commonly known under the Domain Name prior to it being notified of these proceedings. As the Domain Name does not resolve to a website, the Complainant contends, the Respondent does not make any *bona fide* commercial use of the Domain Name. Therefore, the Complainant concludes, the Respondent does not have any right or legitimate interest in the Domain Name.

According to the Complainant, the bad faith of the Respondent is demonstrated by the intentional misspelling of the Domain Name, given also the online visibility of the Complainant and its Trade Marks for over a decade.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has shown that it has registered rights in the Trade Marks. The Domain Name is

confusingly similar to the Trade Marks as it incorporates SPINELLIKILCOLLIN, of which the Trade Marks consist, in its entirety, be it with a misspelling consisting of an “l” missing in the SPINELLI part of the Trade Marks. As the Domain Name consists of a common, obvious, or intentional misspelling of the Trade Marks, this does not affect the confusing similarity of the Domain Name to the Trade Marks for purposes of the first element (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.9; and, *inter alia*, *Allianz SE v. WhoisGuard Protected, WhoisGuard, Inc. / Azir Malik*, WIPO Case No. [D2019-2511](#)). The generic Top-Level Domain (“gTLD”) “.com” is typically disregarded under the confusing similarity test, since it is a technical registration requirement (see [WIPO Overview 3.0](#), section 1.11). Therefore, the Panel finds that the Domain Name is confusingly similar to the Trade Marks in which the Complainant has rights.

B. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, the second element a complainant has to prove is that a respondent lacks rights or legitimate interests in a domain name. This 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. In order to satisfy the second element, the Complainant has to make out a *prima facie* case that the Respondent does not have rights or legitimate interests in the Domain Name. If the Complainant succeeds in doing so, 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 (See [WIPO Overview 3.0](#), section 2.1).

Based on the present evidence and the undisputed submissions of the Complainant, the Panel concludes that the Respondent has not received the Complainant’s consent to use or register the Trade Marks as part of the Domain Name, is not commonly known by the Domain Name and has not acquired trade mark rights in the Domain Name. Furthermore, the Domain Name does not resolve to a website and there is no other evidence showing that the Domain Name is used for a *bona fide* offering of goods or services, nor that its use constitute a legitimate noncommercial or fair use.

In view of the above, the Panel concludes that the Complainant has established that the Respondent has no rights or legitimate interests in the Domain Name.

C. Registered and Used in Bad Faith

Based on the information and the evidence provided by the Complainant, the Panel finds that at the time of registration of the Domain Name the Respondent was or should have been aware of the Trade Marks, since:

- the Respondent’s registration of the Domain Name occurred over four years after the Complainant started its business and three years after registration of the earliest of the Trade Marks;
- the SPINELLI KILCOLLIN mark is not a dictionary term, nor a term of which it is likely that a registrant would spontaneously think at the time of registration of the Domain Name;
- the typo in the Domain Name, omitting the “l” from SPINELLI, is a likely mistake an Internet user would make when looking for “Spinellikilcollin”; and,
- a simple trade mark register search, or even an Internet search, prior to registration of the Domain Name in its name would have informed the Respondent of the existence of the oldest Trade Marks.

The Panel further finds that the following circumstances taken together warrant a finding of bad faith use of the Domain Name:

- the probability that the Respondent was aware or should have been aware of the Complainant’s rights in the Trade Marks;

- the use of a privacy shield upon the initial registration of the Domain Name; and
- the lack of a response to the cease-and-desist-letters from the Complainant and the lack of a formal Response of the Respondent.

Therefore, the Panel concludes that the Domain Name has been registered and is being used in bad faith.

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 Domain Name <spinelikilcollin.com> be transferred to the Complainant.

/Wolter Wefers Bettink/

Wolter Wefers Bettink

Sole Panelist

Date: June 6, 2023