

ADMINISTRATIVE PANEL DECISION

Kevin Murphy Professional Pty. Ltd. v. Abdul Wadood Abbas,
WSKEVIN MURPHY
Case No. D2023-4395

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 Abdul Wadood Abbas, WSKEVIN MURPHY, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <wskevinmurphy.com> is registered with HOSTINGER Operations, UAB (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 24, 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 26, 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 (Domain Admin, Privacy Protect LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 27, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Respondent sent an email communication to the Center on October 28, 2023. On October 31, 2023, the Complainant filed an amended Complaint.

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 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 29, 2023. The Respondent did not submit any formal response. On December 5, 2023, the Center notified the Parties that it would proceed to panel appointment.

The Center appointed Manuel Moreno-Torres as the sole panelist in this matter on December 20, 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 an Australian corporation doing business in the hair care sector in over 40 countries.

The Complainant is the owner of KEVIN MURPHY trademark registrations in different jurisdictions. By way of example:

- Australian trademark registration number 1144183, registered on November 1, 2006.
- United States trademark registration number 4623077, registered on October 21, 2014.

The Complainant owns a portfolio of approximately 50 domain names in connection to the above mentioned marks. As such <kevinmurphy.eu>, <kevinmurphy.pro>, or <kevinmurphydistributor.com>.

The Respondent registered the disputed domain name on July 10, 2023. The Complainant provides evidence that the website at the disputed domain name displayed the Complainant's copyrighted images with no authorization purportedly offering for sale the Complainant's products.

The Complainant applied for a Digital Millennium Copyright Act ("DMCA") takedown notice to the Registrar who confirmed the content removal and IP blocking so that the disputed domain name no longer resolves 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 Respondent's domain registration of the disputed domain name including the Complainant's trademark combined with the letters "ws", shortened for "wholesale", increases online confusion among customers.

By displaying the Complainant's products for purchase, the Respondent has misled customers to his own website rather than the Complainant's. Thus, to deceive customers into believing a relationship existed between the Complainant and the Respondent.

Besides, the Complainant asserts that the Respondent registered the disputed domain name with the Complainant's company in mind and the Respondent is preventing the Complainant from reflecting his mark in the disputed domain name.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel that:

- (i) the disputed 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 disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

There are no exceptional circumstances within paragraph 5(f) of the Rules to prevent the Panel from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a substantive Response. This dispute resolution procedure is accepted by the domain name registrant as a condition of registration.

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, "ws" 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.

Indeed, none of the examples of the Respondent's rights enumerated in the Policy apply in the present case.

Besides, panels have held that the use of a domain name for illegal activity heresale of allegedly unofficial or fake products of the Complainant and/or impersonation or passing off, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Furthermore, the nature of the disputed domain name, comprising the Complainant's trademark and the additional letters "ws" shortened "wholesale", indicates an awareness of the Complainant and its trademark and intent to take unfair advantage of such, which does not support a finding of any rights or legitimate interests.

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

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Further, paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel notes that the paragraph 4(b)(iv) applies: The Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark. Indeed, the fact that the disputed domain name resolved to a website mimicking Complainant and purported offering for sale the Complainant's products allows the Panel to conclude that, on balance, the Respondent knew or should have known about the Complainant and its trademark at the time of the registration of the disputed domain name.

Panels have held that the use of a domain name for illegal activity such as impersonation/passing-off, here the disputed domain name has been used to impersonate the Complainant through prominent use of the Complainant's logo in connection with a website allegedly offering the Complainant's products, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel notes the distinctiveness and the reputation of the Complainant's trademark, and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy. [WIPO Overview 3.0](#), section 3.3.

Upon a full examination of the record, the Panel finds that the Respondent targeted the Complainant and its trademark when registering the disputed domain name and subsequent use of it in a website.

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 <wskevinmurphy.com> be transferred to the Complainant.

/Manuel Moreno-Torres/

Manuel Moreno-Torres

Sole Panelist

Date: January 3, 2024