

## **ADMINISTRATIVE PANEL DECISION**

Kevin Murphy Professional Pty. Ltd. v. fdgdfg gfdgfdhg, fdagfa  
Case No. D2024-3129

### **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 fdgdfg gfdgfdhg, fdagfa, United States.

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

The disputed domain name <kevinmurphyshop.shop> is registered with NameSilo, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 30, 2024. On July 31, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 31, 2024, 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 (“Information not available on WHOIS”) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 6, 2024, 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 amended Complaint on August 8, 2024.

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 August 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 1, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 2, 2024.

The Center appointed Theda König Horowicz as the sole panelist in this matter on September 9, 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 is an Australian corporation doing business in the hair care sector in many countries and which has been operating in this field since 2004.

The Complainant is the owner of KEVIN MURPHY trademark registrations for haircare products and services in different jurisdictions including:

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

These marks have been consistently used in commerce by the Complainant since 2006.

Additionally, the Complainant owns a portfolio of domain names comprising the KEVIN MURPHY mark, such as <kevinmurphy.eu>, <kevinmurphy.pro>, or <kevinmurphydistributor.com>, some of which are linked to the Complainant's official website.

The Respondent registered the disputed domain name on June 24, 2024. Before the filing of the Complaint, the website at the disputed domain name displayed, without any authorization, the Complainant's products for sale and included copyrighted product images and the Complainant's corporate logo. The disputed domain name was later suspended and placed on "clientHold" status. At the time of the filing of the Complaint, the disputed domain name resolved to an inactive 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.

The Complainant contends that the disputed domain name uses the entirety of the Complainant's trademark and is therefore confusingly similar. The addition of the term "shop" in the disputed domain name increases online confusion.

Furthermore, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. By displaying the Complainant's products for purchase, the Respondent has misled customers to its own website rather than the Complainant's. Thus, to deceive customers into believing a relationship existed between the Complainant and the Respondent, for the purpose of disrupting the Complainant's business and tarnishing the Complainant's established trademark KEVIN MURPHY.

Besides, the Complainant asserts that the Respondent registered the disputed domain name with the Complainant's company in mind. The Respondent is preventing the Complainant from reflecting its mark in the disputed domain name and is confusing customers, particularly since the Respondent displays on the corresponding website copyrighted product images and the Complainant's corporate logo. In this regard, the Complainant alleges that the products which were offered for sale on the said website were counterfeit goods. The Complainant also raises that the Respondent's contact information used to register the disputed domain name is clearly invalid.

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

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

## **6. Discussion and Findings**

### **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.

The Complainant has shown rights in respect of the trademark KEVIN MURPHY for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the KEVIN MURPHY 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.

The addition of the term "shop" in the disputed domain name does not prevent a finding of confusing similarity with the KEVIN MURPHY mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel thus finds that the disputed domain name is confusingly similar to the Complainant's KEVIN MURPHY mark and that 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.

Based on the case file, the Panel finds that there is no indication that the Respondent is known by the disputed domain name or has any rights corresponding to the disputed domain name. In particular, the Panel notes that the disputed domain name was used for selling KEVIN MURPHY goods which were identified by the Complainant as being counterfeited goods which can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Furthermore, the Panel finds that because the disputed domain name comprises the entirety of the Complainant's KEVIN MURPHY trademark, any use of such domain name by the Respondent carries a risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

The Panel thus finds that 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 paragraph 4(b)(iv) of the Policy 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 the Complainant's official website and offering for sale at a discount either the Complainant's products or counterfeits, without a disclaimer as to the lack of association with the Complainant, allows the Panel to conclude that, on the balance of probabilities, the Respondent knew or should have known about the Complainant and its trademark at the time of the registration of the disputed domain name. The Panel also notes that the disputed domain name incorporates the Complainant's trademark in addition to the term "shop" and the gTLD ".shop", with such term strengthening the likelihood that Internet users will be confused as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and the products featured on it. [WIPO Overview 3.0](#), section 3.1.4.

Panels have held that the use of a domain name for illegal activity such as impersonation/passing off constitutes bad faith under the Policy. In this case, the Complainant has evidenced that the website which the disputed domain name resolved to has indeed been used to impersonate the Complainant through the use of the Complainant's logo and copyrighted product images. [WIPO Overview 3.0](#), section 3.4.

Furthermore, the Panel notes that the current non-use of the disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3.

Finally, the Panel notes that the Respondent used a privacy service for registering the disputed domain name. Based on the elements disclosed by the Registrar, it appears that the identity and details given by the Respondent at the time of the registration of the disputed domain name are obviously fanciful which is another indication of the bad faith registration and use.

Having reviewed the record, the Panel comes to the conclusion that the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel thus 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 <kevinmurphyshop.shop> be transferred to the Complainant.

*/Theda König Horowicz/*

**Theda König Horowicz**

Sole Panelist

Date: October 4, 2024