

ADMINISTRATIVE PANEL DECISION

Kimley-Horn and Associates, Inc. v. KIng Collins
Case No. D2024-4778

1. The Parties

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

The Respondent is KIng Collins, United States.

2. The Domain Name and Registrar

The disputed domain name <kinley-horn.com> (the “Disputed 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 November 20, 2024. On November 20, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On November 20, 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 (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 November 22, 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 November 25, 2024. On November 27, 2024, the Center sent an email communication to the Complainant requesting a further amendment to the Complaint regarding mutual jurisdiction. The Complainant filed a second amended Complaint (hereafter, the “Complaint”) on November 27, 2024.

The Center verified that 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 November 29, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 19, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 20, 2024.

The Center appointed Douglas M. Isenberg as the sole panelist in this matter on December 27, 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 states that it was founded in 1967 and is "one of the nation's premier planning, engineering, and design consulting firms offering full services in a wide range of disciplines". The Complainant further states, and provides evidence in support thereof, that it is the owner of the following registration for the word mark KIMLEY-HORN (the "KIMLEY-HORN Trademark"):

- United States Reg No. 2788474 (registered December 2, 2003) for use in connection with, inter alia, "engineering consultation";

The Disputed Domain Name was created on November 11, 2024, and is used in connection with what the Complainant describes as "a website featuring sponsored pay-per-click advertisements for third-party products and services". Further, the Complainant states that "the Respondent has associated mail servers to the Disputed Domain Name."

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 Disputed Domain Name is confusingly similar to the KIMLEY-HORN Trademark because, inter alia, "the Domain Name is comprised solely of an obvious misspelling thereof, namely, Respondent has replaced the M in KIMLEY with the letter N and the remainder of the Domain Name is identical to the KIMLEY-HORN Mark."
- The Respondent has no rights or legitimate interests in the Disputed Domain Name because, inter alia, "Respondent has no prior rights or legitimate interest in the Domain Name"; "Respondent is not commonly known by and was not revealed to be commonly known by the name KIMLEY-HORN or any similar variations thereof"; "the Domain Name effectively impersonates and suggests sponsorship or endorsement by Complainant and therefore Respondent cannot legitimately claim any rights or legitimate interest in the Domain Name"; and "the fact that Respondent is using the Domain Name to host the Website which contains sponsored advertisements is, by its very nature, commercial and thus Respondent cannot claim to be using the Domain Name in connection with a legitimate noncommercial or fair use."
- The Disputed Domain Name was registered and is being used in bad faith because, inter alia, "[t]he KIMLEY-HORN Mark is a highly distinctive mark that has been in use in commerce by Complainant exclusively for the past fifty-six (56) years, such that it stretches credibility that Respondent would have a legitimate speculative reason for registering the Domain other than specifically targeting Complainant, which

amounts to registration of the Domain Name in bad faith”; “panels have found bad faith registration and use under a theory of ‘initial interest confusion’ where a domain name resolves to a pay-per-click website”; and “at worst, as Respondent has also associated email servers to the Domain Name, this implies the possibility that Respondent has ulterior motives, for example, using the Domain Name in connection with a phishing or business email compromise scheme.”

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.

Based on the trademark registrations cited in the Complaint, the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy, that is, the KIMLEY-HORN Trademark. [WIPO Overview 3.0](#), section 1.2.1.

As to whether the Disputed Domain Name is identical or confusingly similar to the KIMLEY-HORN Trademark, the relevant comparison to be made is with the second-level portion of the Disputed Domain Names only (i.e., “kinley-horn”), as it is well-established that the Top-Level Domain (i.e., “.com”) may be disregarded for this purpose. [WIPO Overview 3.0](#), section 1.11: “The applicable Top Level Domain (‘TLD’) in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.”

The Disputed Domain Name contains the KIMLEY-HORN Trademark in its entirety, other than changing the letter “m” to the letter “n.” As set forth in section 1.7 of [WIPO Overview 3.0](#), “in cases where a domain name incorporates the entirety of a trademark, 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 mark for purposes of UDRP standing.” Further, as set forth in section 1.9 of [WIPO Overview 3.0](#), “[a] domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element,” including “such typos” as the “substitution of similar-appearing characters.”

Here, it is obvious that the Disputed Domain Name incorporates a dominant feature of the KIMLEY-HORN Trademark and that the difference of a single letter is an intentional misspelling. Therefore, the Disputed Domain Name is confusingly similar to the KIMLEY-HORN Trademark, and 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.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

Whether a domain name is registered and used in bad faith for purposes of the Policy may be determined by evaluating four (non-exhaustive) factors set forth in the Policy: (i) circumstances indicating that the registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the registrant's documented out-of-pocket costs directly related to the domain name; or (ii) the registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the registrant has engaged in a pattern of such conduct; or (iii) the registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the registrant has intentionally attempted to attract, for commercial gain, Internet users to the registrant's website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the registrant's website or location or of a product or service on the registrant's website or location. Policy, paragraph 4(b).

As set forth in section 3.1.4 of [WIPO Overview 3.0](#), "[p]anels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith." Further, numerous panels have found the registration and use of a domain name that is confusingly similar to a complainant's trademark to constitute bad faith pursuant to paragraph 4(b)(iv) of the Policy where, as here, the disputed domain name is identical or confusingly similar to a highly distinctive trademark and is associated with a monetized parking page, even if the links on the respondent's website are unrelated to the complainant or the relevant trademark. See, e.g., *Wolters Kluwer U.S. Corporation v. Transure Enterprise Ltd.*, WIPO Case No. [D2008-0384](#) (finding bad faith where disputed domain name was used in connection with "a 'click farm' which is intended to lure Internet users who are seeing the Complainant's website to its site where other unrelated links for goods and services are offered"); *Nick Cannon v. Modern Limited - Cayman Web Development*, WIPO Case No. [D2005-0757](#) (finding bad faith where disputed domain name redirected visitors "to a website of totally unrelated links to other web pages"); and *LinkedIn Corporation v. yin jun*, WIPO Case No. [D2015-1070](#) (finding bad faith where "disputed domain name resolved to a pay-per-click ('PPC') parking page containing links to certain business websites relating to publishing and other unrelated products/services").

Accordingly, 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, <kinley-horn.com>, be transferred to the Complainant.

/Douglas M. Isenberg/

Douglas M. Isenberg

Sole Panelist

Date: January 7, 2025