

ADMINISTRATIVE PANEL DECISION

Kimley-Horn and Associates, Inc. v. Amelia James, kimley Horn
Case No. D2025-0785

1. The Parties

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

Respondent is Amelia James, kimley Horn, United States.

2. The Domain Name and Registrar

The disputed domain name <kimley-horn.live> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 25, 2025. On February 26, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 26, 2025, 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 Complainant on February 27, 2025, 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 February 28, 2025.

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 March 5, 2025. In accordance with the Rules, paragraph 5, the due date for Response was March 25, 2025. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on March 26, 2025.

The Center appointed Scott R. Austin as the sole panelist in this matter on April 4, 2025. 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 following facts appear from the Complaint (as amended) and its attached Annexes, which have not been contested by Respondent, and provide evidence sufficient to support:

Founded in 1967, Complainant provides planning, engineering, and design consulting firm services under the trademark KIMLEY-HORN (the “KIMLEY-HORN Mark”).

Complainant owns trademark registrations for the KIMLEY-HORN Mark in the United States, including the following:

1. United States Trademark Registration No. 2,788,474, KIMLEY-HORN, registered with the United States Patent and Trademark Office (“USPTO”) on December 2, 2003, for a range of financial, engineering design and environmental consultation related services in International Classes 36, and 42 and claiming a first use date of January 1, 1994;
2. United States Trademark Registration No. 4,685,771, KIMLEY-HORN, registered on February 10, 2015, for a range of financial, engineering design and environmental consultation related services in International Classes 36, and 42 and claiming a first use date of June 24, 2014; and
3. United States Trademark Registration No. 7,036,864, KIMLEY-HORN, registered on April 25, 2023, for a range of business, construction, transportation, transportation planning and environmental consultation related services in International Classes 35, 37, 39, 42 and 45 and claiming a first use date of June 17, 2014.

The disputed domain name was created on December 24, 2024, and does not resolve to a functional website.

5. Parties’ Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name: that the disputed domain name is identical or confusingly similar to Complainant’s KIMLEY-HORN Mark; that Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

There are no exceptional circumstances within paragraph 5(e) of the Rules to prevent this Panel from determining the present dispute based upon the Complaint (as amended), notwithstanding the failure of any person to lodge a substantive formal Response in compliance with the Rules. Under paragraph 14 of the Rules, where a party does not comply with any provision of the Rules, the Panel shall “draw such inferences therefrom as it considers appropriate”.

Where no substantive Response is filed, however, Complainant must still make out its case in all respects under paragraph 4(a) of the Policy. To succeed, Complainant must demonstrate that the requirements for each of the elements listed in paragraph 4(a) of the Policy have been satisfied.

The Panel will address its findings on each of these elements in more detail below.

The standard of proof under the Policy is often expressed as the “balance of the probabilities” or “preponderance of the evidence” standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 4.2.

A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Complainant has demonstrated its rights because it has shown that it is the holder of multiple valid and subsisting trademark registrations for the KIMLEY-HORN Mark, including two which are incontestable and one registered over 20 years prior to registration of the disputed domain name. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#); see also, *Ralph Maltby Enters., Inc. v. Women With Balls*, WIPO Case No. [D2004-0917](#).

With Complainant’s rights in the KIMLEY-HORN Mark established, the remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant’s KIMLEY-HORN Mark.

Prior UDRP panels have held that the incorporation of the entirety of a trademark in a domain name is sufficient to establish identity or confusing similarity for purposes of the Policy. See [WIPO Overview 3.0](#), sections 1.7 and 1.8 (“Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element”); see also *United Talent Agency, LLC v. Lianxin Zhou*, WIPO Case No. [D2024-1160](#); and *Carrefour SA v. yuri eros*, מ"נ "נות ביתן בע", WIPO Case No. [D2022-1277](#).

The disputed domain name incorporates Complainant’s KIMLEY-HORN Mark in its entirety and is identical because it adds nothing other than the generic Top-Level Domain (“gTLD”) “.live”. The addition of the gTLD “.live” is irrelevant in determining whether the disputed domain name is identical or confusingly similar. See, *Research in Motion Limited v. Thamer Ahmed Alfarshooti*, WIPO Case No. [D2012-1146](#); [WIPO Overview 3.0](#), section 1.11.1.

Accordingly, the Panel finds that Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under the second element of the Policy, a complainant is first required to make out a prima facie case that the respondent lacks rights or legitimate interests in the disputed domain name. If a complainant makes that showing, the burden of production on this element shifts to the respondent to come forward with relevant evidence of such rights or legitimate interests in the domain name. If the respondent fails to come forward with such evidence, a complainant is generally deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1. See also, *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#).

Based on the record, Complainant has established, prima facie, that Respondent lacks rights or legitimate interests in the disputed domain name. First, Complainant asserts that it has not licensed, or otherwise authorized Respondent to use the KIMLEY-HORN Mark in any manner, nor is Complainant in any way or manner associated with or related to Respondent. Complainant has also claimed with persuasive evidence submitted that Respondent is not commonly known by the disputed domain name because Respondent’s

name, “Amelia James”, clearly bears no resemblance to the term “KIMLEY-HORN”, the KIMLEY-HORN Mark, or the disputed domain name. The Panel finds that Respondent is not commonly known by the disputed domain name for purposes of the Policy. In addition, Respondent’s use of the term “kimley Horn” disclosed by the Registrar as Respondent’s “Organization” is additional evidence of Respondent’s unauthorized use of the KIMLEY-HORN Mark to falsely affiliate itself with and impersonate Complainant by providing false registration data which would also negate Respondent’s ability to claim legitimate noncommercial or fair use of the disputed domain name under paragraph 4(c)(iii) of the Policy.

[WIPO Overview 3.0](#), section 2.5.3.

Complainant also shows that Respondent has not used the disputed domain name in connection with a bona fide offering of goods and services because it does not resolve to a functional website and remains inactive, so it is therefore not offering any goods or services. Prior UDRP panels have held that the inactive status of a disputed domain name does not comprise a bona fide offering of goods or services under the Policy. See *Accenture Global Services Limited v. Marc Diks*, WIPO Case No. [D2021-1383](#).

The Panel finds Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services, so as to confer rights or legitimate interests in it in accordance with paragraph 4(c)(i) of the Policy and that the composition of the disputed domain name being identical to Complainant’s mark fosters an implied affiliation with Complainant. [WIPO Overview 3.0](#), section 2.5.1.

Complainant also contends that when presented with an opportunity to address the matter prior to the filing of the subject proceeding, Respondent has opted not to respond to Complainant’s allegations and concerns raised in Complainant’s cease-and-desist correspondence it sent to Respondent on February 11, 2025. Respondent never replied. Prior UDRP panels have held that failure to respond to a cease-and-desist letter is evidence from which it is reasonable to conclude that the respondent was aware that it has no rights or legitimate interests in the domain name at issue. See, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *Alcoholics Anonymous World Services, Inc. v Raymond*, WIPO Case No. [D2000-0007](#).

These facts establish Complainant’s prima facie showing. Respondent has not provided any basis on which that showing may be overcome. Complainant has successfully met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Finally, Complainant must prove, by a preponderance of the evidence, that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy. See, e.g., *Hallmark Licensing, LLC v. EWebMall, Inc.*, WIPO Case No. [D2015-2202](#).

Paragraph 4(b) of the Policy sets out a non-exhaustive list of circumstances that point to bad faith conduct on the part of a respondent. The panel may, however, consider the totality of the circumstances when analyzing bad faith under Policy, paragraph 4(a)(iii) and may make a finding of bad faith that is not limited to the enumerated factors in Policy, paragraph 4(b). See *Do the Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#).

First, Complainant contends, and this Panel has found in Section 6B above from the record submitted and its own independent investigation as permitted under the Policy, that the KIMLEY-HORN Mark is registered in the United States where Respondent is purportedly located. Based on the uncontested record, considering that the KIMLEY-HORN Mark is recognized and advertised online and operates at offices throughout the United States, including the address in North Carolina Respondent has submitted as its address in its registration data, Complainant’s trademark registration predates by over twenty years Respondent’s registration of the disputed domain name, and the disputed domain name incorporates the KIMLEY-HORN Mark in its entirety, Respondent has no credible argument that she is unaware of the KIMLEY-HORN Mark. See, e.g., *Alstom v. Domain Investments LLC*, WIPO Case No. [D2008-0287](#); see also *Accor S.A. v. Kristen Hoerl*, WIPO Case No. [D2007-1722](#).

A consensus of prior UDRP panels have found that the mere registration of a domain name that is identical or confusingly similar to a widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

Prior UDRP panels have also found that where, as here, it would be implausible to believe that Respondent selected and was using the disputed domain name for any other purpose than to trade on Complainant's trademark rights and reputation, it establishes a fact pattern that repeatedly has been held to constitute bad faith registration. See *Houghton Mifflin Co. v. Weathermen, Inc.*, WIPO Case No. [D2001-0211](#); see also *Philip Morris Incorporated v. Alex Tsytkin*, WIPO Case No. [D2002-0946](#). The Panel finds, therefore, that Respondent had actual knowledge of the KIMLEY-HORN Mark, and that Respondent has targeted Complainant's KIMLEY-HORN Mark in registering the disputed domain name in bad faith. See *Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whois Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc.*, WIPO Case No. [D2014-1754](#).

Complainant contends that the disputed domain name has never resolved to an active page, as it has remained inactive since its registration. Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), Section 3.3. Prior UDRP panels have found under the doctrine of passive holding that that the word bad faith "use" in the context of paragraph 4(a)(iii) does not require a positive act on the part of respondent – instead, passively holding a domain name can constitute a factor in finding bad faith registration and use pursuant to Policy paragraph 4(a)(iii). [WIPO Overview 3.0](#), section 3.3. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); see also *Alitalia Linee Aeree Italiane S.p.A v. Colour Digital*, WIPO Case No. [D2000-1260](#).

Having reviewed the record, the Panel finds Respondent's non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. While panelists will look at the totality of the circumstances in each case, factors that are present here which have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of Complainant's mark, registered over 20 years prior to registration of the disputed domain name (ii) the failure of Respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, especially considering this Respondent has failed to avail itself of its opportunity to respond to Complainant's pre complaint cease and desist correspondence (iii) Respondent concealing its identity and use of false contact details, and (iv) the implausibility of any good faith use to which the disputed domain name may be put. [WIPO Overview 3.0](#), section 3.3. See *"Dr. Martens" International Trading GmbH and "Dr. Maertens" Marketing GmbH v. Godaddy.com, Inc.*, WIPO Case No. [D2017-0246](#).

The Panel finds Complainant's arguments and evidence persuasive and has received no arguments or evidence from Respondent to the contrary. Considering all the circumstances, the Panel concludes that Respondent has registered and used the disputed domain name in bad faith and Complainant has satisfied paragraph 4(a)(iii) 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 <kimley-horn.live> be transferred to Complainant.

/Scott R. Austin/

Scott R. Austin

Sole Panelist

Date: April 10, 2025