

## **ADMINISTRATIVE PANEL DECISION**

Kosmos Global Holding, S.L. v. Jewella Privacy - 00a3b, Jewella Privacy LLC  
Privacy ID# 924265 / Domain Manager, Orion Global Assets  
Case No. D2022-2408

### **1. The Parties**

The Complainant is Kosmos Global Holding, S.L., Spain, represented by MERX IP, Spain.

The Respondent is Jewella Privacy - 00a3b, Jewella Privacy LLC Privacy ID# 924265, United States of America (“United States”) / Domain Manager, Orion Global Assets, United States, represented by John Berryhill, Ph.d., Esq., United States.

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

The disputed domain name <kosmos.com> (the “Disputed Domain Name”) is registered with Sea Wasp, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 1, 2022. On July 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On July 5, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on July 6, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On the same day, the Respondent’s representative sent an email communication requesting that all future correspondence be directed to him. In this email, the Respondent’s representative also referred to a previous UDRP case involving the Disputed Domain Name and claimed that one of the email addresses mentioned in the Complaint and in the Center’s communications is not linked to the Respondent. The Complainant filed an amended Complaint on July 13, 2022.

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 July 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 7, 2022. The Response was filed with the Center on August 7, 2022 and included a request to elect a three-member Panel.

The Center appointed Flip Jan Claude Petillion, Fernando Triana, and Nick J. Gardner as panelists in this matter on August 25, 2022. The Panel finds that it was properly constituted. Each member of 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, Kosmos Global Holding, S.L., is a company investing in sports, media, and entertainment companies. According to an extract of the Barcelona Mercantil Registry, the Complainant was founded in Spain on November 3, 2017 (see Respondent Exhibit A).

The Complainant applied for several trade marks including the sign KOSMOS, some of which are effectively registered such as the following:

- below European Union (“EU”) figurative trade mark registered under No. 1463110 on August 6, 2018 in classes 35, 36, and 41:



The Disputed Domain Name was registered on April 4, 1998. The Respondent does not indicate when it acquired the Disputed Domain Name but according to an undisputed invoice, the Respondent renewed the Disputed Domain Name around the date of March 2, 2017 (Respondent Exhibit B). The Disputed Domain Name resolves to a web page offering the Disputed Domain Name for sale.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant considers the Disputed Domain Name to be identical to a trade mark in which it claims to have rights.

The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. According to the Complainant, there is no evidence of *bona fide* or fair use of the Disputed Domain Name, or that the Respondent is or has been commonly known by the Disputed Domain Name. The Complainant claims that the Respondent registered the Disputed Domain Name and other domain names while targeting the Complainant and attempting to sell the Disputed Domain Name to the Complainant.

Finally, the Complainant asserts that the Respondent's bad faith is implicit in the registration of the Disputed Domain Name because it was registered for a name "kosmos" which is similar to "cosmos" and is a popular word in many languages. In the Complainant's view, the idea of the Respondent is to register domain names for a popular name to resell it to companies acting in the market. The Complainant claims that the Disputed Domain Name is being used in bad faith which constitutes a breach of Article 2 of the UDRP, which

therefore renders the registration in bad faith.

## **B. Respondent**

The Respondent claims it possessed the Disputed Domain Name prior to the Complainant's existence, which means that the Complainant's alleged rights in connection with any "KOSMOS" mark are well junior to the Respondent's registration of the Disputed Domain Name.

According to the Respondent, it follows from the above that the Respondent has legitimate rights and interests in the Disputed Domain Name. Moreover, the Respondent claims that "kosmos" is a common dictionary word and that the mere general offer for sale of a non-exclusive and non-distinctive term does not implicate or violate the Complainant's limited rights. According to the Respondent, the Disputed Domain Name was never used for any purpose having to do with the particular services in which the Complainant has rights, so there has been no illegitimate use of the Disputed Domain Name even if the Respondent's senior interest was ignored.

Finally, the Respondent contests the Complainant's interpretation of the Policy regarding the bad faith element, according to which bad faith use of a domain name could result in a so-called "retroactive" bad faith registration. In the Respondent's view, such interpretation has been rejected by mainstream UDRP jurisprudence for years. The Respondent claims that even if the Complainant's interpretation was applied, the fact remains that the Respondent acquired the Disputed Domain Name prior to the Complainant's existence, and has engaged in no "changed use" or infringing use of the Disputed Domain Name relative to the Complainant's limited scope of rights in this otherwise dictionary word.

According to the Respondent, the Complainant failed to explain why it omitted an email of the Complainant's counsel to the Respondent's authorized broker, which included an offer to buy the Disputed Domain Name. The Respondent claims that the present case is yet another "Plan B" UDRP proceeding, in which a junior trademark registrant attempts to purchase a domain name from a senior domain registrant, is unsatisfied or ignorant of normal market pricing, and instead launches a UDRP while omitting evidence of its purchase attempt.

## **6. Discussion and Findings**

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out his case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer the Disputed Domain Name. The standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

- (i) The Disputed Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (iii) The Disputed Domain Name has been registered and is being used in bad faith.

The Panel will therefore deal with each of these requirements.

## A. Identical or Confusingly Similar

To prove this element, the Complainant must first establish that there is a trade mark or service mark in which it has rights. The Panel finds that there is at least one registered trade mark in which the Complainant has rights. The Complainant's figurative trade mark depicted above under section 4 has been registered and is being used in the EU in connection to the Complainant's business.

The assessment of identity or confusing similarity involves comparing the Disputed Domain Name and the textual components of the Complainant's mark. To the extent that design (or figurative/stylized) elements would be incapable of representation in domain names, these elements are largely disregarded for purposes of assessing identity or confusing similarity under the first element (see section 1.10 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Disputed Domain Name corresponds to the term "KOSMOS", which is prominently included in the Complainant's figurative trade mark depicted above under section 4. As a dominant feature of the relevant mark is recognizable in the Disputed Domain Name, the Panel finds that the Disputed Domain Name is confusingly similar to that mark for purposes of UDRP standing (see section 1.7 of the [WIPO Overview 3.0](#)).

Additionally, it is well-established that the generic Top-Level Domain ("gTLD"), here ".com", may be disregarded when considering whether the Disputed Domain Name is confusingly similar to a trade mark in which the Complainant has rights.

In light of the above, the Panel considers the Disputed Domain Name to be confusingly similar to the Complainant's trade mark.

## B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

The Complainant presents various arguments in that regard, such as the fact that the Respondent does not appear to be commonly known by the Disputed Domain Name and that the Respondent does not seem to have acquired trade mark or service mark rights.

However, more relevant to this case is the Complainant's claim according to which the Respondent is making an unfair use of the Disputed Domain Name with the sole intention to sell it to third parties.

Generally speaking, panels have accepted that aggregating and holding domain names (usually for resale) consisting of acronyms, dictionary words, or common phrases can be *bona fide* and is not per se illegitimate under the UDRP (see section 2.1 of the [WIPO Overview 3.0](#)).

In the present case, the Disputed Domain Name consists of the word "kosmos". As confirmed by both parties and in a previous UDRP case relating to the Disputed Domain Name, the Panel finds that the word "kosmos" is a dictionary word (see *Kosmos SAS v. Domain Hostmaster - Customer ID: 48322848242624 / Domain Admin, Ashantiplc Limited*, WIPO Case No. [D2015-2198](#), <kosmos.com>).

In view of the above, the Panel finds that the Respondent can have a legitimate interest in registering and holding the Disputed Domain Name provided that this is not done with the intent to target the Complainant (see *Zyodus Lifesciences Ltd. (formerly known as Cadila Healthcare Ltd.) v. Jewella Privacy LLC / DNS, Domain Privacy LTD*, WIPO Case No. [D2022-0880](#)).

As will be further explained below under section 6.C, the Panel considers that the Respondent registered the Disputed Domain Name without targeting the Complainant or its mark.

Therefore, the Panel finds that the Complainant has not established the second requirement under the Policy.

### **C. Registered and Used in Bad Faith**

The Complainant essentially claims that the Respondent's use of the Disputed Domain Name for the sole purpose of reselling it to third parties amounts to bad faith use. The Complainant refers to two UDRP cases in which the respective panels took the view that bad faith use of a domain name can be sufficient to establish the third requirement under the Policy, even without proof of bad faith intent at the time of registration.

The Panel must disagree with the Complainant's arguments.

The two UDRP decisions referred to by the Complainant are part of specific UDRP jurisprudence dating from more than 10 years ago, finding a so-called "retroactive" bad faith registration. It is well-understood that this concept has not been followed in subsequent UDRP cases (see section 3.2.1 of the [WIPO Overview 3.0](#)).

The Panel observes that based on undisputed evidence, the Respondent showed that it registered the Disputed Domain Name before the Complainant's very existence. Where a respondent registers a domain name before the complainant's (trade mark) rights accrue, panels will not normally find bad faith on the part of the respondent, except in limited cases of anticipatory bad faith (see section 3.8 of the [WIPO Overview 3.0](#)). The Panel finds that no exceptions to the above principle apply in this case. The Respondent could not have registered the Disputed Domain Name in bad faith as the Complainant did simply not exist yet.

Moreover, the Panel found no conclusive evidence regarding any bad faith use of the Disputed Domain Name either.

The Complainant claims that the Respondent "contacts potential buyers through a supposedly independent broker". The Complainant suggests that it was contacted by a broker from the company Lumis with regard to the sale of the Disputed Domain Name and attempts to show that this broker is not independent and in fact linked to the Respondent.

However, based on the evidence provided by both parties, the Panel is inclined to believe in the broker's independence. In the correspondence between the Lumis broker and the Complainant, the broker explicitly states that "we do not own Kosmos.com nor are we representing the owner of this domain" (Complainant Annex 5.1). In the Panel's view, the Complainant does not show that the Respondent actively contacted the Complainant regarding the Disputed Domain Name.

On the contrary, the evidence suggests that the Complainant took the initiative to contact the Respondent's authorized broker with an offer to buy the Disputed Domain Name (Complainant's Annexes 6, 7, and 9 and Respondent's Exhibit I).

In view of the above, the Panel finds that the Complainant has not established that the Disputed Domain Name has been registered and used in bad faith.

### **D. Reverse Domain Name Hijacking**

The Respondent has not formally requested a finding that the Complainant has engaged in Reverse Domain Name Hijacking ("RDNH"). However, following some early cases to the contrary, UDRP panels have more clarified that, for an RDNH finding to be made, it is not necessary for a respondent to seek an RDNH finding or prove the presence of conduct constituting RDNH (see section 4.16, [WIPO Overview 3.0](#)).

Paragraph 15(e) of the Rules provides that, if "after considering the submissions the panel finds that the complaint was brought in bad faith, for example in an attempt at RDNH or was brought primarily to harass the domain-name holder, the panel shall declare in its decision that the complaint was brought in bad faith

and constitutes an abuse of the administrative proceeding”.

For this purpose, paragraph 1 of the Rules defines “Reverse Domain Name Hijacking” to be “using the Policy in bad faith to attempt to deprive a registered domain name holder of a domain name”.

Reasons articulated by panels for finding RDNH include: (i) facts which demonstrate that the complainant knew it could not succeed as to any of the required three elements – such as the complainant’s lack of relevant trademark rights, clear knowledge of respondent rights or legitimate interests, or clear knowledge of a lack of respondent bad faith (see generally section 3.8) such as registration of the disputed domain name well before the complainant acquired trademark rights, (ii) facts which demonstrate that the complainant clearly ought to have known it could not succeed under any fair interpretation of facts reasonably available prior to the filing of the complaint, including relevant facts on the website at the disputed domain name or readily available public sources such as the Whois database, (iii) unreasonably ignoring established Policy precedent notably as captured in this WIPO Overview – except in limited circumstances which *prima facie* justify advancing an alternative legal argument, (iv) the provision of false evidence, or otherwise attempting to mislead the panel, (v) the provision of intentionally incomplete material evidence – often clarified by the respondent, (vi) the complainant’s failure to disclose that a case is a UDRP refiling, (vii) filing the complaint after an unsuccessful attempt to acquire the disputed domain name from the respondent without a plausible legal basis, (viii) basing a complaint on only the barest of allegations without any supporting evidence (see section 4.16, [WIPO Overview 3.0](#)).

The mere lack of success of a complaint is not in itself sufficient for a finding of RDNH. In the present case, however, the Panel finds the following circumstances to be particularly relevant:

- The Complainant misrepresented the facts regarding its trade mark rights. The Complainant stated several times that it owned various or even “a family of” registered trade marks. It appears that a lot of these trade marks are not validly registered (yet);
- The Complainant omitted relevant evidence, notably an email from its counsel to the Respondent authorized broker (Respondent’s Exhibit I).
- The Complainant is professionally represented in this matter and, in the opinion of the Panel, knew or ought to have known that it could not succeed as to the second and third element of the Policy for the reasons set out above. In particular, given that the Complainant’s representatives quoted extensively from UDRP case law, the Panel thinks it is unlikely that they were unaware of the current overwhelming view of UDRP panelists as to the need to prove registration as well as use in bad faith and that the more than 10 year old cases cited in that regard are no longer relevant (see *Aktsionernoe Obshchestvo, Kontsern Radioelektronnye Tehnologii v. Titan Networks, Domain Hostmaster*, WIPO Case No. [D2019-3170](#)).

In these circumstances, the Panel finds that the Complaint has been brought in bad faith. Accordingly, the Panel finds that the Complainant has abused the administrative proceeding and engaged in reverse domain name hijacking.

## 7. Decision

For the foregoing reasons, the Complaint is denied.

*/Flip Jan Claude Petillion/*  
**Flip Jan Claude Petillion**  
Presiding Panelist

*/Fernando Triana/*  
**Fernando Triana**  
Panelist

*/Nick J. Gardner/*  
**Nick J. Gardner**  
Panelist  
Date: September 8, 2022