

ADMINISTRATIVE PANEL DECISION

KPMG International Cooperative v. Veena Suma Case No. D2022-3651

1. The Parties

The Complainant is KPMG International Cooperative, Netherlands, represented by Taylor Wessing LLP, United Kingdom.

The Respondent is Veena Suma, United States of America.

2. The Domain Name and Registrar

The disputed domain name <kp-rngh.com> is registered with Gandi SAS (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on September 30, 2022. On October 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 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 October 18, 2022, 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 October 19, 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 October 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 10, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 14, 2022.

The Center appointed Manuel Moreno-Torres as the sole panelist in this matter on November 18, 2022. 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 a Dutch company doing business worldwide. The KPMG network is one of the world's leading providers of audit, tax, and advisory services. The KPMG member firms operate in approximately 147 countries, with more than 219,000 employees. The Complainant owns the trademark KPMG and licenses its use to the KPMG member firms worldwide.

The Complainant uses <kpmg.com> and operate an official website at "www.kpmg.com", through which it markets, promotes, and provides its services.

The Complainant owns over 480 trademark registrations containing the name KPMG throughout the world. These include, by way of example, United States trademark registration number 2339547 and European Union trademark registration number 001011220 for the word mark KPMG, covering auditing, taxation services, and advisory services in classes 35 and 36 (among other goods and services), filed on July 3, 1997, and December 3, 1998, and registered on April 11, 2000, and April 25, 2000, respectively.

Previous UDRP decisions have recognized KPMG as a well-known trademark. See *KPMG International Cooperative v. Privacy service provided by Withheld for Privacy ehf / Samy Dennis*, WIPO Case No. [D2021-2213](#).

The Respondent registered the disputed domain name on August 30, 2022. The disputed domain name has been involved in a case of impersonation and scam via the use of the disputed domain name as an email.

5. Parties' Contentions

A. Complainant

The Complainant asserts that the disputed domain name contains elements of the name KPMG, combined with a hyphen and the letter "h". Given that the disputed domain name consists of "kp", followed by the letters "rn" together so as to look like the letter "m", followed by the letter "g", the Complainant concludes that it is confusingly similar to the distinctive and famous KPMG trademark.

With regard to the second requirement, the Complainant contends that the Respondent does not have any rights or legitimate interests in respect to the disputed domain name. For such, the Complainant refers to the Respondent's use of the disputed domain name on at least one occasion in an unlawful, fraudulent email scam, using the email address "[...]@kp-rngh.com". Indeed, says the Complainant, the Respondent used the email address incorporating one of the Complainant's senior consultant in Canada where the signature block in the email refers to him and specifies his email address as "[...]@kpmg.com". The Complainant notes that <kpmg.com> is the core domain name used by the Complainant and the network of KPMG firms, both for the main KPMG website and for its emails.

The Complainant also alleges that the Complainant has no connection with the Respondent, the disputed domain name or the email address used.

The Complainant affirms that there is no credible evidence of the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services. Nor there is credible evidence that the Respondent has been commonly known by the disputed domain name. Neither there is evidence that the Respondent is, or could be, making any legitimate noncommercial or fair use of the disputed domain name. Further, the Complainant avers that the disputed domain name does not resolve to a valid website using URL "www.kp-rngh.com".

The Complainant argues that the disputed domain name was registered and is being used in bad faith for the purpose of using it to target a third party by way of a serious, unlawful, and fraudulent email scam to elicit

the third party into transferring funds.

By using the disputed domain name to send at least one fraudulent email impersonating an employee of the Complainant, the Respondent is intentionally attempting to opportunistically attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's famous KPMG mark as to the source, sponsorship, affiliation, or endorsement of 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 Response. Under paragraph 14(a) of the Rules in the event of such a "default" the Panel is still required "to proceed with a decision on the complaint", whilst under paragraph 14(b) it "shall draw such inferences there from as it considers appropriate". This dispute resolution procedure is accepted by the Respondent as a condition of registration.

A. Scope of the Policy

The disputed domain name is used as an email and resolves to an inactive website. Such use does not impact the enforcement of the Policy since domain names used for emails are within its scope because they are "domain names". See paragraph 4(b)(iv) of the Policy which refers to the "web site or location or of a product or service on your web site or location". The Internet Corporation for Assigned Names and Numbers ("ICANN") also provides that "[d]omain names can also be used to send email". (Beginner's Guide to Domain Names, ICANN, available at: www.icann.org/en/system/files/files/domain-names-beginners-guide-06dec10-en.pdf).

B. Identical or Confusingly Similar

To begin with the analysis of this first requirement, the Panel first confirms the existence of trademark rights in favour of the Complainant in relation to KPMG as noted above.

The Panel looks at section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"): "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".

That said, the Panel notes that a comparison of the Complainant's mark KPMG and the disputed domain name yields only a partial incorporation of the "kp" element of the Complainant's mark, with the added letters "rn" bearing a visual resemblance to the "m" as found in the Complainant's mark, and with the last letter "h" being added in the disputed domain name. The Respondent's use of "rn" to visually mimic the "m" in the Complainant's mark can be considered a typographical homograph of the Complainant's KPMG mark. See,

American Machinery Works Inc. v. Registration Private, Domains by Proxy LLC / Name Redacted, WIPO Case No. [D2021-3006](#); *Vitamin Well AB v. Privacy service provided by Withheld for Privacy ehf / Wen Batiz vegas*, WIPO Case No. [D2022-2148](#); and, *Somfy Activites SA v. Privacy service provided by Withheld for Privacy ehf / Mariano Guzman*, WIPO Case No. [D2022-2128](#). Moreover, the added “h” is similarly a typographical variation of the KPMG mark, seeing that the “h” is adjacent to the “g” on a standard QWERTY keyboard. [WIPO Overview 3.0](#), section 1.9.

Furthermore, in exceptional circumstances, panels have taken into account either the corresponding content of the website to which a domain name redirects (see *Gravity Co. Ltd., Gravity Interactive, Inc. v. Registration Private, Domains By Proxy, LLC / Zhang Xiaodong*, WIPO Case No. [D2021-2765](#)) or the specific use of the domain name in order to assess the first element (see *Airports Company South Africa SOC Limited v. Domains By Proxy, LLC / Dill Martine*, WIPO Case No. [D2020-2716](#)).

In the latter decision, the learned panelist concluded that: “Fourthly, in specific limited instances, where a panel would benefit from affirmation as to confusing similarity, the broader case context may be considered (see section 1.7 of the [WIPO Overview 3.0](#)). As detailed below, the Domain Name has been used to perpetuate fraud impersonating the Complainant, and the Domain Name was clearly chosen by the Respondent to take advantage of the intended confusing similarity with the Complainant’s trade mark”.

In the present case, the disputed domain name is being involved in a scam case where the Respondent purported to be an employee of the Complainant from Canada. Therefore, the evidence shows that the Respondent sought to target the Complainant and benefit from the confusing similarity of the disputed domain name to the Complainant’s mark, thereby trading off the Complainant’s reputation. Thus, by visually deceiving email recipients and by reproducing contact details of an employee of the Complainant, the confusion was well served.

It is also well established that the generic Top-Level Domain (“gTLD”), in this case “.com”, is typically disregarded in the analysis whether the disputed domain name is identical or confusingly similar to the KPMG trademark.

Therefore, the first requirement is met under paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out non-exclusive examples in which the Respondent may establish rights or legitimate interests in the disputed domain name, by demonstrating any of the following:

- (i) before any notice to it of the dispute, the Respondent’s use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) that the Respondent has been commonly known by the disputed domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel finds that the Complainant has produced consistent evidence as to conclude that the Respondent lacks rights or legitimate interests. The attempt to impersonate the Complainant to get an invoice paid from a client is well enough for such finding. Therefore, the Respondent targeted the Complainant, and the attempt of scam cannot provide rights or legitimate interests under the Policy in any circumstance. The Panel, indeed, highlights that the phishing practice is an illegitimate undertaking that can never confer rights or legitimate interests on a respondent. See [WIPO Overview 3.0](#), section 2.13.1, or *ELO v. Gene Brice Christian*, WIPO Case No. [D2022-0174](#).

Accordingly, the Respondent, through the disputed domain name, is taking advantage of the well-known nature of the KPMG trademark to obtain commercial gain, and consequently is not making a *bona fide* offering of goods or services in accordance with paragraph 4(c)(i) of the Policy.

The Panel also notes that while the Complainant has the burden of proof on all the elements, the second element entitles the Complainant with a presumption of having met said burden after *prima facie* case is made. Being that the Complainant has made such a *prima facie* showing, the production of evidence shifts to the Respondent. See [WIPO Overview 3.0](#), section 2.1. The Center duly notified the Complainant to the Respondent who decided not to rebut the Complainant's allegations.

Therefore, the Complainant has met the second element under paragraph 4(a)(ii) of the Policy to the satisfaction of the Panel.

D. Registered and Used in Bad Faith

The Complainant has been using KPMG for over thirty years, namely, long before the Respondent did register the disputed domain name. Besides, as set out above KPMG is a well-known trademark. And lastly, the disputed domain name is being used to impersonate the Complainant. Under these circumstances, the Panel finds that, on balance, the Respondent knew or should have known about the Complainant and its activities at the moment of the registration of the disputed domain name.

The circumstances of the present case are clearly similar, if not identical, in terms of evidence to those produced in other previous cases, such as *KPMG International Cooperative v. Privacy service provided by Withheld for Privacy ehf / Samy Badel*, WIPO Case No. [D2021-2214](#), where the Panel concluded: "the Respondent's fraudulent emails included the KPMG trademark, the KPMG logo and some of the details on the Complainant's senior executive whose identity was used for this fraud. Such use of the disputed domain name can only be observed as clear evidence of the Respondent's bad faith (see, in particular, sections 3.1.4 and 3.4 of [WIPO Overview 3.0](#)). Considering all of the above circumstances, the Panel concludes that the Respondent has used the disputed domain name in an unlawful attempt to impersonate the identity of a Complainant's senior executive, by way of an email scam. This clearly constitutes evidence of bad faith registration and use".

Thus, and having in mind the evidence, the Panel concludes that the use of the disputed domain name to send a deceptive email to solicit payment of a fraudulent invoice by the Complainant's client by way of impersonating the Complainant is in bad faith.

Therefore, the Panel finds that the Complainant has satisfied the requirements of 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, <kp-rngh.com>, be transferred to the Complainant.

Manuel Moreno-Torres

Sole Panelist

Date: December 2, 2022