

## **ADMINISTRATIVE PANEL DECISION**

### **Kibali Goldmines SA v. Evans Wesonga**

### **Case No. D2023-0905**

#### **1. The Parties**

The Complainant is Kibali Goldmines SA, Congo, represented by Dorsey & Whitney, LLP, United States of America.

The Respondent is Evans Wesonga, Kenya.

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

The disputed domain name <kibaligoldmines.com> (the "Domain Name") is registered with Internet Domain Service BS Corp (the "Registrar").

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 28, 2023. On March 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 3, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent (Unknown, Not disclosed) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 9, 2023, 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 March 9, 2023.

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 March 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 11, 2023.

The Center appointed Jeremy Speres as the sole panelist in this matter on April 21, 2023. 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 was founded in 2009 as a mining services company and is the owner of the Kibali Gold Mine located in the north-eastern province of Haut-Uélé in the Democratic Republic of the Congo. The Complainant, and its affiliates and subsidiaries, as well as its partial owner and exclusive operator, Barrick Gold, have used the trade mark KIBALI in connection with its gold mining services in both the Democratic Republic of the Congo, throughout Africa, the United States, and around the world since at least as early as 2009.

The Complainant owns trade mark registrations for its KIBALI mark in various jurisdictions in Africa, including Organisation Africaine de la Propriété Intellectuelle (“OAPI”) Trade Mark Registration No. 86372 KIBALI in class 14 with registration date January 29, 2016. An OAPI registration confers trade mark rights in 17 mostly French-speaking countries in Africa.

The Domain Name was registered on November 16, 2022, and resolves to a website headed “KIBALI GOLD MINE” featuring a replica of the Complainant’s logo and the text “A combined open pit and underground gold mine in the Haut-Uélé province of the northeast Democratic Republic of the Congo” amongst other elements.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant contends that the Domain Name is confusingly similar to its well-known KIBALI mark, that the Respondent has no rights or legitimate interests in the Domain Name, and the Domain Name was registered and used in bad faith given that it has been used to impersonate the Complainant.

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

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

#### **6. Discussion and Findings**

##### **A. Identical or Confusingly Similar**

The Complainant’s registered KIBALI mark is wholly contained within the Domain Name as its first element with the addition of the dictionary terms “gold” and “mines”. Where the trade mark is recognisable within the disputed domain name (as in this case), the addition of other terms (including descriptive terms) does not prevent a finding of confusing similarity (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) at section 1.8). The Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

##### **B. Rights or Legitimate Interests**

The Complainant’s mark was registered and well known for many years prior to registration of the Domain Name. The Domain Name is confusingly similar to the Complainant’s mark and the Complainant has certified that the Domain Name is unauthorised by it.

The general impression created by the Domain Name’s website, including use of the Complainant’s distinctive logo and a descriptor that matches the Complainant’s services, is one of impersonation of the Complainant. UDRP panels have categorically held that the use of a domain name for illegal activity (e.g.

impersonation) can never confer rights or legitimate interests on a respondent ([WIPO Overview 3.0](#) at section 2.13.1).

There is no evidence that any of the circumstances set out in paragraph 4(c) of the Policy, nor any others which might confer rights or legitimate interests upon the Respondent, pertain. The Complainant has satisfied paragraph 4(a)(ii) of the Policy by virtue of having made out an un rebutted *prima facie* case ([WIPO Overview 3.0](#) at section 2.1).

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

UDRP panels have consistently found that registration of a domain name that is confusingly similar (particularly domain names incorporating the mark plus a descriptive term, as in this case as discussed below) to a famous or well-known trade mark by an unaffiliated entity can by itself create a presumption of bad faith ([WIPO Overview 3.0](#) at section 3.1.4).

It is well accepted that impersonation is clear evidence of bad faith registration and use (*FLRish IP, LLC v. prince zvomuya*, WIPO Case No. [D2019-0868](#)). That impersonation was the intention of the Respondent upon registration of the Domain Name, and that the Respondent was aware of and targeted the Complainant's mark, is clear from the fact that the Domain Name's website makes prominent use of the Complainant's unique logo, the name of the Complainant's gold mine and a descriptor matching the Complainant's services. The Domain Name itself incorporates terms descriptive of the Complainant's business, alongside the Complainant's well-known mark, which is a further indicator of bad faith ([WIPO Overview 3.0](#) at section 3.1.2).

The Panel draws an adverse inference from the Respondent's failure to take part in the present proceeding where an explanation is certainly called for ([WIPO Overview 3.0](#) at section 4.3).

The 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 Domain Name, <kibaligoldmines.com>, be transferred to the Complainant.

*/Jeremy Speres/*

**Jeremy Speres**

Sole Panelist

Date: May 4, 2023