

## **ADMINISTRATIVE PANEL DECISION**

thyssenkrupp AG and TK Elevator GmbH v. Privacy service provided by  
Withheld for Privacy ehf / Kim Halt  
Case No. D2022-2272

### **1. The Parties**

- 1.1 The Complainant is thyssenkrupp AG, Germany, and TK Elevator GmbH, Germany, internally represented.
- 1.2 The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Kim Halt, United States of America (“United States”).

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

- 2.1 The disputed domain name <tkelevatr.com> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

- 3.1 The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 23, 2022. At the time that the Complaint was initially filed, the publicly available Whois details for Domain Name were redacted. On June 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On June 23, 2022, the Registrar transmitted by email to the Center its verification response disclosing underlying registrant and contact information for the Domain Name. The Center sent an email communication to the Complainant on June 24, 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 June 28, 2022.
- 3.2 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”).
- 3.3 In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on July 5, 2022. In accordance with the Rules,

paragraph 5, the due date for Response was July 25, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 9, 2022.

- 3.4 The Center appointed Matthew S. Harris as the sole panelist in this matter on August 15, 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**

- 4.1 The Complainants are both incorporated in Germany. TK Elevator GmbH (formerly known as TK Elevator AG) is owned by a private equity consortium and operates the global elevator business previously operated by thyssenkrupp AG. The transfer of that business to TK Elevator GmbH took place in June 2020.
- 4.2 Thyssenkrupp AG is the owner of international trade mark registration no. 1578956 dated November 13, 2020, for TK ELEVATOR as a word mark in classes 7, 9, 11, 35, 37, and 42 and designating over 50 territories. That trade mark is based upon a German trade mark registered on October 23, 2020. This international trade mark has proceeded to registration in a large number of the designated territories. These registered marks include United States registered trade mark no 6,641,566, registered on February 15, 2022.
- 4.3 TK Elevator GmbH is the exclusive licensee of thyssenkrupp AG's TK ELEVATOR trade marks. TK Elevator GmbH is also the owner and registrant of the domain name <tkelevator.com>, which was first registered on January 25, 2001. This is the domain name used for TK Elevator GmbH's primary business website, and is also used as the e-mail address domain for its business e-mail and the emails of its affiliate companies globally.
- 4.4 The Domain Name was registered on February 16, 2022; *i.e.* the day after thyssenkrupp AG's United States trade mark proceeded to registration.
- 4.5 The Domain Name was then used on February 16, 2022, as part of the email address for an email falsely purporting to come from an employee of a United States subsidiary of TK Elevator GmbH. That email attached a modified copy of an intercepted genuine invoice issued by that affiliate to one of its customers. By means of that email and modified invoice, the sender sought to induce that customer to transfer in excess of USD 100,000 into a bank account not controlled by the TK Elevator business and presumably controlled by the fraudster sending the email.
- 4.6 The Respondent appears to be an individual based in the United States, but given the way in which the Domain Name has been used, it is questionable whether a person with that name actually controls the Domain Name.

#### **5. Parties' Contentions**

##### **A. Complainants**

- 5.1 The Complainants describe the "TK Elevator" business and associated marks and how the Domain Name has been used since registration; contending that the Domain Name has been used to perpetuate fraud against a named customer of a subsidiary of TK Elevator GmbH. The Complainants provide a detailed explanation of how this alleged fraud was perpetuated and support those claims by evidence in the form of copies of the relevant emails and invoices involved. The Complainants claim that the fraud was (at least initially) successful and has been reported to the relevant criminal authorities.

- 5.2 The Complainants contend that the Domain Name involves a misspelling of their TK ELEVATOR trade mark and the <tklevator.com> domain name used by TK Elevator GmbH in respect of its business. In these circumstances, they maintain that the Domain Name is confusingly similar to the TK ELEVATOR trade mark, that the Respondent has no rights or no legitimate interests in the Domain Name, and that the Domain Name has been both registered and used in bad faith.
- 5.3 The Complainants also contend that as thyssenkrupp AG is the owner of the TK ELEVATOR trade mark and TK Elevator GmbH is the exclusive licensee of that mark, “consolidation of multiple Complainants in this case is appropriate, as both Complainants have a common grievance against the Respondent”. They also expressly request as a remedy that the Domain Name be transferred to TK Elevator GmbH.

## **B. Respondent**

- 5.4 The Respondent did not reply to the Complainants’ contentions.

## **6. Discussion and Findings**

- 6.1 There are no exceptional circumstances within paragraph 5(f) of the Rules so as to prevent the Panel from determining the dispute based upon the Complaint, notwithstanding the failure of any Respondent to lodge a Response.
- 6.2 To succeed in these proceedings the Complainants must make out their case in all respects under paragraph 4(a) of the Policy. Namely, the Complainants must prove that:
- (i) the Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainants have rights (paragraph 4(a)(i)); and
  - (ii) the Respondent has no rights or legitimate interests in respect of the Domain Name (paragraph 4(a)(ii)); and
  - (iii) the Domain Name has been registered and is being used in bad faith (paragraph 4(a)(iii)).
- 6.3 However, under paragraph 14(b) 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”.
- 6.4 As a preliminary matter, the Panel accepts the Complainants’ contention that the proceedings can continue with both of them being named as a complainant in these proceedings. This is not really a case where there is arguably “consolidation” of disputes in respect of different domain names. It is instead a case where more than one entity has an interest in (in the present case as the owner and the exclusive licensee of) the trade mark that is relied upon in proceedings in respect of a single domain name. In such a case, it is legitimate for all such entities to be named as complainants in the proceedings: see in this respect section 1.4 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the [“WIPO Overview 3.0”](#)).

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

- 6.5 The Panel accepts that each of the Complainants have rights for the purposes of the Policy in a number of registered trade marks for the word mark TK ELEVATOR. It also accepts that the Domain Name can only sensibly be read as a misspelling of and reference to TK ELEVATOR (with the letter “o” omitted) in combination with the “.com” generic Top-Level Domain (“gTLD”). It follows that the Domain Name is confusingly similar to a trade mark in which each of the Complainants have rights. The Complainants have, therefore, made out the requirements of paragraph 4(a)(i) of the Policy.

## **B. Rights or Legitimate Interests and Registration and Use in Bad Faith**

- 6.6 It is usual for panels under the Policy to consider the issues of rights or legitimate interests and registration and use in bad faith in turn. However, in a case such as this it is more convenient to consider those issues together.
- 6.7 The Panel accepts that the Domain Name has been registered and used with the intention of the sending of an email or emails fraudulently impersonating an employee of a subsidiary of one of the Complainants. In this particular case, the fraud took the form of persuading by way of these emails a customer of that subsidiary to transfer monies owed under a modified invoice originally issued by that subsidiary to a bank account controlled by or connected with the person registering the Domain Name.
- 6.8 There is no rights or legitimate interests in holding a domain name for the purpose of furtherance of a fraud through impersonation (see section 2.13 of the [WIPO Overview 3.0](#)), and the fact that a domain name is or has been used for such a purpose is evidence that no such rights or legitimate interests exist. Further, the registration and use of a domain name for such a purposes involves registration and use in bad faith (see section 3.4 of the [WIPO Overview 3.0](#) and, for example, *Vestey Group Limited v. George Collins*, WIPO Case No. [D2008-1308](#)). Indeed, it is difficult to conceive of a more clear cut example of bad faith registration and use of a domain name, even if such activity does not obviously fall within the scope of any of the non-exhaustive list examples of circumstances indicating bad faith registration or use set out in paragraph 4(b) of the Policy.
- 6.9 In the circumstances, the Panel has no hesitation in finding that the Complainants have made out the requirements of paragraphs 4(a)(ii) and 4(a)(iii) of the Policy.

## **7. Decision**

- 7.1 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, <tkelevatr.com>, be transferred to TK Elevator GmbH.

*/Matthew S. Harris/*

**Matthew S. Harris**

Sole Panelist

Date: August 29, 2022