

## ADMINISTRATIVE PANEL DECISION

### Kellogg Brown & Root LLC v. Mike Chew Case No. D2023-4444

#### 1. The Parties

The Complainant is Kellogg Brown & Root LLC, United States of America (the “United States”), self-represented.

The Respondent is Mike Chew, United States.

#### 2. The Domain Name and Registrar

The disputed domain name <kbr-usa.com> (the “Disputed Domain Name”) <sup>1</sup> is registered with NameCheap, Inc. (the “Registrar”).

#### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 25, 2023. On October 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On October 26, 2023, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 29, 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 December 1, 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”).

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<sup>1</sup> Initially, the Complainant filed the Complaint against the Respondent for an additional domain name, <kbrusa.com>. The Registrar informed the Center and the Complainant that the <kbrusa.com> domain name had expired. However, the Complainant was unable to register the <kbrusa.com> domain name and therefore asked the Center to withdraw the <kbrusa.com> domain name from the Complaint and continue the proceeding only with the <kbr-usa.com> Disputed Domain Name. The Center accepted the Complainant’s request without prejudice to file another Complaint with respect to the <kbrusa.com> domain name, and the proceeding commenced with <kbr-usa.com> as the sole Disputed Domain Name in this proceeding.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on December 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 24, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 5, 2024.

The Center appointed Lynda M. Braun as the sole panelist in this matter on January 15, 2024. 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, along with the Complainant's corporate parent entity, KBR, Inc., are part of a global corporation based in the United States that focuses on delivering science, technology, and engineering solutions to governments and companies around the world. Together they employ approximately 28,000 individuals performing diverse, and complex roles in 34 jurisdictions worldwide.

The Complainant owns KBR marks (KBR reflecting the abbreviation of the Complainant's name) with the United States Patent and Trademark Office ("USPTO"), including, but not limited to: KBR, United States Trademark Registration No. 2,997,435, registered on September 20, 2005, in international classes 35, 37, and 42; and KBR & Design, United States Trademark Registration No. 6,025,224, registered on March 31, 2020, in international classes 35, 36, 37, 40, 41, 42, and 45. In addition, the Complainant has registered KBR trademarks in various jurisdictions worldwide, including in Australia (2002), India (2006), Japan (2007), Canada (2007), the European Union (2007), China (2009), and Brazil (2009), among many others. The KBR trademark, used alone and/or accompanied by a design, is well-recognized worldwide and has acquired goodwill with respect to the Disputed Domain Name.

The aforementioned trademarks will hereinafter collectively be referred to as the "KBR Mark".

The Complainant is also the owner of the domain name <kbr.com>, which the Complainant uses to host its official website at "www.kbr.com", where it provides information about its company, employees, executives, and mission.

The Respondent registered the Disputed Domain Name on December 15, 2022, significantly after the Complainant's registrations of the KBR Mark. The Disputed Domain Name was used to redirect to the Complainant's official website "www.kbr.com/en". It currently resolves to an inactive error landing page that states "This site can't be reached. Kbr-usa's server IP address could not be found".

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

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

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name. Notably, the Complainant contends that:

- the Disputed Domain Name is confusingly similar to the KBR Mark because the Disputed Domain Name contains the KBR trademark in its entirety followed by the geographic term "usa" joined by a hyphen, and then followed by the generic Top-Level Domain ("gTLD") ".com" and thus does not prevent a finding of confusing similarity;
- the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because the Complainant has not authorized the Respondent to register a domain name containing the KBR Mark, the Respondent was not making a *bona fide* offering of goods or services through the Disputed Domain Name, and the Respondent has never been commonly known by the KBR Mark or any similar name; and

- the Disputed Domain Name was registered and is being used in bad faith because, among other things, the Disputed Domain Name resolves to an inactive website with no substantive content.
- The Complainant seeks the transfer of the Disputed Domain Name from the Respondent to the Complainant in accordance with paragraph 4(i) of the Policy.

## **B. Respondent**

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

## **6. Discussion and Findings**

In order for the Complainant to prevail and have the Disputed Domain Name transferred to the Complainant, the Complainant must prove the following (Policy, paragraph 4(a)):

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark 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.

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

Paragraph 4(a)(i) of the Policy requires a two-fold inquiry: a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to that trademark. The Panel concludes that in the present case, the Disputed Domain Name is confusingly similar to the KBR Mark.

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the Disputed Domain Name. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

It is uncontroverted that the Complainant has established rights in the KBR Mark based on its many years of use as well as its registered trademarks for the KBR Mark in the United States and numerous jurisdictions worldwide. The consensus view is that "registration of a mark is *prima facie* evidence of validity". The Respondent has not rebutted this presumption, and therefore the Panel finds that the Complainant has rights in the KBR Mark.

The Disputed Domain Name consists of the KBR Mark in its entirety, followed by the geographic term "usa" joined by a hyphen, and then followed by the gTLD ".com". It is well established that a domain name that wholly incorporates a trademark may be deemed confusingly similar to that trademark for purposes of the Policy. Moreover, although the Disputed Domain Name contains a hyphen between the KBR Mark and the term "usa", this is irrelevant for purposes of the Policy because the presence or absence of punctuation marks such as hyphens cannot on their own avoid a finding of confusing similarity. See *Six Continents Hotels, Inc. v. Helen Siew*, WIPO Case No. [D2004-0656](#) (citing *Six Continents Hotels, Inc. v. Georgetown, Inc.*, WIPO Case No. [D2003-0214](#) (hyphens do not "serve to dispel Internet user confusion here").

Finally, the addition of a gTLD such as ".com" in a domain name is a technical requirement. As such, it is well established that a gTLD may typically be disregarded when assessing whether a disputed domain name is identical or confusingly similar to a trademark. See *Proactiva Medio Ambiente, S.A. v. Proactiva*, WIPO Case No. [D2012-0182](#) and [WIPO Overview 3.0](#), section 1.11.1. Thus, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's KBR Mark.

Based on the available record, the Panel finds that the first element of the Policy has been established.

## B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving that a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

In this case, given the facts as set out above, the Panel finds that the Complainant has made out a *prima facie* case. The Respondent has not submitted any arguments or evidence to rebut the Complainant’s *prima facie* case. Furthermore, the Complainant has not authorized, licensed or otherwise permitted the Respondent to use its KBR Mark. Nor does the Complainant have any type of business relationship with the Respondent. There is also no evidence that the Respondent is commonly known by the Disputed Domain Name or by any similar name, nor any evidence that the Respondent was using or making demonstrable preparations to use the Disputed Domain Name in connection with a *bona fide* offering of goods or services. See Policy, paragraph 4(c).

The Panel concludes that nothing on the record before it would support a finding that the Respondent is making a legitimate noncommercial or fair use of the Disputed Domain Name. Rather, the Panel finds that the Respondent is using the Disputed Domain Name for commercial gain with the intent to mislead by defrauding the Complainant’s customers. Moreover, such use cannot conceivably constitute a *bona fide* offering of a product/service within the meaning of paragraph 4(c)(i) of the Policy. Further, since the Disputed Domain Name currently directs to a passive error landing page with no substantive content, the Respondent’s use of the Disputed Domain Name does not demonstrate rights or legitimate interests and does not constitute a protected noncommercial or fair use of the Disputed Domain Name.

In addition, the composition of the Disputed Domain Name, comprising the entirety of the KBR Mark, joined by a hyphen with the term “usa”, carries a high risk of implied affiliation and cannot constitute fair use here, as it effectively suggests sponsorship or endorsement by the Complainant. See [WIPO Overview 3.0](#), section 2.5.1 (“Generally speaking, UDRP panels have found that domain names identical to a complainant’s trademark carry a high risk of implied affiliation. Even where a domain name consists of a trademark plus an additional term (at the second- or top-level), UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner.”).

Finally, as the Disputed Domain Name resolves to an inactive site, the Respondent was not using the Disputed Domain Name to provide a *bona fide* offering of goods or services under Policy paragraph 4(c)(i), nor a legitimate noncommercial or fair use under Policy paragraph 4(c)(iii).

In sum, the Panel finds that the Complainant has established an un rebutted *prima facie* case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name.

Based on the available record, the Panel finds that the second element of the Policy has been established.

## C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall

be evidence of the registration and use of a domain name in bad faith. The Panel finds that based on the record, the Complainant has demonstrated the existence of the Respondent's bad faith registration and use of the Disputed Domain Name pursuant to paragraph 4(a)(iii) of the Policy.

UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a well-known trademark by an unaffiliated entity, as in this case, can by itself create a presumption of bad faith on the part of the Respondent. See [WIPO Overview 3.0](#), section 3.1. In the present case, the Panel notes that the KBR Mark is contained in its entirety in the Disputed Domain Name. The use of a domain name to intentionally attempt to attract Internet users to a respondent's website or online location by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation or endorsement of the registrant's website or online location for commercial gain demonstrates registration and use in bad faith. Here, the Respondent's registration and use of the Disputed Domain Name indicate that such registration and use had been done for the specific purpose of trading upon and targeting the name and reputation of the Complainant. See *Madonna Ciccone, p/k/a Madonna v. Dan Parisi and "Madonna.com"*, WIPO Case No. [D2000-0847](#) ("[t]he only plausible explanation for Respondent's actions appears to be an intentional effort to trade upon the fame of Complainant's name and mark for commercial gain").

Moreover, the Panel concludes that the Respondent's registration of the Disputed Domain Name was an attempt to disrupt the Complainant's business by diverting Internet users who were searching for the Complainant's services from its official website to the Respondent's resolving Disputed Domain Name, as well as to prevent the Complainant from registering the Disputed Domain Name. See *Banco Bradesco S.A. v. Fernando Camacho Bohm*, WIPO Case No. [D2010-1552](#). The Respondent's initial use of the Disputed Domain Name was also highly likely to confuse Internet users into incorrectly believing that the Respondent is somehow affiliated with or sponsored by the Complainant and to disrupt the Complainant's business.

Finally, panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds that the Disputed Domain Name resolved to a passive landing page with no substantive content. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes that the Complainant has a distinctive trademark and is a well-known company, and the Respondent concealed its identity by using a privacy service and failed to submit a response. Based on the foregoing, the Panel finds that under the circumstances of this case, the current passive holding of the Disputed Domain Name constitutes bad faith registration and use under the Policy.

Thus, the Panel finds that the third element of the Policy has been established.

## 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 <kbr-usa.com> be transferred to the Complainant.

/Lynda M. Braun/

**Lynda M. Braun**

Sole Panelist

Date: January 23, 2024