

ADMINISTRATIVE PANEL DECISION

L'Oréal v. Domain Administrator, Fundacion Privacy Services LTD
Case No. D2022-0964

1. The Parties

The Complainant is L'Oréal, France, represented by Dreyfus & associés, France.

The Respondent is Domain Administrator, Fundacion Privacy Services LTD, Panama.

2. The Domain Name and Registrar

The disputed domain name <kiels.com> is registered with Media Elite Holdings Limited dba Register Matrix (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 17, 2022. On March 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 25, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact.

The Center verified that the 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 April 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 27, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 11, 2022.

The Center appointed Stefan Naumann as the sole panelist in this matter on May 16, 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 well-known French company specialized in cosmetics, personal care and beauty products that owns and operates numerous companies globally, including a United States of America (“United States”) company Kiehl’s that it acquired through its United States subsidiary in 2000. Although the Complainant did not provide evidence of its corporate registration, the Panel was able to confirm this with the publicly accessible database of the French Registry of Commerce and Corporations.

The Complainant owns a French trademark KIEHL’S (n°99811207) and an International trademark KIEHL’S (n°752476) registered respectively on September 8, 1999, and January 18, 2001, for products in Class 3.. The Complainant’s United States subsidiary further owns the domain name <kiehls.com> registered on April 28, 1998. The evidence submitted by the Complainant fully establishes that these rights are in effect and owned by the Complainant or its subsidiaries.

The disputed domain name was registered on April 21, 2007. The Respondent, which appears to be a privacy protection service provider based on its name Fundacion Privacy Services, with an address in Panama, is listed as registrant. The Complainant indicates that the disputed domain name redirected to the Complainant’s website in India, then to different fraudulent pages and then to a parking page with links targeting skincare products and the Complainant’s KIEHL’S brand. The evidence provided by Complainant does not include the disputed domain name redirection to Complainant’s website in India.

In keeping with the consensus view among UDRP panels that a panel may undertake limited factual research into matters of public record if it deems this necessary to reach the right decision¹, the Panel verified the use of the disputed domain name. The disputed domain name <kiels.com> currently redirects to successive domain names, followed by a malware warning from Google.

The Complainant’s representative sent to the Respondent a cease-and-desist letter in December 2021 and several reminders. These were not answered.

5. Parties’ Contentions

A. Complainant

The Complainant asserts that its KIEHL’S marks are well known, that the Respondent has no permission from the Complainant to use the Complainant’s trademarks or apply for a domain name with the Complainant trademarks, that the Respondent engaged in typosquatting, does not have a right or legitimate interest in respect of the disputed domain names in connection with a *bona fide* offer of good and services, and that it registered and is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

In order to succeed in its claim, the Complainant must demonstrate that all three elements listed in paragraph 4(a) of the Policy have been satisfied:

¹ *Sermo, Inc. v. CatalystMD, LLC*, WIPO Case No. [D2008-0647](#); *e-Duction, Inc. v. John Zuccarini, d/b/a The Cupcake Party & Cupcake Movies*, WIPO Case No. [D2000-1369](#); see also *Descente, Ltd. and Arena Distribution, S.A. v. Portsportals Enterprises Limited*, WIPO Case No. D2008-1768; *Latchways PLC v. Martin Peoples*, WIPO Case No. [D2010-1255](#); *Sensis Pty Ltd. Telstra Corporation Limited v. Yellow Page Marketing B.V.*, WIPO Case No. [D2011-0057](#).

- (i) the disputed domain name must be identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent must have no rights or legitimate interests with respect to the disputed domain name; and
- (iii) the disputed domain name must have been registered and used in bad faith.

At the outset, the Complainant does not explain when it became aware of the disputed domain name which was registered in 2007, nearly fifteen years before the Complainant began the present proceeding. The Panel agrees with the position stated in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") section 4.17 that mere delay between the registration of a domain name and the filing of a complaint neither bars a complainant from filing such case, nor from potentially prevailing on the merits. Furthermore, trademark owners cannot reasonably be expected to permanently monitor for every instance of potential trademark abuse, nor to instantaneously enforce each such instance they may become aware of, particularly when cyber-squatters face almost no financial or practical barriers to registering (multiple) domain names, unless the evidence or the respondents' contentions show that the delay has a bearing on one of the Policy elements. Depending on the facts, a long delay may however make it more difficult for a complainant to establish its case on the merits, particularly in relation to the second and third elements requiring the complainant to establish that the respondent lacks rights and legitimate interests and that the respondent registered and used the domain name in bad faith (*Green Bay Packers, Inc. v. Moniker Privacy Services / Montgomery McMahon*, WIPO Case No. [D2016-1455](#), <totalpackers.com>, see also *Mile, Inc. v. Michael Burg*, WIPO Case No. [D2010-2011](#), <lionsden.com>).

In the present matter, the Panel does not find in the evidence or in the chronology of events any indication that Complainant's delay affected or may have affected its case on the merits with respect to the second or third claims of the Policy, or that it adversely affected or may have affected Respondent or Respondent's legitimate interests.

A. Identical or Confusingly Similar

The Complainant has established trademark rights in the trademark KIEHL'S, as described in section 4 above.

The disputed domain names differ from the Complainant's trademark by omitting the letter "h" and the deletion of the apostrophe.

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. The Panel considers that a domain name which consists of a common, obvious, or intentional misspelling of a trademark would ordinarily be confusingly similar to the relevant mark for purposes of the first element.

In the present case, the Complainant's trademark is recognizable in the disputed domain name. Thus, the disputed domain name is confusingly similar to the Complainant's marks.

The Panel is satisfied that the disputed domain name is confusingly similar to the Complainant's trademarks for the purposes of the Policy.

B. Rights or Legitimate Interests

One would expect a legitimate business to provide information that allows it to be contacted. Here, however, the Respondent appears to be a privacy protection service. The record shows that no underlying registrant was revealed by the Respondent. The privacy protection service thus formally appears as the registrant in the publicly available WhoIs.

The Panel finds that consumers may land on the website at the disputed domain name when typing and misspelling the Complainant's trademark KIEHL'S.

The apparent use of a privacy protection service indicates in the view of the Panel that the Respondent is not attempting to operate a business, other than that of linking to third party websites offering products and services in the same sector as those of the Complainant after confusing Internet users who misspell the disputed domain name. In addition, it appears that the Respondent is not itself offering any services or products.

The Respondent has chosen not to reply to the Complaint. The Panel finds that the Complainant has made a *prima facie* case that the Respondent lack rights or legitimate interests, and finds no indication in the evidence that the Respondent claims or could claim rights or legitimate interests of its own in the term "Kiels". Since the Respondent also has no permission from the Complainant, its use of the disputed domain name is without rights or legitimate interests.

For these reasons, the Panel considers that in the present case the Respondent does not have any rights or legitimate interests with respect to the disputed domain name.

C. Registered and Used in Bad Faith

The Respondent's use of a webpage with links to products competing with those of the Complainant, to fraudulent websites or to websites leading to malware warning messages, indicates that the Respondent registered the disputed domain name in bad faith.

In the present matter, the record shows that:

- (i) the Complainant's KIEHL'S trademark arguably has a reputation and is widely known, as evidenced by its significant use in the United States, and by the International mark designating various countries,
- (ii) the Respondent registered a domain name which is confusingly similar to the Complainant's trademarks and resolved to a parking webpage with links related to the Complainant's activities in the cosmetic sector, and
- (iii) the Respondent appears to be a privacy protection service.

In light of these specific circumstances, the Panel concludes that the disputed domain name was registered and is being used in bad faith.

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, <kiels.com> be transferred to the Complainant.

/Stefan Naumann/

Stefan Naumann

Sole Panelist

Date: May 25, 2022