

ADMINISTRATIVE PANEL DECISION

Kiwibank Limited v. Domain Administrator, See PrivacyGuardian.org / KingSoftCn
Case No. D2022-1606

1. The Parties

The Complainant is Kiwibank Limited, New Zealand, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Domain Administrator, See PrivacyGuardian.org, United States of America / KingSoftCn, China.

2. The Domain Name and Registrar

The disputed domain name <kiwibank.top> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 4, 2022. On May 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 4, 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 May 9, 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 May 10, 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 May 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 16, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 22, 2022.

The Center appointed Alfred Meijboom as the sole panelist in this matter on July 1, 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 New Zealand bank which was founded in 2002, with currently over one million customers and an operating income of NZD 577 million in July 2021, with a total net asset growth of NZD 2.9 billion, and NZD 126 million in profits. The Complainant owns national New Zealand trademark registrations for the word KIWIBANK with registrations numbers 644724, 644725, 644726, and 644727 for goods and services in classes 9, 16, 35, and 36, respectively, which were all registered on March 3, 2003, and well as New Zealand trademark registration for the word KIWIBANK with registrations number 644728 for services in class 42, which was registered on March 31, 2003 (together the “Trademark”).

The the disputed domain name was registered on October 22, 2021. The disputed domain name directs Internet users to a website that resolves to a blank page which lacks content.

5. Parties’ Contentions

A. Complainant

The Complainant alleges that the disputed domain name is identical to the Trademark.

The Complainant alleges that the granting of registrations of the Trademark is *prima facie* evidence of the validity of the term “kiwibank” as a trademark, of the Complainant’s ownership of the Trademark, and of the Complainant’s exclusive right to use the Trademark in commerce on or in connection with the goods and/or services for which the Trademark was registered. The Complainant further claims that the Respondent is not sponsored by or affiliated with the Complainant in any way, nor has the Complainant given the Respondent license, authorization, or permission to use the Trademark in any manner, including in the disputed domain name, while the Respondent is also not commonly known by the disputed domain name, so that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

According to the Complainant, the Complainant and the Trademark are well-known in New Zealand and internationally, and the Complainant has marketed and sold its goods and services using the Trademark well before the Respondent’s registration of the disputed domain name. The Complainant alleges that the Respondent, by registering a domain name that solely consists of the Trademark, has created a domain name that is identical to the Trademark and has consequently demonstrated a knowledge of and familiarity with the Trademark and the Complainant’s business. Consequently, the registration of the disputed domain name was made in bad faith. The Complainant also alleges that the Respondent’s use of the disputed domain name is in bad faith, as the disputed domain name is identical to the Trademark, and the Respondent has made no use of the disputed domain name which factors result in finding bad faith registration.

B. Respondent

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

6. Discussion and Findings

The Respondent did not file a Response. However, as set out in section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), the consensus view of UDRP panels is that a respondent’s default does not automatically result in a decision in favor of the

complainant. The Complainant must still establish each of the three elements required by paragraph 4(a) of the Policy. Although the Panel may draw appropriate inferences from the Respondent's default, paragraph 4 of the Policy requires the Complainant to support its assertions with actual evidence in order to succeed in this proceeding. Paragraph 14(b) of the Rules provides that, in the absence of exceptional circumstances, the panel shall draw such inferences as it considers appropriate from a failure of a party to comply with a provision or requirement of the Rules. The Panel finds that in this case there are no such exceptional circumstances.

Under the Policy, the Complainant must prove 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 has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

It is well established that the Top Level Domain ("TLD") – in the present case ".top" – may be disregarded in the assessment under paragraph 4(a)(i) of the Policy ([WIPO Overview 3.0](#), section 1.11.1). When ignoring the TLD, the Panel finds that the disputed domain name is identical to the Trademark.

Consequently, the first element of paragraph 4(a) of the Policy has been met.

B. Rights or Legitimate Interests

The Complainant must make a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which the Respondent may rebut (e.g., *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

The Panel takes note of the various allegations of the Complaint and in particular, that no authorization has been given by the Complainant to the Respondent to use the Trademark or to register the disputed domain name and that the Respondent has not been commonly known by the disputed domain name. These allegations of the Complainant remain unchallenged. There is no evidence before the Panel to show that the Respondent has rights or legitimate interests in the disputed domain name.

The Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Complainant showed that it has registered the Trademark nearly two decades before the Respondent registered the disputed domain name and the Complainant undisputedly alleged that the Trademark had a reputation at the time the Respondent registered the disputed domain name. As the Trademark also has "no sensible meaning independent of their association with the Complainant" (*Kiwibank Limited v. Privacy Protection / Brands Delight / Prime Market Case*, WIPO Case No. [D2022-1041](#)), the Panel considers it likely that the Respondent registered the disputed domain name because it was familiar with the Trademark. Consequently, the Panel is satisfied the disputed domain name was registered in bad faith.

According to WIPO Overview, section 3.3, "[...] panelists have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding," and that the circumstances of the case determine if the domain name is used in bad faith. In this matter the Panel is satisfied that the disputed domain name is also used in bad faith because the disputed domain name is identical to the Trademark and was registered while the Respondent was likely aware of the Trademark which is undisputedly well-known in, at least, New Zealand, the Respondent used a

privacy shield to conceal its identity, and failed to reply to the Complainant's cease and desist letter, whereas the Panel considers any good faith use to which the disputed domain name may be put implausible.

Consequently, the third and last element of paragraph 4(a) of the Policy is also met.

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 <kiwibank.top> be transferred to the Complainant.

/Alfred Meijboom/

Alfred Meijboom

Sole Panelist

Date: July 6, 2022