

ADMINISTRATIVE PANEL DECISION

Deloitte Tax & Consulting v. Privacy Service Provided by Withheld for Privacy / Penultimate Media Systems
Case No. D2022-1775

1. The Parties

The Complainant is Deloitte Tax & Consulting, Luxembourg, represented by Office Freylinger S.A., Luxembourg.

The Respondent is Privacy Service Provided by Withheld for Privacy, Iceland / Penultimate Media Systems, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <dontkyc.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 17, 2022. On May 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 18, 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 19, 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 amendment to the amended Complaint on May 23, 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 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 13, 2022. The Response was filed with the Center on May 25, 2022. The Respondent showed willingness to settle the dispute amicably. On May 25, 2022, the Center sent a “Possible Settlement” email to the parties, but no response was received from the Complainant.

The Center appointed Adam Taylor as the sole panelist in this matter on June 30, 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.

On July 29, 2022, the Panel issued Procedural Order No. 1, inviting the parties to comment on various matters. Both parties responded on August 8, 2022.

4. Factual Background

The Complainant is part of the Deloitte group which, for some 175 years, has provided audit, assurance, consulting and advisory services worldwide.

Amongst other things, the Complainant offers what it describes on its website as a “service offering for KYC operations, called DKYC”. The service is said to involve “collecting and qualifying data and documents, risk scoring and due diligence level maintenance, shareholding structure collection, and watch list screening, among others, and allows to substantially reduce counterparty onboarding time while enhancing the data quality and traceability”.

The Complainant owns Benelux trade mark No. 1437521, and International trade mark No. 1637487, registered on June 19, 2021, and August 11, 2021, respectively, both for DKYC in classes 9, 35, 36, 38, and 42.

The disputed domain name was registered on August 12, 2021.

The Respondent did not reply to the Complainant’s cease and desist letter dated October 15, 2021.

As of May 6, 2022, the disputed domain name resolved to a website branded “DKYC”. The site stated that: “DKYC is the first fintech token with a sole focus on privacy and financial freedom for all” and invited users to “Anonymously Spend Crypto”. The site included a number of “D”-related heading/links, namely “DCash™”, “DSwap™” and “DPay™”. Users were invited to: “Spend your crypto reflections with a prepaid MasterCard® or Visa®.” The site also stated: “For the first time on DeFi, you can choose to take your BUSD reflections (from holding DKYC) and anonymously spend them in the real world using any currency. No cross-chain conversions. No registration. No personal details. Just sit back, relax, and automatically claim your card when you’ve accrued enough BUSD.” The following notice appeared in the footer: “Mastercard and the ‘circles’ design are registered trademarks of Mastercard International Incorporated. Visa® is a registered trademark of Visa International Service Association. DKYC / Don’t Know Your Customer are in no way affiliated with Mastercard or Visa. DKYC emphasizes the distinction between money laundering and everyday spending – one that is unnecessarily blurred. We stand 100% behind the prevention of financial fraud and terrorism. We stand 100% against labelling everyday cryptocurrency investors with the same contempt. We believe in the good of the people.”

5. Parties’ Contentions

A. Complainant

The following is a summary of the Complainant’s contentions.

The Complainant’s group is internationally well-known.

The Complainant exploits the DKYC trade mark widely.

The disputed domain name is highly similar to the Complainant’s trade mark as it includes the four letters in the Complainant’s mark in the same order.

The Respondent's website offers various financial services under the identical sign "DKYC", and the public's attention will therefore be directed to this term, increasing the risk of confusion with the Complainant's rights.

The Respondent lacks rights or legitimate interests in the disputed domain name.

Worldwide trade mark searches show that the Respondent owns no registered trade marks for "DONTKYC" or "DKYC". Only the Complainant owns a trade mark for DKYC for financial services in class 36.

The Complainant has not authorised the Respondent to register the disputed domain name or to use its trade mark.

There is no evidence that the Respondent has been commonly known by the disputed domain name.

Nor is there any evidence of use, or preparations to use, the disputed domain name for a *bona fide* offering of goods or services.

The Respondent's website does not identify any active company or provide a valid postal address or other contact details, indicating that the Respondent never intended to use the disputed domain name for commercial purposes.

The Respondent's failure to respond to the Complainant's cease and desist letter is further evidence of a lack of rights or legitimate interests.

The disputed domain name was registered and is being used in bad faith.

It is inconceivable that the Respondent was unaware of the Complainant when it registered the disputed domain name, given the fame of the Complainant's group and that the Complainant's DKYC mark is well known by the relevant public worldwide.

Furthermore, the fact that the disputed domain name was registered on the same day that the Complainant's international trade mark was filed can hardly be a coincidence.

The Respondent set out to create a likelihood of confusion with the Complainant's mark.

The Respondent's website includes many references to "DKYC", which is identical to the Complainant's trade mark, but the site does not mention "dontkyc", the term reflected in the disputed domain name.

The Respondent's website offers financial services that are identical or highly similar to the services for which the Complainant's mark are registered and have been used, thereby constituting a false suggestion of affiliation with the Complainant's mark.

The Respondent's website is illegal, and it also damages the Complainant's reputation as the Respondent promotes anonymous financial transactions, directly contrary to the purpose of the Complainant's "know your client" service, which is concerned with identification and traceability of clients in the financial world.

The Complainant registered and used the disputed domain name to profit from advertising revenue from Internet users seeking the Complainant and/or to prevent the Complainant from registering the disputed domain name.

The fact that the Respondent facilitates anonymous worldwide transactions, and the lack of any Respondent identity or address information, indicate a fraudulent intent on the part of the Respondent.

B. Respondent

The following is a summary of the Respondent's contentions.

The Respondent is willing to adjust its branding to remove all instances of “DKYC” and queries if that will suffice to resolve the case.

Don't KYC is small community-based non-profit token operating on the Binance Smart Chain. The Respondent does not sell goods or services and does not claim to operate commercially. The Respondent allows end-users to use their dividends to fund micro-transactions like groceries and meals.

The Respondent has no intention to infringe on any trade marks. In fact, before registering the disputed domain name, the Respondent conducted a preliminary United States Patent and Trademark Office (“USPTO”) search that returned no results. The Respondent has now however learned that that “DKYC” is registered in other territories and apologises for this.

C. Complainant’s response to Panel Order

In response to the Panel’s observation that Internet searches indicated that third party sites extensively referred to the Respondent as “DKYC” and “Don't KYC”, and that the Respondent’s site explains that “DKYC” means “don't know your customer”, indicating the anonymous element of the Respondent’s services (including apparent services for DPAY, DCASH, and DSWAP, each claiming a “TM” designation), the Complainant simply states that it is not objecting to use of the sentence “don't know your customer” but, rather, to the Respondent’s repeated use of “DKYC”, which is identical to the Complainant’s trade mark.

The Complainant asserts that the disputed domain name <dontkyc.com> “always” infringes the Complainant’s rights, especially given the prominent use of “DKYC” on the Respondent’s website.

The Complainant adds that it has obtained information confirming that the credit card company logos prominently displayed on the Respondent’s site are unauthorised, demonstrating that the Respondent set out to confuse the relevant public by using third party indicators in bad faith.

D. Respondent’s response to Panel Order

The Respondent states that, while there appears to be a sinister connection in timing between registration of the Complainant’s trade mark and the disputed domain name, the events are merely coincidental. If the Respondent intended to infringe the Complainant’s mark, it would have chosen a domain name that included the acronym “DKYC” in some form, rather than the Respondent’s full, unabbreviated name.

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- the disputed domain name has been registered and is being used in bad faith.

A. Preliminary Issue - Informal Response

The Response is in the form of an email to the Center, which does not comply with the formal requirements set out in paragraph 5 of the Rules. For example, there is no statement of truth. The Panel has nonetheless decided to admit the Response in accordance with its powers under paragraph 10(d) of the Rules but to bear in mind the Response’s non-compliance with the Rules, including in particular the absence of a statement of truth, when weighing up the Respondent’s assertions in this case.

B. Identical or Confusingly Similar

The Complainant has established registered rights in the mark DKYC.

Section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)) makes clear that the first element functions primarily as a standing requirement. The test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant’s trade mark and the disputed domain name. Where at least a dominant feature of the relevant mark is recognisable in the disputed domain name, it will normally be considered confusingly similar to that mark for purposes of UDRP standing.

The disputed domain name differs from the DKYC mark in that the “d” has been changed to “dont”. The Panel considers that, for the purposes of this limited confusing similarity test, the Complainant’s trade mark remains sufficiently recognisable within the disputed domain name.

For the above reasons, the Panel concludes that the disputed domain name is confusingly similar to the Complainant’s trade mark and that the Complainant has therefore established the first element of paragraph 4(a) of the Policy.

C. Rights or Legitimate Interests

It is unnecessary for the Panel to consider this element in light of its conclusion under the third element below.

D. Registered and Used in Bad Faith

The Respondent’s position is effectively that it registered the disputed domain name because it reflected its trading name “Don’t KYC”, denoting “Don’t Know Your Customer”, designed to convey the anonymous nature of the Respondent’s service, and that the Respondent’s use of “DKYC” on its website was simply intended as an abbreviation/acronym thereof. The Respondent denies knowledge of the Complainant’s trade mark.

The Panel notes that the Respondent does indeed appear to be operating a genuine cryptocurrency product, which it describes as a “community-based non-profit token”, and that there are extensive references to the Respondent’s service on third party cryptocurrency trading sites, both as “Don’t KYC” and as “DKYC”. The Panel also notes that the Respondent offers, or proposes to offer, other services with “D”-formative names, namely DPAY, DCASH, and DSWAP, each claiming a “TM” designation.

The Complainant argues that the Respondent’s services are identical or highly similar to its own. However, while both offerings have relevance to the concept of “know your customer”, it seems to the Panel that the parties approach the issue from opposite ends of the spectrum and that their services are markedly different. The Complainant offers client identification and onboarding services to professionals/businesses, whereas the Respondent provides a service that apparently enables consumers to anonymously spend cryptocurrency “in the real world”.

The Complainant further relies on the Respondent’s alleged illicit use of well-known credit card company logos, presumably to try and demonstrate that the Respondent has engaged in a pattern of infringing the rights of others. The Complainant claims to have information that the Respondent’s use of the logos was unauthorised. However, it has not produced that evidence. In any case, whether or not the Respondent has infringed the Complainant’s rights, the Panel does not consider that in the circumstances, including the Respondent’s use of the “R” sign next to each credit card name, the extensive disclaimer set out in section 4 above, and the lack of clarity as to the relevance of such credit cards to the Respondent’s services, these references clearly indicate that the Respondent registered the disputed domain name with a bad faith intent vis-à-vis the Complainant.

The Complainant also relies on the fact that the Respondent's website does not include the name and address of the legal entity responsible for operating the site. In other circumstances, this might be an indicator of bad faith, but it is perhaps an understandable omission in the context of a service that is based on anonymity.

One matter that has given the Panel pause is the fact that the Respondent registered the disputed domain name the day after the Complainant applied for its international trade mark. The Respondent acknowledges that this appears sinister but insists that the events are merely coincidental. While the Respondent has not supplied any supporting evidence such a dated document showing that it conceived of its name earlier, it does make the reasonable point that, if it had set out to target the Complainant, it would be more likely to have chosen a domain name containing the acronym "DKYC" in some form, rather than the Respondent's full unabbreviated name. The Panel would add that the complete name, "Don't KYC", may indeed be thought of as conveying the very opposite of the kind of service likely to be sought by the Complainant's clients and therefore a far from obvious formulation to use if the Respondent was out to create confusion on the part of the Complainant's clients. Moreover, the Panel notes that the Complainant states that it does not object to the use of the sentence "don't know your customer" but, rather, to the Respondent's repeated use of "DKYC". In this regard, the Panel notes that the disputed domain name is not <dkyc.com> but, rather, <dontkyc.com> - which is reflective of the term "don't know your customer" - and that, to the extent the Complainant takes issue with use of "DKYC" on the site, that is a matter beyond the scope of the present proceeding.

Accordingly, while the Panel has not found this case straightforward and notwithstanding the lack of formal statement of truth from the Respondent, having carefully weighed up all of the above matters, the Complainant has not convinced the Panel on the balance of probabilities that the Respondent either registered or used the disputed domain name in order to illicitly target the Complainant's mark. More likely than not, the Respondent's use of "DKYC" on its site was, as it claims, purely an acronym/abbreviation for its trading name "Don't Know Your Client", which was itself selected by reference to the nature of the Respondent's service and not the Complainant's trade mark.

Of course, it remains open to the Complainant to take the Respondent to court for infringement of its intellectual property rights, if it considers that it has grounds to do so.

For the above reasons, the Panel considers that the Complainant has failed to establish the third element of paragraph 4(a) of the Policy.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: August 23, 2022