

ADMINISTRATIVE PANEL DECISION

KPMG International Cooperative v. Jean lafond Case No. D2022-2299

1. The Parties

The Complainant is KPMG International Cooperative, Netherlands, represented by Taylor Wessing, United Kingdom.

The Respondent is Jean lafond, France.

2. The Domain Name and Registrar

The Disputed Domain Name <kpmg-acquisitions.com> is registered with Ligne Web Services SARL (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on June 24, 2022. On June 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On June 28, 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 July 1, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On July 1, 2022, the Center sent an email communication to the parties, informing them that the language of the Registration Agreement was French. On July 1, 2022, the Complainant sent an email communication to the Center, confirming that it wished to proceed in English. The Complainant filed an amended Complaint on July 1, 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 July 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 27, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 29, 2022.

The Center appointed Peter Wild as the sole panelist in this matter on August 4, 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.

Language of the Proceedings

The language of the registration agreement pursuant to which the Disputed Domain Name is registered (Registration Agreement) is French. The Complainant requested that English be the language of the proceedings. The Registrar's website itself is fully published in French. The only communication from Respondent which is on file is in English, in the form of WhatsApp messages and draft agreements in English. The Respondent did not participate in the proceedings and did not file a request for French to be the language of the proceedings. This clearly shows that the Respondent's primary language is English or in any case that the Respondent fully understands English.

Therefore, this Panel considers that conducting the proceedings in English would not be disadvantageous to the Respondent, since it results from the Complainant's undisputed allegations that the Respondent has demonstrated an ability to understand and communicate in English. The Panel is therefore prepared to infer that the Respondent is able to understand and communicate in English.

Furthermore, the Panel finds that substantial additional expense and delay would likely be incurred if the Complaint had to be translated into French. The Panel is of the view that the language requirement should not cause any undue burden on the parties or undue delay.

Finally, the Panel notes that the Respondent neither objected to the Complaint being in English nor to the request made that the proceedings be conducted in English. The Respondent was given a fair opportunity to present its case, to raise objections as to the request for English to be the language of proceedings or to inform the Center on its language preference. It has however chosen not to comment on any of these issues (*cf. Volkswagen AG v. Song Hai Tao*, WIPO Case No. [D2015-0006](#)).

Taking all these circumstances into account, this Panel finds that it is appropriate to exercise its discretion, according to paragraph 11(a) of the Rules and allow the proceedings to be conducted in English.

4. Factual Background

The Complainant is one of the world's leading providers of audit, tax and advisory services. Those services are provided by the Complainant's member firms under the trademark KPMG. Member firms of the KPMG network of independent firms are affiliated with the Complainant. The KPMG member firms operate in approximately 147 countries, with more than 219,000 employees. The Complainant owns the trademark KPMG and licenses its use to the KPMG member firms worldwide. The Complainant's business and trademark is worldwide well known. The Complainant is the owner of numerous trademark registrations that protect the trademark KPMG, such as

- US trademark registration number 2339547 word mark KPMG registered April 11, 2000.
- EUTM registration number 1011220 for the word mark KPMG, registered on April 25, 2000.

and many more trademarks worldwide.

The Disputed Domain Name was registered on April 6, 2022.

Under the Disputed Domain Name, no active website can be found, but a simple holding page in English.

The Disputed Domain Name was used to form email addresses which were used in communication with a client of the Complainant. In such email, the Respondent pretended to be a senior employee of the Complainant's French member firm.

5. Parties' Contentions

A. Complainant

According to the Complainant, it owns and uses the trademark KPMG. The Complainant submits that the Respondent has no rights or legitimate interests in this trademark or the Disputed Domain Name and there is evidence in the form of WhatsApp messages and emails that the Respondent is using the Disputed Domain Name fraudulently. The Complainant further claims that the Respondent's bad faith is directly supported by the fact that at least one clear phishing attempt is documented. Allegedly, the Respondent contacted one of the Complainant's clients first by WhatsApp and then using an email address which was composed of a real name of a senior employee of the French member of the Complainant and the Disputed Domain Name.

B. Respondent

The Respondent did not reply to the Complainant's contentions nor to the Center's invitation to comment of the procedural language.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has established its rights in the KPMG trademark. These trademark rights have also been recognized by a number of previous Panels, such as *KPMG International Cooperative v. Privacy service provided by Withheld for Privacy ehf / Samy Dennis*, WIPO Case No. [D2021-2231](#); and *KPMG International Cooperative v. Privacy service provided by Withheld for Privacy ehf / Samy Badel*, WIPO Case No. [D2021-2214](#).

The Panel sees that the Disputed Domain Name reproduces the Complainant's trademark in its entirety. The addition of a generic term, in the present case "acquisitions", does not avoid a finding of confusing similarity under the Policy. The KPMG trademark is the only distinctive element in the Disputed Domain Name.

The Panel concludes that the Disputed Domain Name is confusingly similar to the Complainant's established trademark.

The first element of the Policy has therefore been established.

B. Rights or Legitimate Interests

The Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. See *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#). Once such *prima facie* case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the Disputed Domain Name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

There is no reason to believe that the Respondent's name somehow corresponds with the Disputed Domain Name and the Respondent does not appear to have any trademark rights associated with the term "KPMG". See *VUR Village Trading No. 1 Limited t/a Village Hotels v. Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2019-1596](#).

The Respondent is not identified in the Registrar's Whois database as "KPMG". Previous UDRP panels have held that a respondent was not commonly known by a domain name, if not even the Whois information was similar to the domain name. There is no evidence in the case file showing that the Respondent may be commonly known as "KPMG". The Panel therefore finds under paragraph 4(a)(ii) of the Policy that the Respondent is not commonly known by the Disputed Domain Name.

The element "acquisitions" in the Disputed Domain Name may lead the consumer to believe that the website or communication under the Disputed Domain Name is coming from the Complainant's specialized department which handles acquisitions and therefore, the generic term "acquisition" increases the danger of confusion.

According to the Complainant, the Respondent is not affiliated with nor authorized by the Complainant in any way to use their trademark and there is no other plausible reason for registration of the Disputed Domain Name than to take advantage of the goodwill and reputation associated with the trademark KPMG. Furthermore, the Disputed Domain Name is used fraudulently and in bad faith (see C. below) which clearly cannot be considered as a *bona fide* offering of goods or services.

Based on these facts, the Panel holds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

Therefore, the Panel decides that the second condition of the Policy is met.

C. Registered and Used in Bad Faith

The Internet user does not get access to content at the website with the Disputed Domain Name, it is a simple holding page in English. However, the Disputed Domain Name was used to form email addresses. In particular, the Respondent used it at least once, incorporating the name of a senior employee of the Complainant's French member who is advising in acquisition matters. In a direct WhatsApp communication with one of the Complainant's clients, the Respondent invited that client to contact them via the fake email address. As a consequence, an email correspondence started, in which the Respondent used the Complainant's full name, address, trademark and logo. In such communication, the Respondent tried to extract confidential details from that client. This constitutes a clear phishing attack and bad faith use of the Disputed Domain Name.

The Complainant's registration and use of the relevant trademarks and domain name also clearly predates the date at which the Respondent registered the Disputed Domain Name.

Given the distinctiveness and well-known status of the Complainant's trademark, it is reasonable to conclude that the Respondent has registered the Disputed Domain Name with full knowledge of the Complainant's trademarks, constituting opportunistic bad faith. The Panel finds it hard to see any other explanation than that the Respondent knew of the Complainant's well-known trademark. This inference is confirmed by the fact that the Respondent uses the Complainant's employee name and full business address and trademark plus logo in communication just one month after the Disputed Domain Name's registration. This is evidence that the Respondent knew all relevant details of the Complainant, in particular the trademark, when they filed and started using the Disputed Domain Name.

For these reasons, the Panel concludes that the Respondent has registered and is using the Disputed Domain Name in bad faith pursuant to paragraph 4(b)(iv) of the Policy.

The third element of the policy is therefore 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, <kpmg-acquisitions.com> be transferred to the Complainant.

/Peter Wild/

Peter Wild

Sole Panelist

Date: August 11, 2022