

## **ADMINISTRATIVE PANEL DECISION**

**KIN, Inc. v. Privacy Services Inc. / Domain Investments**  
**Case No. D2022-2571**

### **1. The Parties**

The Complainant is KIN, Inc., United States of America (“United States”), represented by Fross Zelnick Lehrman & Zissu, PC, United States.

The Respondent is Privacy Services Inc. / Domain Investments, Honduras.

### **2. The Domain Names and Registrar**

The disputed domain names <khols.com> and <kolhs.com> are registered with BoteroSolutions.com S.A. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 13, 2022. On July 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name <khols.com>. On August 10, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name <khols.com> which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on August 15, 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 and a request to add the disputed domain name <kolhs.com> to the current proceeding on August 20, 2022. On August 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name <kolhs.com>. On August 29, 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 details.

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 September 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 10, 2022. The Respondent did not submit a Response. The Center received an email from the Registrar on behalf of the Respondent dated September 22, 2022. On October 11, 2022, the Center informed the Parties that it would proceed to panel appointment.

The Center appointed Steven A. Maier as the sole panelist in this matter on October 24, 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. Concurrent Legal Proceedings**

The Registrar has notified the Center that the disputed domain name <khols.com> is the subject of a legal dispute in Honduras and that the disputed domain name <kohls.com> is also subject to a legal dispute, further particulars of which were not provided. The Complainant states that it is not a party to either of these disputes and has certified in the Complaint that it has not commenced any other legal proceedings concerning the disputed domain names.

Under paragraph 18(a) of the Rules, a panel has discretion to suspend, terminate or continue a UDRP proceeding where the disputed domain name is the subject of other pending legal proceedings. However, it is the established practice of panels not to suspend or terminate proceedings in these circumstances unless there is some reason why the relevant complaint cannot be independently determined under the terms of the Policy. The Panel notes in these circumstances that continuing the UDRP proceeding does not prejudice a national court as to its conduct of the relevant dispute, nor is the determination of any such UDRP dispute binding upon the national Court (see paragraph 4.14 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). The Panel determines in the circumstances that the proceeding shall continue.

#### **5. Identity of Respondent**

The Whols-named registrant in this proceeding is a privacy or proxy service which has disclosed the identity and partial contact details of the underlying registrant of the disputed domain names. However, in reply to the Center's request for disclosure of the underlying registrant's email address, the Registrar responded as follows:

"The registrant has indicated that has no interest in disclosing their own email address and as such asked to use the following privacy address instead, accepting that all communication sent to it, is considered as valid: Registrant Email: [...] @pm.me."

The Panel finds in the circumstances that the Whols-named registrant has not provided sufficient disclosure concerning the underlying registrant such that it should no longer remain a Respondent in the case (see section 4.4.5 [WIPO Overview 3.0](#)). The Panel directs, therefore, that both the Whols-named registrant and the underlying registrant shall be treated as the Respondent in this proceeding.

#### **6. Factual Background**

The Complainant is a corporation headquartered in Aurora, Illinois, United States. It is a retail outlet offering moderately-priced goods including apparel, shoes, accessories, beauty and home products, both under third-party brands and brands exclusive to itself.

The Complainant is the owner of various registrations for the trademark KOHL'S. Such registrations include, for example, United States trademark registration number 1772009 for the word mark KOHL'S, registered on May 18, 1993.

The disputed domain name <khols.com> was created on February 18, 2004, and the disputed domain name <kolhs.com> on August 22, 2000. The Complainant submits "upon information and belief" that the disputed domain names were acquired by the Respondent on November 9, 2018, and April 12, 2020, respectively, although it does not state the basis for these contentions.

The Complainant submits that the disputed domain names have redirected at various times to the Complainant's own website at "www.kohls.com" and to a third-party website offering to sign up visitors for the Complainant's coupons or gift cards. The Complainant submits screen prints of the web pages on which it relies, although the Panel notes that none of the pages so exhibited appears to include reference to either of the disputed domain names.

## **7. Parties' Contentions**

### **A. Complainant**

The Complainant states that it was founded in 1962 and that it is one of the largest retail stores in the United States by sales. It submits that it has over 1,100 physical locations as well as operating an e-commerce website at "www.kohls.com" and a mobile app. It states that its annual sales typically exceed USD 15 billion. The Complainant submits that as a result of these matters, extensive advertising and promotional efforts and unsolicited media attention, its KOHL'S trademark has achieved widespread public recognition and has built up substantial commercial goodwill.

The Complainant submits that the disputed domain names are confusingly similar to its KOHL'S trademark. It states that each of the disputed domain names comprises no more than a "typosquatted version" of the KOHL'S trademark, minus the apostrophe.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain names. It states that it has no relationship with the Respondent and has never authorized it to use its KOHL'S trademark, that the Respondent has not commonly been known by the disputed domain names and that the Respondent is making neither *bona fide* commercial use nor legitimate noncommercial or fair use of the disputed domain names. The Complainant submits that the redirection of the disputed domain names to the Complainant's own website and products cannot give rise to rights or legitimate interests on the part of the Respondent and merely underlines the potential for confusion caused by the Respondent's actions.

The Complainant submits that the disputed domain names have been registered and are being used in bad faith. It contends that both of the disputed domain names are immediately recognizable as misspelled versions of the Complainant's KOHL'S well-known trademark and that the registration of the disputed domain names therefore represents "opportunistic bad faith". The Complainant adds that there is no reasonable explanation for the Respondent's registration and use of the disputed domain names other than to take unfair advantage of the Complainant's goodwill in its KOHL'S trademark. Finally, the Complainant exhibits two "cease and desist" letters sent to the Respondent (c/o the Registrar) dated May 13 and June 1, 2022. The Complainant submits that the Respondent's failure to reply to either of these letters further evidences its bad faith in this matter.

The Complainant requests the transfer of the disputed domain names.

## **B. Respondent**

The Respondent did not submit a Response in this proceeding or otherwise make any substantive reply to the Complainant's contentions. The Registrar's email to the Center dated September 22, 2022, merely enquired what further information was required from the Parties.

## **8. Discussion and Findings**

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (i) the disputed domain names are 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 names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

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

The Complainant has established that it has registered trademark rights in respect of the mark KOHL'S. Each of the disputed domain names is identical to that trademark, but for the re-ordering of two of the characters which it contains and the omission of the apostrophe. The Panel finds that each of the disputed domain names is both visually and aurally similar to the Complainant's trademark and that the re-ordering of the characters does not in either case prevent the Complainant's trademark from being recognizable within the relevant disputed domain name (see section 1.7 of [WIPO Overview 3.0](#)). The Panel therefore finds that the disputed domain names are confusingly similar to a trademark in which the Complainant has rights.

### **B. Rights or Legitimate Interests**

In the view of the Panel, the Complainant's submissions set out above give rise to a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain names. However, the Respondent has failed to file a Response in this proceeding and has not submitted any explanation for its registration and use of the disputed domain names, or evidence of rights or legitimate interests on its part in the disputed domain names, whether in the circumstances contemplated by paragraph 4(c) of the Policy or otherwise. The Panel therefore concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

### **C. Registered and Used in Bad Faith**

While the web pages exhibited by the Complainant do not include references to the disputed domain names, the Panel accepts (particularly in the absence of any contradiction by the Respondent) the Complainant's submission, as certified in the Complaint to be true, that these are web pages to which the disputed domain names resolved. The Panel finds therefore that the Respondent has used the disputed domain names to redirect either to the Complainant's own website or to third-party websites which reference the Complainant and its business. In those circumstances, the Panel finds the Respondent must have been aware of the Complainant and its KOHL'S trademark at the date of its registration of each of the disputed domain names.

Moreover, in the light once again of any explanation from the Respondent, the Panel finds that it is difficult to conceive of any purpose for which the Respondent could have registered the disputed domain names other than "typosquatting" upon the Complainant's KOHL'S trademark, *i.e.*, the adoption of domain names which reflect a predictable typographical or spelling error in the name of that trademark.

While the Respondent's ultimate purpose in its use of the disputed domain names is unclear, the Panel infers in all the circumstances of the case that the Respondent registered the disputed domain names, which are inherently misleading in nature, with the intention of deriving some commercial advantage from the Complainant's goodwill in its KOHL'S trademark. The Panel therefore finds that, by using the disputed domain names, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its websites by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its websites or of a product or service on its websites (paragraph 4(b)(iv) of the Policy).

The Panel therefore finds that the disputed domain names have been registered and are being used in bad faith.

## **9. 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 names, <khols.com> and <kolhs.com>, be transferred to the Complainant.

*/Steven A. Maier/*

**Steven A. Maier**

Sole Panelist

Date: November 7, 2022