

ADMINISTRATIVE PANEL DECISION

Klipsch Group, Inc. v. Stefan Durina, Turbado SE
Case No. D2022-4117

1. The Parties

The Complainant is Klipsch Group, Inc., United States of America (“United States or US”), represented by Quarles & Brady LLP, United States.

The Respondent is Stefan Durina, Turbado SE, Slovakia, self represented.

2. The Domain Name and Registrar

The disputed domain name <klipsch.asia> (the “Disputed Domain Name”) is registered with NETIM SARL (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 1, 2022. On November 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On November 9, 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 (REDACTED) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 11, 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 November 15, 2022. On November 12 and November 16, 2022, the Respondent sent email communications to the Center inquiring what the Complaint was about.

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 November 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 11, 2022. The Response was filed with the Center on November 21, 2022.

The Center appointed Nick J. Gardner as the sole panelist in this matter on January 5, 2023. 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 January 11 2023 the Panel issued a Procedural Order (the “Procedural Order”) which provided as follows:

“The Panel has reviewed the submissions from the Parties in this case. In view of the Respondent’s claims to have registered the disputed domain name on behalf of its client, the “registered business entity with the name Klipsch LLC”, and pursuant to paragraphs 10 and 12 of the UDRP Rules, the Panel issues the following order:

1. The Panel requests the Respondent (a) to explain the reason behind its choice of the “klipsch” name for its business and also (b) that the Respondent provide actual evidence of its client’s historical use of and reputation behind its name “Klipsch LLC”.

Such evidence may include length and amount of sales under the name, the nature and extent of advertising, consumer surveys, and media recognition.

The Respondent’s submissions should be received by the Center no later than January 16, 2023.

2. The Panel provides the Complainant with five days from receipt of the Respondent’s submissions to offer any rebuttal.

The Complainant’s submissions should be received by the Center no later than January 21, 2023.

The Parties’ further submissions should be limited to the above request.

The Decision due date is extended to at least January 30, 2023”.

The parties each made submissions pursuant to the Procedural Order within the stipulated times. These are discussed below.

4. Factual Background

The Complainant is a US company. The Respondent has not challenged the material set out in the Complaint about the Complainant and its business. The Panel accepts the following as factually accurate.

The Complainant is an audio device company. Originally founded in in 1946 as “Klipsch and Associates” by Paul W. Klipsch, the Complainant produces loudspeaker drivers and enclosures, as well as complete loudspeakers for high-end, high-fidelity sound systems, public address applications, and personal computers. It is a substantial company and has won many awards and is clearly well known at least in the field in which it operates. It trades in many countries throughout the world.

The Complainant operates an Internet presence via websites linked to the domain names <klipsch.com>, <klipsch.co.uk>; <klipsch.ca>, and <klipschdealer.com>.

The Complainant owns many registered trademarks for the term KLIPSCH – by way of example see US registration no. 978949 registered on February 19, 1974. These trademarks are referred to collectively as the KLIPSCH trademark in this Decision. Such trademarks subsist in many jurisdictions in Asia including for example China and India.

The Disputed Domain Name was registered on September 5, 2022. It has not been used apart from resolving to a parking page provided by the Registrar

5. Parties' Contentions

A. Complainant

The Complainant has submitted a detailed Complaint citing a large number of previous UDRP decisions. The Panel does not think it necessary to repeat everything the Complainant has said here. Where relevant to the Panel's reasoning previous UDRP cases are discussed below. In summary, the main points the Complainant makes as set out in the original and amended Complaint can be summarized as follows.

The Complainant is a well-known and famous business with a long history.

The Disputed Domain Name is identical to the KLIPSCH trademark.

The Respondent has no rights or legitimate interests in the Disputed Domain Name.

The Disputed Domain Name has been registered and used in bad faith. In this regard the Complainant says KLIPSCH is a highly distinctive and widely known trademark, as shown by the Complainant's continuous use since 1946 and by the Complainant's numerous trademark registrations for the KLIPSCH trademark. It says that simple Google search would have immediately revealed the Complainant and its rights in the term KLIPSCH and it is clear that the Respondent's registration of the Disputed Domain Name was for the purpose of benefitting from the reputation of the KLIPSCH trademark. This is evidenced by the fact that the KLIPSCH trademark is well known and distinctive, and by the Respondent's passive use of the Disputed Domain Name.

The further points the Complainant makes pursuant to the Procedural Order are discussed below.

B. Respondent

The Response sets out an affirmative case that the Disputed Domain Name had been registered on behalf of an unnamed client who was entitled to do so. The main substantive points made in the Response are as follows.

The Respondent's client has used the Klipsch name for its hotel and restaurant business for many years, owns a registered business entity with the name Klipsch LLC and owns and operates several domain names with the Klipsch name, therefore that client has established the requisite trademark rights. It has advertised, promoted, offered, and sold its hotel and restaurant services in connection with its marks to the public through channels of trade in commerce under the name Klipsch, and it clearly cannot be confused with audio products that the Complainant is referring to. It says the Disputed Domain Name is identical to its client's business name and therefore that client holds the right to the Disputed Domain Name especially as their hotel and restaurant business is in Asia.

A large number of subsidiary points were made, many of which seem to be repetitive but which can be summarised as follows.

The Disputed Domain Name has only been parked because the Complainant's actions have resulted in it being put on hold.

Whilst acknowledging the Complainant has an identical or similar name to the Disputed Domain Name, but the Complainant's trademark is relevant to category of audio devices, loudspeaker drivers and enclosures, as well as complete loudspeakers for high-end, high-fidelity sound systems, public address applications, and personal computers.

The client concerned is in the hotel and restaurant business, and uses no technology that is trademarked by the Complainant nor does it use or reproduce any logo or other content of the Complainant that would infringe the trademarks, designs, or any other intellectual property of the Complainant.

The Respondent says that its client acknowledges the Complainant owns or holds the domain names <klipsch.com>; <klipsch.co.uk>; <klipsch.ca>; <klipsch.com.tr>; and <klipschdealer.com>, but says that does not give them the right to own and hold other domain names using the word “klipsch”. Ownership of one domain name does not constitute the right to ownership of other domain names. Each must be viewed and approached separately and individually.

The Respondent says its client doesn't know Mr. Paul W. Klipsch, nor is aware of any of the awards mentioned, and these have no relevance to its business of hotels and restaurants.

The Respondent says the client concerned acts in good faith and does NOT act as Klipsch, the audio company, does not use or reproduce any content from the Complainant's numerous websites. The client owns and uses the Disputed Domain Name in good faith for its legitimate business.

Klipsch is a common last name, and not an unusual one and many people have online profiles with that name freely registered online, it is not a unique name, nor unique mark.

A simple Google search reveals the hotel and restaurant activities in Asia of the client in question, and also many people with that name.

6. Filings pursuant to the Procedural Order

Respondent's Filing

Pursuant to the Procedural Order the Respondent lodged a Supplemental Filing which made the following further points.

The client in question is Klipsch LLC, a Wyoming corporation. The Respondent filed a copy of its “Articles of Organization” which were filed in Wyoming on November 15, 2022.

This client operates in Asia a hotel with the Klipsch name and the Disputed Domain Name will be used to represent their chain of hotels. The first hotel can be found on many Asian websites and “they created the Klipsch LLC to raise funds for expansion”. Three website links were provided to the relevant page on Indonesian travel sites relating to the “Klipsch Lounge Hotel” (see discussion below).

The Disputed Domain Name belongs to this client and it will be used to expand their existing business in Asia.

The remaining points made by the Respondent are repetitive of points made in the Response (see above).

Complainant's Filing

The Complainant made the following points in its Supplemental Filing.

The Complainant says the Respondent has failed to provide any evidence to support or explain a good faith basis or reason it chose “klipsch” as the name for its business and/or domain name. Rather than provide historical documentation of use of the name, such as “amount of sales under the name, the nature and extent of advertising, consumer surveys, and media recognition”, as requested by the Panel the Respondent merely directed the Panel to a suspicious limited liability company that was filed on November 15, 2022, just two days after the Complainant's amended Complaint was filed and two weeks after the Complainant's

Complaint was filed. The Respondent also only provided three website URLs to sites purporting to relate to a “Klipsch Lounge Hotel” in Indonesia.

The Respondent has not provided any evidence to support that it is actually affiliated with that hotel in Indonesia, including that the Respondent is authorized to conduct business on behalf of the hotel and/or register domains in the hotel’s name. There is therefore no evidence to establish that the Respondent did not merely choose the “Klipsch Lounge Hotel” after the fact as a cover for its bad faith registration of the Disputed Domain Name.

Further the Respondent is a self-proclaimed cybersquatter who boasts online about its success in extorting payments from well-known companies and holding “over 1000 brands and domain names”. Moreover, the Respondent has offered, or is offering, to sell the Disputed Domain Name on the Internet. The Complainant’s evidence on these issues is discussed below.

The Complainant goes on to expand upon these points in considerable detail. The Panel does not think it necessary to set out everything further the Complainant has said.

7. Discussion and Findings

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

- (i) the Disputed Domain Name is identical with or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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

The Complainant has rights in the KLIPSCH trademark. The Panel finds the Disputed Domain Name is identical to this trademark. It is well established that the generic Top-Level Domain (“gTLD”), in this case “.asia”, does not affect the Disputed Domain Name for the purpose of determining whether it is identical or confusingly similar to a trademark in which the complainant has rights. See, for example, *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. [D2000-0429](#).

Accordingly the Panel finds that the Disputed Domain Name is identical to the Complainant’s trademark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a domain name:

- (i) before any notice to the respondent of the dispute, use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent says that (i) above applies. It says the Disputed Domain Name was registered on behalf of its client who operated a hotel business under that name in Asia.

The Panel does not accept that explanation. The Panel accepts that there is a hotel called the Klipsch Lounge Hotel in Indonesia located in a town south east of Jakarta. It appears to be a modest local establishment comprising a single storey building with perhaps between ten and twenty bedrooms and a small bar/dining area. The website entries referred to by the Respondent are almost entirely in Indonesian. Without any corroborating evidence it is simply unbelievable that whoever owns this business incorporated an LLC in Wyoming in connection with the business as part of some planned expansion. Further as the Complainant correctly points out the LLC was only incorporated after the Respondent had been served with the amended Complaint. The Respondent has not provided a single piece of evidence to show any connection between himself or Klipsch LLC and the Indonesian Klipsch Lounge hotel business. The Panel concludes it is more likely than not that no such connection exists and the Respondent, when faced with the Complaint, located online the coincidentally named Klipsch Lounge Hotel and has used a supposed connection with that business and the newly created Klipsch LLC as a pretext to claim legitimacy. The Panel rejects that claim.

Accordingly the Panel finds the Respondent has no rights or any legitimate interests in the Disputed Domain Name and the second condition of paragraph 4(a) of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

In the present case the Panel concludes that it is more likely than not that the Respondent acquired the Disputed Domain Name being aware that it corresponded to the Complainant's KLIPSCH trademark and that would afford him the opportunity to sell the Disputed Domain Name to the Complainant or a competitor of the Complainant for a price greater than his out of pocket costs incurred in obtaining the Disputed Domain Name.

The Panel recognises that this finding necessarily involves disbelieving the Respondent's explanation. The Panel is conscious that proceedings under the UDRP are of a limited and restricted nature, do not involve oral hearings, discovery or cross examination, and hence are not readily suited to deciding disputed questions of fact or matters of truth or falsehood. That does not however mean a panel has to accept without scrutiny a claim by a respondent to lack knowledge of a complainant or its trademark. Were that the case any UDRP complaint could be defeated by an untruthful respondent. The Panel considers it is a

question of evaluating all the available evidence and circumstances, including where appropriate forming reasonable inferences based on the available material, and reaching a conclusion as to whether or not, on the balance of probabilities, the Respondent is to be believed. The Panel considers there are a number of factors which, taken cumulatively, mean it is more likely than not the Respondent's claim to have been unaware of the Complainant's KLIPSCH trademark is untrue. Those factors are as follows.

The Respondent's account of a connection with the Klipsch Lounge hotel in Indonesia is not credible – see discussion above.

Although the word "Klipsch" clearly is a surname – the Complainant's name derives from its founder's surname – there is no evidence it is a common one. Further there is no evidence that anyone at all (save for the Klipsch Lounge Hotel – see above) uses the name in commerce. The Respondent suggests a simple Google search will show the name is widely used. In fact it shows the reverse – it appears to be only used in commerce by the Complainant (and the Klipsch Lounge Hotel although that hotel does not feature significantly in any Google search results and does not seem to have its own website).

The Complainant has produced evidence which shows that the Respondent holds a large portfolio of domain names. He lists these domain names on a website at "www.beneko.com" which is prefaced with the statement that "As always, we are open to business if you find anything of your interest among our digital assets, brands and domain names". A significant proportion of the domain names in the portfolio replicate well-known trademarks – for example it contains domain names corresponding to "apple", "asus", "bose", "dell", "delonghi", "easyjet", "Electrolux", "Huawei", "iphone", "Lenovo", "Motorola", "Ryanair", "Samsung", and "sonos". The Disputed Domain Name is also listed together with <klipsch.ee>, <klipsch.fi>, <klipsch.gr>, <klipsch.hk>, <klipsch.hu>, <klipsch.id>, <klipsch.ie>, <klipsch.lv>, <klipsch.me>, <klipsch.me.uk>, and <klipsch.si>.

Taking all of the above factors into account and, given that the Disputed Domain Name is identical to the Complainant's trademark, the Panel concludes that it is more likely than not that the Respondent registered the Disputed Domain Name because he was aware of the Complainant's KLIPSCH trademark, that he registered the Disputed Domain Name because of its likely value to the Complainant or a competitor of the Complainant and that he anticipated he would be able to sell it to the Complainant or a competitor of the Complainant for valuable consideration in excess of his documented out-of-pocket costs directly related to the Disputed Domain Name. The Panel also concludes that it is more likely than not that the supposed connection with the Klipsch Lounge Hotel Indonesia is not true and this is a device intended to confer an explanation in response to the Complaint.

Accordingly, the Panel finds that the Disputed Domain Name has been registered and is being used in bad faith and the third condition of paragraph 4(a) of the Policy has been fulfilled.

8. 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 <klipsch.asia> be transferred to the Complainant.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: January 30, 2023