

## **ADMINISTRATIVE PANEL DECISION**

TPC Group Corp v. Kaye Dong  
Case No. D2022-4792

### **1. The Parties**

The Complainant is TPC Group Corp, United States of America (“United States”), represented by Bend Law Group, PC, United States.

The Respondent is Kaye Dong, China, represented by Andrew Wang Solicitors and Notaries, China.

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

The disputed domain name <keiconcepts.com> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 14, 2022. On December 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 15, 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 for the disputed domain name.

The Center verified that the 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 January 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 23, 2023. The Response was filed with the Center on January 18, 2023.

The Center appointed Assen Alexiev as the sole panelist in this matter on January 27, 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.

#### **4. Factual Background**

The Complainant is the owner of the United States trademark KEI CONCEPTS with registration No. 6858630, registered on September 27, 2022 and claiming a first use in commerce in 2018, for services in International Class 35 (the “KEI CONCEPTS trademark”) per the Complaint for business development services; concept and brand development in the restaurant and cafe fields; restaurant franchising, namely, offering business management assistance in the establishment and/or operation of restaurants; restaurant management for others.

The disputed domain name was registered on December 29, 2016. It resolves to a parking webpage of the Registrar.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant states that the disputed domain name is identical to its KEI CONCEPTS trademark. According to it, this is confusing to consumers who will assume that the disputed domain name is associated with the Complainant.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because she is not using it in connection with a *bona fide* offering of goods or services. The Complainant maintains that the disputed domain name is currently not in use and there is no indication that the Respondent plans to put it to use. The Complainant comments that the Respondent claims she has been using the disputed domain name since 2012 to market beauty products, but there is no evidence that the website was active at any point between 2012 and 2022. The Complainant notes that there are only two trademark registrations for KEI CONCEPTS in the United States, and neither of them belongs to the Respondent. The Complainant states that the Respondent is not commonly known by the disputed domain name, and a Google search for KEI CONCEPTS shows results solely for the Complainant. The Complainant further maintains that the Respondent does not appear to be making a legitimate noncommercial use of the disputed domain name, as she is not currently using it for any purpose and the website at the disputed domain name is currently parked.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to it, the Respondent has not used the disputed domain name. The Complainant notes that, according to the Respondent’s letter, the Respondent has been the owner of the disputed domain name since 2012. However, a search in the Wayback Machine shows no evidence of the website ever having been active. In 2011, it displayed an “under construction” sign, and archived versions from 2013 and 2019 show no actual website. According to the Complainant, the Respondent has been holding the disputed domain name in the hopes of selling it instead of using it for a legitimate purpose. The Complainant reached out to the Respondent through the Registrar’s broker service to arrange the purchase of the disputed domain name. The Respondent agreed to sell the disputed domain name for USD 1,000, but later refused to go through with the deal. The Complainant concludes that the Respondent pulled out of the deal because she realized that the Complainant would be motivated to acquire the disputed domain name, and this way she can hold out for a higher settlement offer.

##### **B. Respondent**

The Respondent asserts that she registered the disputed domain name (referred to as the “Web Site”) with the Registrar in 2012 for the sale of beauty products. The disputed domain name was chosen because the term “kei” sounded like “kaye”, the name of the Respondent. Trade bank accounts were opened by Kei Concepts in the same year. Between July 2014 and January 2020, the Respondent purchased beauty products from a third party, and sold them to a pharmaceutical and beauty products chain in Hong Kong in 2014 and 2015. The Respondent submits that she has established a substantial goodwill and reputation as

provider of beauty products on and offline some ten years prior to the Complainant's registration of the KEI CONCEPTS trademark. The Respondent adds that the natures of the business of the website at the disputed domain name and that of the Complainant are totally distinct and separate.

The Respondent points out that the Complainant registered the KEI CONCEPTS trademark on September 27, 2022 in the United States under Class 35, which primarily relates to the operation and management of a restaurant, and no claim is made to the exclusive right to use its "concepts" element apart from the trademark as a whole. The Respondent claims that the fact that the Complainant registered the KEI CONCEPTS trademark in the United States does not give it the exclusive or global monopoly to the words "Kei Concepts".

The Respondent notes that the Complainant has certified in the Complaint that the information contained in it is to the best of the Complainant's knowledge complete and accurate, that the Complaint is not being presented for any improper purpose, such as to harass, and that the assertions in this Complaint are warranted under the Rules and under applicable law. The Respondent points out in this regard that on November 23, 2022, her solicitors replied to a correspondence from the Complainant's solicitors enclosing a copy of the Business Registration Certificate of the Respondent for the period November 7, 2021, to November 6, 2022. According to the Respondent, had the Complainant acted reasonably to follow up with a request for further information from the Respondent, time and costs would not have been wasted. The Respondent submits that the Complainant has acted in bad faith in filing the Complaint, with the sole objective to harass the Respondent to abandon the disputed domain name.

## **6. Discussion and Findings**

Pursuant to the Policy, paragraph 4(a), the Complainant must prove each of the following to justify the transfer of the disputed domain name:

- (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 was registered and is being used in bad faith.

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

The Complainant has filed evidence that it holds rights in the KEI CONCEPTS trademark. This trademark was registered in 2021, while the disputed domain name was registered in 2016. As discussed in section 1.1.3 of the WIPO Overview on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), while the UDRP makes no specific reference to the date on which the holder of the trademark or service mark acquired its rights, such rights must be in existence at the time the complaint is filed. The fact that a domain name may have been registered before a complainant has acquired trademark rights does not by itself preclude a complainant's standing to file a UDRP case, nor a panel's finding of identity or confusing similarity under the first element. However, where a domain name has been registered before a complainant has acquired trademark rights, only in exceptional cases would a complainant be able to prove a respondent's bad faith.

In view of the above, the Panel accepts that the Complainant has standing to file the Complaint in the present proceeding.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the general Top-Level Domain ("gTLD") section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). See section 1.11.1 of the [WIPO Overview 3.0](#). The Panel sees no reason not to follow the same approach here, so it will disregard the ".com" gTLD section of the disputed domain name for the purposes of its comparison to the Complainant's KEI CONCEPTS trademark.

The disputed domain name incorporates the KEI CONCEPTS trademark and include no other elements. This satisfies the Panel that the disputed domain name is identical to the Complainant's KEI CONCEPTS trademark.

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

In view of the Panel's findings on the issue of bad faith, it is not necessary to make a finding of whether the Respondent has rights or legitimate interests in the disputed domain name.

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

As already mentioned, the KEI CONCEPTS trademark was registered in 2021, while the disputed domain name was registered in 2016.

As discussed in section 3.8.1 of the [WIPO Overview 3.0](#), where a respondent registers a domain name before the complainant's trademark rights accrue, panels will not normally find bad faith on the part of the respondent. As an exception to this general proposition, in certain limited circumstances where the facts of the case establish that the respondent's intent in registering the domain name was to unfairly capitalize on the complainant's nascent (typically as yet unregistered) trademark rights, panels have been prepared to find that the respondent has acted in bad faith. Such scenarios include registration of a domain name: (i) shortly before or after announcement of a corporate merger, (ii) further to the respondent's insider knowledge (e.g., a former employee), (iii) further to significant media attention (e.g., in connection with a product launch or prominent event), or (iv) following the complainant's filing of a trademark application.

The Complainant has not addressed the issue of the registration of the disputed domain name being before the registration of its trademark or its claimed first use in commerce, and has not referred to any of the scenarios described above. There is indeed no evidence in the case supporting a conclusion that the Respondent might have known of the Complainant in 2016 and might have targeted it with the registration of the disputed domain name. There is not even an allegation (let alone evidence) that the Complainant has existed at that time or carried out any activities under the KEI CONCEPTS mark; while a simple Google search shows use of said mark, the Complaint refers to the TPC Group which is apparently the parent company of the Complainant.

The Complaint must fail.

The Panel notes in closing that both Parties submissions are lacking in various respects. As mentioned above the Complaint refers to the TPC Group and does not expand on its use of the KEI CONCEPTS mark; at the same time, the Response refers to a 2012 registration date while the creation date for the disputed domain name is in 2016 (while it is possible that the registration lapsed and was created anew, this is not suggested by the Response, and given the state of the pleadings and the disposition of this case the Panel has not found it necessary or appropriate to request briefings from the Parties on this point).

## **7. Decision**

For the foregoing reasons, the Complaint is denied.

*/Assen Alexiev/*

**Assen Alexiev**

Sole Panelist

Date: February 10, 2023