

## **ADMINISTRATIVE PANEL DECISION**

Kaytee Products, Inc. v. Fang78 Deng  
Case No. D2023-1337

### **1. The Parties**

The Complainant is Kaytee Products, Inc., United States of America (“United States”), represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Fang78 Deng, China.

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

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 28, 2023. On March 29, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 30, 2023, the Registrar transmitted by email to the Center its verification response disclosing additional registrant contact information for the disputed domain name to the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on March 30, 2023, 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 March 31, 2023.

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 April 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 23, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 2, 2023.

The Center appointed Fabrizio Bedarida as the sole panelist in this matter on May 12, 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 in this proceeding is Kaytee Products, Inc. Founded in 1866 by Nicholas W. Knauf and Peter Juckem, the Complainant became the first commercial supplier of wild bird seed in 1955. The Complainant was later renamed to Kaytee Products, Incorporated, in 1964. The Complainant offers pet food and supplies for small animals, pet birds, and wild birds of varying species.

The Complainant is, *inter alia*, the owner of;

- United States trademark KAYTEE registration number 1440780, registered on May 26, 1987;
- European Union Trade Mark KAYTEE registration number 007465834, registered on September 24, 2009;
- Chinese trademark KAYTEE registration number 26581340, registered on October 7, 2018.

The Complainant is, *inter alia*, also the owner of the domain names:

<kaytee.com> (registered on February 18, 1997);  
<kayteepromotions.com> (registered on October 29, 2008);  
<buykaytee.com> (registered on June 7, 2006);  
<kayteepetguarantee.com> (registered on October 5, 2017)

The Complainant has provided information about its KAYTEE brand and products since 1997 through its main website, “www.kaytee.com”.

The disputed domain name was registered on September 3, 2022.

The disputed domain name is currently not reachable, whereas at the time the Complaint was filed it resolved (at least until March 16, 2023) to a website where the Complainant’s trademark was displayed and purported KAYTEE-branded goods were offered for sale.

#### 5. Parties’ Contentions

##### A. Complainant

The Complainant claims that the disputed domain name is confusingly similar to the KAYTEE trademark registrations.

The Complainant further states that the Respondent has no rights or legitimate interests whatsoever with respect to the disputed domain name. No license, or authorization of any other kind, has been given by the Complainant to the Respondent to use the KAYTEE trademarks.

The Complainant thus concludes that the disputed domain name has been intentionally registered and used to attract Internet users, for commercial gain, to the website hosted at the disputed domain name by creating a likelihood of confusion with the KAYTEE trademark, such confusion encompassing the source, sponsorship, affiliation or endorsement of the website of the Respondent.

##### B. Respondent

The Respondent did not reply to the Complainant’s contentions.

## 6. Discussion and Findings

In order for the Complainant to obtain a transfer of the disputed domain name, paragraphs 4(a)(i) – (iii) of the Policy require that the Complainant must demonstrate to the Panel that:

- (i) the disputed domain name is identical 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 established rights in the KAYTEE trademark.

The disputed domain name contains the Complainant's KAYTEE with the addition of the term "shop" and the generic Top-Level Domain ("gTLD") ".com".

The addition in the disputed domain name of the term "shop" does not prevent a finding of confusing similarity with the KAYTEE trademark.

Pursuant to section 1.8 of the Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), "[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements". In addition, the gTLD is disregarded under the first element confusing similarity test. See section 1.11 of the [WIPO Overview 3.0](#).

Therefore, the Panel finds the disputed domain name to be confusingly similar to the KAYTEE trademark in which the Complainant has rights.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

### B. Rights or Legitimate Interests

This Panel finds that the Complainant has made a *prima facie* case that the Respondent does not have rights or legitimate interests in the disputed domain name.

The Respondent has no connection or affiliation with the Complainant and the Complainant has not licensed or otherwise authorized the Respondent to use or register any domain name incorporating the Complainant's trademark.

The Respondent does not appear to engage in any legitimate noncommercial or fair use of the disputed domain name, nor any use in connection with a *bona fide* offering of goods or services.

Indeed, it appears that the Respondent has attempted to usurp the Complainant's goodwill in the trademark, in an attempt to confuse and deceive Internet users into doing business with the Respondent. The nature of the goods offered at the website to which the disputed domain name resolves is unclear (*i.e.*, whether genuine KAYTEE-branded products or not) and whether or not there are actual goods available for sale. However, distributors or resellers can be making a *bona fide* offering of goods and thus have a right or legitimate interest in a domain name only if the following cumulative requirements are met (*Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); [WIPO Overview 3.0](#), section 2.8.1: (i) respondent must actually be offering the goods at issue; (ii) respondent must use the site to sell only the trademarked goods; (iii) the site must accurately and prominently disclose the registrant's relationship with the trademark

holder; and (iv) respondent must not try to “corner the market” in domain names that reflect the trademark.)

These requirements are not fulfilled in the present case because the disputed domain name falsely suggests that the website be an official site of the Complainant or of an entity affiliated to or endorsed by the Complainant by reproducing, without authorization by the Complainant, the Complainant’s trademarks without any disclaimer of lack of association with the Complainant.

In addition, the Respondent does not appear to be commonly known by the disputed domain name or by a similar name. Moreover, the Respondent has not replied to the Complainant’s contentions, claiming any rights or legitimate interests in the disputed domain name.

Moreover, the nature of the disputed domain name is inherently misleading as it effectively suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

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

Based on the evidence put forward by the Complainant, the Panel is of the opinion that the Respondent was aware of the Complainant’s trademark registrations and rights to the KAYTEE mark when it registered the disputed domain name.

The Complainant’s KAYTEE trademark has been registered and used for many years specifically to sell pet food and supplies for small animals including through the Complainant’s website, “www.kaytee.com”.

The Respondent’s knowledge of the KAYTEE trademark is particularly obvious, given that the Respondent, on its website, which prominently displayed the Complainant’s trademark as well as purported KAYTEE-branded goods offered for sale. Hence, the registration of the disputed domain name does not seem to be a coincidence, and thus indicates that the Respondent knew of the Complainant’s marks and intentionally intended to create an association with the Complainant and its business at the time of the registration of the disputed domain name.

In addition, the Respondent’s use of the disputed domain name to resolve to a website where the Complainant’s trademark was displayed and (purported) KAYTEE-branded products were sold constitutes an inference of bad faith use as well as a disruption of the Complainant’s business under the Policy. The fact that the website is no longer reachable via the disputed domain name does not prevent a finding of bad faith in the present circumstances (see section 3.3 of the [WIPO Overview 3.0](#)).

Inference of bad faith can also be made in the failure to respond to the Complainant’s contentions, and the Respondent’s lack of any rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds, on the basis of the evidence presented, that the Respondent registered and is using the disputed domain name in bad faith.

Therefore, the Complainant has satisfied paragraph 4(a)(iii) of the Policy.

### **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, <kayteeshop.com>, be transferred to the Complainant.

*/Fabrizio Bedarida/*

**Fabrizio Bedarida**

Sole Panelist

Date: May 26, 2023