

## **ADMINISTRATIVE PANEL DECISION**

**Kellogg Brown & Root LLC v. Eric Russell**  
**Case No. D2023-1434**

### **1. The Parties**

Complainant is Kellogg Brown & Root LLC, United States of America (“United States”), represented internally.

Respondent is Eric Russell, United States.

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

The disputed domain name <kbr-const.com> is registered with Nicenic International Group Co., Limited (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 3, 2023. On April 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 13, 2023, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details. The Center sent an email communication to Complainant on April 20, 2023, providing the registrant and contact information disclosed by the Registrar.

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 Respondent of the Complaint, and the proceedings commenced on April 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 10, 2023. Respondent did not submit any response. Accordingly, the Center notified the Parties of Respondent’s default on May 17, 2023.

The Center appointed Ingrida Kariņa-Bērziņa as the sole panelist in this matter on June 1, 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**

Complainant is an international engineering, science and technology firm formed by the 1998 merger between M.W. Kellogg, a pipe fabrication business started in 1901, and Brown & Root Engineering and Construction, a Texas-based construction company that began operations in 1919. Complainant currently has 28,000 employees and offices in North America, Europe, the Middle East, Asia, and Australasia.

Complainant trades under the mark KBR, for which it has registered trademarks in numerous jurisdictions, including United States Trademark Registration No. 2997435 for KBR (word mark), registered on September 20, 2005 for goods and services in classes 35, 37 and 42, claiming a date of first use in 1999. Complainant operates its primary business website at the domain name <kbr.com>.

The disputed domain name was registered on December 20, 2022. It does not resolve to an active website, though the record reflects that it was previously used to redirect Internet users to Complainant's website. The record contains evidence that the disputed domain name has been used to generate emails in which Respondent impersonated Complainant's employee.

#### **5. Parties' Contentions**

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

Complainant's contentions may be summarized as follows:

Under the first element, Complainant states that the disputed domain name includes the lettering "kbr" which is Complainant's registered mark and which Complainant uses in its primary domain name <kbr.com>. The added lettering "-const" in the disputed domain name is so minor and of such character to lead a user to likely confuse the disputed domain name as being associated with KBR. The added lettering is therefore insufficient to distinguish the disputed domain name from the mark and Complainant's own domain name. The KBR mark has become well-known internationally.

Under the second element, Complainant states that Complainant has no business association with Respondent and it has not licensed or authorized Respondent the use of Complainant's trademarks, likeness, or domain names. Complainant also has never authorized Respondent to act for or on behalf of Complainant or on behalf of any of Complainant's related entities. Respondent is not commonly known by the disputed domain name. The disputed domain name has been used by Respondent to attempt to impersonate Complainant's corporate parent entity, KBR, Inc., to fraudulently order hundreds of thousands of dollars' worth of goods from Complainant's suppliers.

Under the third element, Complainant states that Respondent created a likelihood of confusion with Complainant and its trademarks by registering a domain name that include Complainant's KBR trademark, only to redirect users to Complainant's official website, divert communication, and fraudulently impersonate Complainant by placing orders with Complainant's suppliers. Complainant's registration of its trademarks significantly predates the registration of the disputed domain name. Respondent's sole purpose in registering the disputed domain name was to perpetuate a fraud.

Complainant requests transfer of the disputed domain name.

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

Respondent did not reply to Complainant's contentions.

## 6. Discussion and Findings

Paragraph 4(a) of the UDRP requires Complainant to make out all three of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) Respondent has registered and is using the disputed domain name in bad faith.

Under paragraph 15(a) of the Rules, “[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

### A. Identical or Confusingly Similar

Complainant has provided evidence establishing that it has trademark rights in the KBR mark through registration in the United States. Complainant thereby satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.2.1.

In comparing Complainant’s KBR mark with the disputed domain name, the Panel finds that the disputed domain name is confusingly similar to this mark as the mark is clearly recognizable within the disputed domain name, followed by a hyphen and the terms “const”. It is the consensus view of UDRP panels that, where a domain name incorporates the entirety of a trademark, the domain name will normally be considered confusingly similar to that mark. Moreover, where 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. See [WIPO Overview 3.0](#), sections 1.7, and 1.8.

It is the well-established view of UDRP panels that a generic Top Level Domain (“gTLD”) such as “.com” is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See [WIPO Overview 3.0](#), section 1.11.1.

Accordingly, the Panel finds that Complainant has established the first element under paragraph 4(a) of the Policy.

### B. Rights or Legitimate Interests

The Panel finds that the evidence submitted by Complainant establishes a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain names. Respondent is not authorized by Complainant and has no rights in the KBR mark, nor is Respondent commonly known by the disputed domain name.

Pursuant to [WIPO Overview 3.0](#), section 2.1, and cases thereunder, where Complainant makes out a *prima facie* case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

Respondent has not provided any rebuttal of Complainant’s *prima facie* case and has therefore not proved rights or legitimate interests in the disputed domain name. There is no evidence that Respondent is commonly known by the disputed domain name, or that there are any circumstances or activities that would establish Respondent’s rights therein. There is no evidence of legitimate noncommercial use or a *bona fide* offering of goods or services. The disputed domain name comprises Complainant’s KBR mark plus the term “const”. Such composition cannot constitute fair use as it impersonates or suggests sponsorship or endorsement by the trademark owner. See [WIPO Overview 3.0](#), section 2.5.1.

The evidence in the record establishes that the disputed domain name is not currently being used to resolve to a website and was previously used to redirect Internet users to Complainant's own website. The disputed domain name has been used by Respondent to impersonate Complainant in an attempt to defraud third parties through email communications. Such use can never confer rights or legitimate interests. See [WIPO Overview 3.0](#), section 2.13.1.

Accordingly, the Panel finds that Complainant has established the second element under paragraph 4(a) of the Policy.

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

The Panel finds that Complainant has demonstrated Respondent's bad faith registration and use of the disputed domain name. Complainant registered rights in its KBR mark predates the registration of the disputed domain names by nearly 20 years. The disputed domain name reflects Complainant's well-established mark together with the term "const", implying a connection to Complainant's activities. Moreover, UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity, as in this case, can by itself create a presumption of bad faith on the part of Respondent. See [WIPO Overview 3.0](#), section 3.1.4.

The Panel finds the evidence in the record establishes that Respondent used the disputed domain name in an attempt to pass itself off as Complainant to perpetuate what appears to be a fraudulent scheme to obtain goods and services from Complainant's suppliers. The Panel finds that Respondent thereby attempted to impersonate Complainant for commercial gain, indicating bad faith in registration and use of the disputed domain name. See [WIPO Overview 3.0](#), section 3.2.1.

Respondent has failed to provide any evidence of actual or contemplated good-faith use of the disputed domain name. Under the circumstances, the Panel does not find any such use plausible.

The Panel therefore finds that Complainant has established the third element under paragraph 4(a) 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, <kbr-const.com>, be transferred to Complainant.

*/Ingrīda Kariņa-Bērziņa/*

**Ingrīda Kariņa-Bērziņa**

Sole Panelist

Date: June 16, 2023