

ADMINISTRATIVE PANEL DECISION

Kin INC. v. Simon Rahman

Case No. D2023-2673

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 Simon Rahman, Bangladesh.

2. The Domain Name and Registrar

The disputed domain name <kohlsfeedback.org> is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 21, 2023. On June 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 23, 2023, 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 FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 26, 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 July 1, 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 July 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 2, 2023.

The Center appointed Kaya Köklü as the sole panelist in this matter on August 11, 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 a United States company active in the retail industry since 1962. It operates an online store, an ecommerce app and more than 1,100 retail stores in the United States, offering apparel, shoes, accessories, beauty and home products.

The Complainant owns the KOHL'S trademark, which is registered in the United States and some further jurisdictions (Annex H to the Complaint). According to the Complaint, the Complainant is, among others, the registered owner of the United States Trademark Registration No. 2292684 (registered on November 16, 1999) and No. 2047904 (registered on March 25, 1997) for KOHL'S, both providing protection for retail department store services as covered in class 35 (Annex F to the Complaint).

The Complainant further owns and operates its official website at "www.kohls.com" (Annex I to the Complaint). The Complainant further operates a website at "www.kohlsfeedback.com", which provides its customers the opportunity to leave feedback on their shopping experiences by redirecting users to an authorized survey site (Annexes L and M to the Complaint).

The disputed domain name was registered on December 14, 2021.

The Respondent is reportedly from Bangladesh.

The Screenshots in the case file, as provided by the Complainant, show that the disputed domain name is connected to a website, which prominently features the Complainant KOHL'S trademark and invites Internet users to participate in a survey allegedly on their shopping experiences in the Complainant's retail stores and its website. In return, users allegedly get a chance to win prizes like gift cards or discount coupons from the Complainant. Content and design of the associated website is virtually a copy of the Complainant website at "www.kohlsfeedback.com" and provides the look and feel as if the alleged survey is authorized or even provided by the Complainant itself (Annex N to the Complaint). A small disclaimer at the very bottom of the website associated to the disputed domain name merely states that "this website is not associated with the KohlsFeedback".

On May 17, 2023, the Complainant sent a cease-and-desist letter to the Respondent and tried to solve the dispute amicably between the involved parties (Annex O to the Complaint).

5. Parties' Contentions

A. Complainant

The Complainant requests the transfer of the disputed domain name and contends that it has satisfied each of the elements required under the Policy.

B. Respondent

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

6. Discussion and Findings

According to paragraphs 14 and 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable and on the basis of the Complaint where no substantive response has been submitted.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not substantively replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") section 4.3.

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views captured therein.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. See [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in the KOHL'S trademark by virtue of various trademark registrations. See [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the KOHL'S mark is reproduced within the disputed domain name, except the technically required omission of the apostrophe. Accordingly, the disputed domain name is confusingly similar to the Complainant's KOHL'S trademark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms, here "feedback", may bear on assessment of the second and third elements, the Panel finds the addition of this term does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's KOHL'S mark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Panel further notes that the nature of the disputed domain name, comprising the Complainant's trademark and additional terms, and the content and design of the associated website, which is virtually a copy of the Complainant's website at "www.kohlsfeedback.com", indicates the Respondent's awareness of the Complainant and its KOHL'S trademark and his intent to take unfair advantage of such, which does not support a finding of any rights or legitimate interests.

In the absence of a response, the Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name, such as those enumerated in the Policy or otherwise.

Consequently, and based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. Other circumstances may be relevant as well in assessing whether a respondent's registration and use of a domain name is in bad faith. See [WIPO Overview 3.0](#), section 3.2.1.

In view of the Panel, the Respondent has registered the disputed domain name solely for the purpose of creating an association with the Complainant. After having reviewed the Complainant's screenshots of the website associated to the disputed domain name (Annex N to the Complaint), the Panel is convinced that the Respondent has intentionally registered the disputed domain name to target and mislead third parties, probably for phishing or other illegitimate purposes. Consequently, the Panel is convinced that the Respondent has registered the disputed domain name in bad faith.

As regards bad faith use, the prominent use of the Complainant's KOHL'S trademark as well as the inherently misleading nature of the disputed domain name is, in view of the Panel, sufficient evidence that the Respondent intentionally tries to attract, for likely illegal purposes, Internet users to its website which is virtually an authorized copy of the respective Complainant's feedback website. The Panel particularly notes that the hardly visible and misleading disclaimer at the very bottom of the Respondent's website associated to the disputed domain name, is not sufficient to explain that there is no existing relationship between the Respondent and the Complainant.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 <kohlsfeedback.org> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: August 25, 2023