

ADMINISTRATIVE PANEL DECISION

Keolis and Métropole Européenne de Lille v. Jane Varela
Case No. D2023-4908

1. The Parties

The Complainants are Keolis, France, and Métropole Européenne de Lille, France, represented by Plasseraud IP, France.

The Respondent is Jane Varela, United States of America (the “United States”).

2. The Domain Name and Registrar

The disputed domain name <ilevia-keolis.com> is registered with Amazon Registrar, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 27, 2023. On November 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 29, 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 (On behalf of ilevia-keolis.com owner, Identity Protection Service) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 4, 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 December 7, 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 December 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 31, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 3, 2024.

The Center appointed Angelica Lodigiani as the sole panelist in this matter on January 23, 2024. 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 Complaint has been filed by two Complainants, who request the consolidation of the complaints. The first Complainant is Keolis, a French public limited company operating in the public transport field since 1982. Predominantly owned by the SCNF, the French public company in charge of the rail transportation, Keolis operates in the field of passenger transport, by metro, tramway, bus and other means of transportation. Keolis operates several networks in France, such as in Lille, where it offers its transport services through one of its subsidiaries. Keolis transport network accounts for 200 million annual journeys, by metro, tramway, bus, bicycles, etc. Keolis also offers its transport services outside France, in particular in Australia, Canada, China, Germany, Netherlands (Kingdom of the), Norway, India, the United Kingdom and the United States. Altogether, Keolis employs more than 68,000 employees worldwide and generated EUR 6.6 billion revenues in 2019. Keolis has also a strong presence on the most relevant social networks, such as Instagram, Twitter, LinkedIn and YouTube.

The second Complainant is a French general public administration named Métropole Européenne de Lille, incorporated in 2020 and offering, inter alia, public transportation services in the French city of Lille, under the trademark ILEVIA, through a subsidiary of Keolis, named Keolis Lille Métropole.

Hereinafter, where appropriate, the first and the second Complainant are jointly referred to as the "Complainants".

The Complainants are the owner of various trademark registrations for KEOLIS and ILEVIA, in many jurisdictions, including the following:

- KEOLIS (figurative), International registration No. 1364942, registered on June 12, 2017, for goods and services in classes 9, 35, 36, 38, 39 and 42. This trademark designates various jurisdictions, among which the United States;
- ILEVIA, European Union registration No. 017975711, registered on October February 13, 2019, for goods and services in classes 9, 12, 16, 35, 36, 37, and 39.

Furthermore, the Complainant Keolis is the owner of the domain name <keolis.com>, registered on November 24, 2000, which it uses as its main website.

The Respondent is an individual located in the United States. The disputed domain name was registered on October 31, 2023, and is inactive. The Respondent has set up Mail exchanges ("MX records") for the disputed domain name and has used the disputed domain name to send one phishing email impersonating the Complainant's commercial manager.

5. Parties' Contentions

A. Complainant

Preliminarily, the Complainants request the Panel to allow the consolidation of multiple complainants in a single complaint as the Complainants have a common grievance against the Respondent. The disputed domain name consists of the combination of the trademark ILEVIA, owned by the Complainant Métropole Européenne de Lille, and the trademark KEOLIS, owned by the Complainant Keolis. The Complainants cooperate, through Keolis' subsidiary Keolis Lille Métropole, in the city of Lille, where this company manages

and offers its public transportation services under the trademark ILEVIA. Therefore, the Respondent has engaged in a common conduct that has affected both Complainants in a similar fashion.

Furthermore, the Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainants contend that the disputed domain name is identical to the Complainants' marks KEOLIS and ILEVIA since it reproduces them identically, merely separated by a hyphen.

Moreover, the Complainants maintain that the Respondent lacks rights or legitimate interests in the disputed domain name, as the Respondent is not commonly known by the disputed domain name. Moreover, the Complainants have never licensed, nor authorized the Respondent to register and use domain names incorporating the ILEVIA and the KEOLIS marks.

Lastly, there is no evidence of any fair, noncommercial or bona fide use of the disputed domain name. The Respondent has set up MX records for the disputed domain name and has sent an email to one of the Complainants' partners, under the name of the Complainant Keolis' commercial manager. The Respondent's email address is almost identical to the Complainant Keolis' official email address since the latter uses the email address "[...]@ilevia.keolis.com", while the Respondent uses the email address "[...]@ilevia-keolis.com". The only difference between the two email addresses lies in the hyphen separating the ILEVIA and KEOLIS marks, instead of the dot. In its email, the Respondent informs the recipient that the Complainant Keolis' bank account has changed and provides one, which does not belong to the Complainants but to the Respondent. Therefore, the Respondent is impersonating the Complainants to mislead the recipient of the email in order to divert payments to the Respondent's bank account.

Finally, the Complainants maintain that the Respondent registered and is using the disputed domain name in bad faith. The disputed domain name reproduces two well-known trademarks of the Complainants. On the same day of the registration of the disputed domain name, the Respondent used the disputed domain name to send a fraudulent email to one of the Complainants' partners. Through this email, the Respondent tried to divert to its own bank account payments actually due to the Complainant Keolis by its partner. The Respondent signed the email with the name of the commercial manager of Keolis Lille Métropole and sent the email in a chain of emails genuinely originating from exchanges between the Complainant Keolis and its partner. This leads to the conclusion that the Respondent illegitimately achieved to enter in the messaging system of either the Complainant Keolis or its partner, and breach the confidentiality of their correspondence, which is a criminal offense. The Respondent has therefore registered and used the disputed domain name in bad faith, to intentionally attempt to attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainants' marks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location.

The Complainants also indicate, as further evidence of bad faith, the fact that the Respondent has provided inaccurate contact information when it registered the disputed domain name. In particular, the address of the Respondent is incorrect.

B. Respondent

The Respondent did not reply to the Complainants' contentions.

6. Discussion and Findings

A. Preliminary Issue – Consolidation of Multiple Complainants

Paragraph 10(e) of the UDRP Rules grants a panel the power to consolidate multiple domain name disputes. In assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the respondent, or the

respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 4.11.1.

In the instant case, the Panel finds that the Complainants have a common grievance against the Respondent as the Respondent has engaged in a conduct that has affected both Complainants in a similar fashion. The Complainants collaborate in offering public transportation services in the French town of Lille under the trademark ILEVIA. Moreover, the disputed domain name consists of the combination of the trademarks ILEVIA, owned by Métropole Européenne de Lille and KEOLIS, owned by the Complainant Keolis. Therefore, the Complainants have been the target of a common conduct by the Respondent. The Panel also finds that there is no apparent reason why it would not be equitable and procedurally efficient to permit consolidation. The Complainants clearly consider the consolidation procedurally efficient. The Respondent did not reply to the Complainants' arguments and did not submit any reason why it should not be equitable to consolidate the disputes. In light of this, the Panel agrees with the consolidation.

B. 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. [WIPO Overview 3.0](#), section 1.7.

The Complainants have shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. In particular, the Complainants have shown that they own registered rights over the two marks that form part of the disputed domain name.

The entirety of the marks is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to each of them for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. The addition of a hyphen between the two marks in the disputed domain name cannot change the overall impression of the disputed domain name and has no impact on the assessment of confusing similarity of the disputed domain name with the Complainants' marks.

Therefore, the Panel finds the first element of the Policy has been established.

C. 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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainants have established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. More specifically, the Complainants have indicated that they have no relationship with the Respondent and that they never authorized the Respondent to make use of their marks, including as part of the disputed domain name. In addition, nothing in the case file shows that the Respondent has been commonly known by the disputed domain name.

Panels have held that the use of a domain name for illegal activity, here sending a phishing email to one of the Complainants partners in order to try to divert payments to the Respondent's bank account, can not confer rights or legitimate interests on the Respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Respondent has not rebutted the Complainants' 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.

Thus, the Panel finds the second element of the Policy has been established.

D. 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.

In the present case, the Panel notes that the Respondent registered a domain name consisting of two trademarks, of which, KEOLIS, enjoys reputation in its field and ILEVIA is inherently distinctive. The Panel finds that the Respondent was certainly aware of the Complainants' marks when it registered the disputed domain name, as the inclusion of two marks of the Complainants cannot have occurred by mere coincidence. Moreover, the Respondent has sent a fraudulent email under the name of the Complainant Keolis' commercial manager on the very same day of registration of the disputed domain name, under the thread of various communications between the Complainant Keolis and its partner. It is therefore clear that the Respondent has registered the disputed domain name with full knowledge of the Complainants and of their earlier trademark rights for a fraudulent intent. Accordingly, the registration of the disputed domain name has occurred in bad faith.

Panels have held that the use of a domain name for illegal activity here, the impersonation of the Complainant Keolis' commercial manager for phishing purposes, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Having reviewed the record, the Panel finds that the Respondent registered and used the disputed domain name in bad faith, to intentionally attempt to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainants' marks.

In view of the above, the Panel finds that the Complainant has established the third element 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 <ilevia-keolis.com> be transferred to the Complainant Keolis.

/Angelica Lodigiani/

Angelica Lodigiani

Sole Panelist

Date: February 6, 2024