

ADMINISTRATIVE PANEL DECISION

Kingfisher Plc v. Ibrahim Mohamed

Case No. D2023-5209

1. The Parties

The Complainant is Kingfisher Plc, United Kingdom, represented internally.

The Respondent is Ibrahim Mohamed, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <kingfishersplc.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 5, 2023. On December 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 14, 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 (kingfishersplc.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 18, 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 amendment to the Complaint on December 19, 2023.

The Center verified that the Complaint together with the amendment to 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 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 22, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 23, 2024.

The Center appointed Gareth Dickson as the sole panelist in this matter on January 29, 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 Complainant is an international home improvement retailer, established in 1982 and based in London, United Kingdom. It operates a network of over 1,980 stores across eight countries and has reported sales of over GBP 12.3 billion for the year ending January 31, 2022. The company employs over 82,000 staff and owns multiple retail brands, including SCREWFIX, B&Q, and CASTORAMA. The Complainant is a public limited company and accordingly is required to use “plc” in its corporate name. It operates an online sales platform through its website accessed using the address “www.kingfisher.com”.

The Complainant has registered trade marks for KINGFISHER (the “Mark”) in various classes and jurisdictions around the world, including:

1. European Union Trade Mark registration number 001539139, registered on December 19, 2002, in classes 35, 36, 41, and 42;
2. United Kingdom Trade Mark registration number UK00901539139, registered on December 19, 2002, in classes 35, 36, 41, and 42; and
3. United Kingdom Trade Mark registration number UK00002261399, registered on January 30, 2004, in class 16.

There is no apparent relationship between the Respondent and the Complainant, although the Respondent has given an address in London, United Kingdom.

The disputed domain name was registered on March 9, 2023, that is, after the Mark was first registered by the Complainant. It currently directs users to a GoDaddy parking page with no legitimate offering of goods or services, but appears to have been used to send and receive emails for the ordering and delivery of goods on credit.

5. Parties’ Contentions

A. Complainant

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

Notably, the Complainant contends that it has rights in the Mark as a result of, inter alia, the aforementioned trade mark registrations. It further contends that the disputed domain name is confusingly similar to the Mark because it incorporates the Mark in its entirety, and because the addition of the letter “s” (to pluralize the Mark) and of the corporate identifier “plc” does not prevent a finding of confusing similarity since such addition is a minor change that is not easily noticeable.

The Complainant also argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name in light of the fact that it is not being used to make a legitimate offering of goods or services but instead, noting that it incorporates the Mark in full without any distinctive element(s), is being used to send emails which expressly allege that the sender is writing on behalf the Complainant. It was used for that purpose almost immediately following registration, with the Respondent (or someone on their behalf or with their assistance) using the email functionality of the disputed domain name to pose as a senior employee of the Complainant to contact suppliers and arrange large orders on credit and without any intention to pay for them, thereby attempting to deceive suppliers into delivering goods based on the false belief that they were dealing with the Complainant. Such fraudulent activity does not provide evidence of rights or legitimate interests; in fact, it proves the opposite and is strong evidence of bad faith registration and use of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

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. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms may bear on assessment of the second and third elements, the Panel finds the addition of an "s" and of "plc" in the disputed domain name does not prevent a finding of confusing similarity between the disputed domain name and the Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

Although the overall burden of proof in UDRP proceedings is on a 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 solely or 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 Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. 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.

Panels have held that the use of a domain name for illegal activity, here demonstrated by the evidence of multiple attempts by the person(s) in control of the email functionality of the disputed domain name to secure orders for goods on credit while expressly claiming, falsely, to be an employee of the Complainant and acting on the Complainant's behalf, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

In the present case, the Panel notes the substantial evidence of the Respondent's efforts to defraud third parties through its use of the Complainant's name and the disputed domain name.

Panels have held that the use of a domain name for illegal activity, such as that described above, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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 <kingfishersplc.com> be transferred to the Complainant.

/Gareth Dickson/

Gareth Dickson

Sole Panelist

Date: February 12, 2024