

ADMINISTRATIVE PANEL DECISION

Kimley-Horn and Associates, Inc. v. Name Redacted Case No. D2024-1253

1. The Parties

Complainant is Kimley-Horn and Associates, Inc., United States of America (“United States”), represented by Nelson Mullins Riley & Scarborough, L.L.P., United States.

Respondent is Name Redacted,¹ represented by Christopher Clay, United States.

2. The Domain Name and Registrar

The disputed domain name <kirnley-hom.com> is registered with Squarespace Domains LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 22, 2024. On March 24, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 26, 2024, 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 Complainant on March 26, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on March 28, 2024.

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”).

¹ Respondent appears to have used the name of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted Respondent’s name from this Decision. However, the Panel has attached as Annex 1 to this Decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this Decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on March 28, 2024. In accordance with the Rules, paragraph 5, the due date for a response was April 17, 2024.. On April 15, 2024, the Center received an email communication from the authorized representative of the domain name registrant as provided by the Registrar in the case.

The Center appointed Michael A. Albert as the sole panelist in this matter on April 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

Founded in 1967, Complainant is a planning, engineering, and design consulting firm offering services in a wide range of disciplines. Since its founding, Complainant has adopted and extensively and continuously used the KIMLEY-HORN trademark in connection with the marketing, advertising, promotion, and provision of Complainant's planning, engineering, and design consulting firm services. Because of its extensive, continuous, and substantial investment in and use of the trademark in commerce, Complainant's KIMLEY-HORN trademark has acquired substantial reputation and goodwill in the marketplace, which consumers recognize as belonging exclusively to Complainant. Complainant applied for and owns the following federal trademark registrations for the KIMLEY-HORN trademark in the United States:

Trademark	Reg. No.	Reg. Date
KIMLEY-HORN	2,788,474	December 2, 2003
Kimley»Horn	4,685,771	February 10, 2015

The disputed domain name was registered on February 29, 2024. The disputed domain name does not resolve to any active websites; however, Complainant has provided evidence that the disputed domain name has been used in connection with fraudulent emails sent to Complainant's clients in order to defraud Complainant's clients into making payments for a different bank account.

5. Parties' Contentions

A. Complainant

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

Notably, Complainant contends that Respondent used the disputed domain name in connection with an attempted business email compromise ("BEC") attack directed at one of Complainant's clients. Complainant contends that Respondent impersonated one of Complainant's project accountants and contacted the client inquiring about an outstanding invoice and indicating, falsely, that Complainant's normal bank account was presently unable to accept payments due to an "ongoing annual tax audit" and proceeded to provide fraudulent alternative banking instructions.

Complainant further contends that (1) the disputed domain name is confusingly similar to the KIMLEY-HORN trademark in which Complainant has rights; (2) Respondent does not have any rights or legitimate interests in the disputed domain name; and (3) Respondent registered and is using the disputed domain name in bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

On April 15, 2024, the Center received an email communication from the authorized representative of the named registrant of the disputed domain name as provided by the Registrar informing that his client did not register the disputed domain name and the actual underlying registrant had stolen aspects of his client's identity for the registration of the disputed domain name.

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 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.

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

The Panel finds the mark is recognizable within the disputed domain name. Specifically, the disputed domain name consists of the mark with the letter "m" replaced by the consecutive letters "r" and "n" in "kimley" which, when adjacent to each other in that order on a computer screen, look nearly identical to the letter "m", as well as by the replacement of the consecutive letters "r" and "n" to "m" in "horn". Previous panels have held that a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. [WIPO Overview 3.0](#), section 1.9. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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 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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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.

Respondent's only known use of the disputed domain name was an attempt to impersonate one of Complainant's employees to fraudulently extract money from one of its clients. Panels have held that the use of a domain name for illegal activity here, claimed impersonation of Complainant's employee, 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 finds that Respondent selected the disputed domain name in a manner indicative of "typosquatting" in that Respondent replaced the letter "m" in Complainant's mark with the letters "r" and "n" in "Kimley", which, when they appear adjacent to each other in that order on a computer screen, look nearly identical to the letter "m", as well as by the replacement of the consecutive letters "r" and "n" to "m" in "horn". In so doing, Respondent appears to have intended to confuse or mislead Internet users into believing that the disputed domain name related to or originated from Complainant. Further, Respondent registered the disputed domain name to impersonate Complainant's employee in an attempt to extract money from one of Complainant's clients, which constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

The Panel accordingly finds Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel thus finds that 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 <kirnley-hom.com> be transferred to Complainant.

/Michael A. Albert/

Michael A. Albert

Sole Panelist

Date: May 22, 2024