

ADMINISTRATIVE PANEL DECISION

K&L Gates LLP v. Tom Hillary, xbiotech

Case No. D2024-1526

1. The Parties

Complainant is K&L Gates LLP, United States of America ("United States"), represented by ZeroFox, United States.

Respondent is Tom Hillary, xbiotech, United States.

2. The Domain Name and Registrar

The disputed domain name <klgatesgroup.com> (hereinafter "Disputed Domain Name") is registered with Hostinger Operations, UAB (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 10, 2024. On April 11, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On April 12, 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 (Domain Admin, Privacy Protect LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on April 15, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on April 26, 2024.

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 Respondent of the Complaint, and the proceedings commenced on May 22, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 11, 2024. The Respondent did not submit any response. Accordingly, the Center notified Respondent's default on June 12, 2024.

The Center appointed Lawrence K. Nodine as the sole panelist in this matter on June 18, 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

Complainant is an international law firm with 48 offices spread across many countries worldwide. Measured by number of employees, it is one of the largest law firms in the United States, employing 1800 people in 2018.

Complainant owns United States Trademark Registration No. 3,373,473 for K&L GATES (hereinafter the "Mark") (registered January 22, 2008). Complainant alleges that it also owns 30 trademark registrations for the Mark in jurisdictions other than the United States. Complainant registered the domain name <klgates.com> in 2006.

The Disputed Domain Name was registered on January 29, 2024.

Complainant received a report from a person who received an email on January 30, 2024 (one day after the Disputed Domain Name was registered) using the Disputed Domain Name as the email address. The email offered employment and transmitted various forms requesting detailed personal information, including bank account numbers. The person who received the email asked Complainant to verify the authenticity of the offer of employment, explaining that the circumstances were suspicious.

Based on this incident, the MX configuration of the Disputed Domain Name was disabled due to terms of service violations.

The Disputed Domain Name currently "can't be reached" by a browser.

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.

B. Respondent

The Respondent did not reply to 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 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 the Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the Mark is reproduced within and recognizable with 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 here, “group,” 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 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 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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the Disputed Domain Name. The 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.

Panels have held that the use of a domain name for illegal activity, here fraudulent impersonation of Complainant in phishing email, 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

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.

The un rebutted evidence shows that one day after Respondent registered the Disputed Domain Name, he used it to send phishing emails impersonating Complainant. This is evidence of not only bad faith use, but also bad faith registration, as it is evidence that Respondent was aware of Complainant when it registered the Disputed Domain Name one day before and also that when he registered the Disputed Domain Name, he intended to impersonate Complainant.

Panels have held that the use of a domain name for phishing, impersonation/passing off, or other types of fraud constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent's registration and use of the Disputed Domain Name constitutes bad faith under 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 <klgatesgroup.com> be transferred to Complainant.

/Lawrence K. Nodine/

Lawrence K. Nodine

Sole Panelist

Date: July 1, 2024