

ADMINISTRATIVE PANEL DECISION

Yerkin Tatishev, the Founder and Chairman of Kusto Group Pte. Ltd. v.
Nathan Howards

Case No. D2024-2842

1. The Parties

Complainant is Yerkin Tatishev, the Founder and Chairman of Kusto Group Pte. Ltd., United Kingdom, represented by Schillings International LLP, United Kingdom.

Respondent is Nathan Howards, Switzerland.

2. The Domain Name and Registrar

The disputed domain name <yerkintatishevkusto.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 July 11, 2024. On July 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 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 (Persons Unknown c/o Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on July 17, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Respondent sent an email communication to the Center on July 24, 2024. Complainant filed an amended Complaint on August 13, 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").

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on August 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 4, 2024. The Center notified the Parties of the commencement of the panel appointment process on September 6, 2024.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on September 26, 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 a citizen of Kazakhstan who is the founder and chairman of Kusto Group Pte. Ltd., founded in 2002 with its headquarter in Singapore and operating in many countries worldwide and in a variety of sectors, including agriculture, construction, oil & gas as well as real estate.

Complainant has provided evidence that it enjoys rights through Kusto Group Pte. Ltd. in the following registered trademarks:

- word trademark KUSTO, International Registration (World Intellectual Property Organization), registration number: 1378900, registration date: July 18, 2017, status: active;
- word trademark KUSTO, United States Patent and Trademark Office (USPTO), registration number: 5,598,053, registration date: November 6, 2018, status: active.

Moreover, Complainant has demonstrated to control the domain name <kustogroup.com> which resolves to the KUSTO group of companies' main website at "www.kustogroup.com", promoting Complainant as its founder and chairman as well as various products and services which the KUSTO group of companies offers in different industry sectors.

Respondent, according to the disclosed Whois information for the disputed domain name, is located in Switzerland. The disputed domain name was registered on June 20, 2023; it resolves to a typical parking/landing website offered by the Registrar, the content of which is blocked.

Complainant requests that the disputed domain name be transferred to Complainant.

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 to be a prominent Kazakh entrepreneur, businessman and philanthropist who has achieved international recognition and acclaim for his position as founder and chairman of Kusto Group Pte. Ltd., and, moreover, that his name is recognized within the commercial community in connection with his leadership of the KUSTO group of companies, being awarded "Entrepreneur of the Year" by Ernst & Young Global Ltd. in 2022.

Complainant submits that the disputed domain name is confusingly similar to Complainant's personal name "Yerkin Tatishev" in which he claims to have achieved common law trademark rights, added by the term "kusto", which refers to the company for which Complainant has received renown as a businessman and entrepreneur. Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) the latter is composed of Complainant's personal name followed by the name of the company of which he is the founder and chairman, and (2) such use by Respondent of Complainant's name and the name of the company with which he is associated by the media and public is obviously designed to misleadingly divert Internet users to the website at the disputed domain name, where Respondent is publishing false and defamatory allegations regarding Complainant, thereby tarnishing Complainant's personal brand. Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since (1) the disputed domain name, which wholly incorporates Complainant's personal name and related common law trademark, will likely mislead Internet

users into believing that any website to which the disputed domain name resolves will be a website owned, operated, or otherwise duly authorized by Complainant, and (3) Respondent has not demonstrated any legitimate reason for registering or using the disputed domain name other than to engage in domain name squatting and to publish defamatory content.

B. Respondent

Respondent did not formally reply to Complainant's contentions, but sent an email communication to the Center on July 24, 2024, notifying that it registered the disputed domain name for a client, and that the domain name owner had no intention of renewing the disputed domain name. Respondent also stated, however, that the latter in fact was not an exact match for Complainant's personal name, and the purpose of the disputed domain name ("to display critical review and consumer feedback") would not fall under current UDRP guidelines anyways.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) that Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

Respondent did not provide any explanation as to the identity of its alleged client, and the Panel notes that Respondent has certain obligations under the UDRP (and by virtue of the registration agreement with the Registrar) irrespective of whether the disputed domain name is used by Respondent directly or by a client. The Panel will refer to the use of the disputed domain name as including any use by Respondent or its client (if any).

A. Identical or Confusingly Similar

First, 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 the registered KUSTO trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Also, the entirety of such trademark is reproduced within the disputed domain name, merely added by Complainant's personal name. Accordingly, the disputed domain name is confusingly similar to the KUSTO trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. Although the addition of other terms (here, Complainant's personal name) may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the KUSTO trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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

B. Rights or Legitimate Interests

Second, 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. 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 has obviously not been authorized to use Complainant’s personal name and/or the KUSTO trademark, either as a domain name or in any other way. Also, there is no reason to believe that Respondent’s name somehow corresponds with the disputed domain name and Respondent does not appear to have any trademark rights associated with e.g. the term “kusto” on its own. The Panel further notes that Complainant did not substantiate its allegations that Respondent has used the disputed domain name e.g. to publish false and defamatory content regarding Complainant; by the time of rendering this Decision, the disputed domain name resolves to a typical parking/landing website offered by the Registrar, the content of which is blocked. It is, however, undisputed between the Parties that both Complainant’s personal name as well as the KUSTO trademark enjoy relevant international recognition. Moreover, the combination of those two elements in the disputed domain name clearly demonstrates that Respondent was well aware of Complainant and the KUSTO trademark at the time of registering the disputed domain name and that the latter is directly targeting thereto. In turn, Respondent has not brought forward anything as to why it needed to rely on the disputed domain name if not to somehow unduly profit from the reputation that is undisputedly connected thereto by including both Complainant’s personal name as well as the KUSTO trademark; rather, Respondent notified the Center by email of July 24, 2024, that the (true) domain name owner had no intention of renewing the disputed domain name, however, that the latter in fact was not an exact match for Complainant’s personal name. Furthermore, as Respondent was claiming the disputed domain name was registered to display critical review and consumer feedback, the Panel notes the fact that the personal name of Complainant’s founder is added to the trademark in the disputed domain name. In this regard, the Panel further notes that previous panels have considered that even a general right to legitimate criticism does not necessarily extend to registering or using a domain name identical to a trademark. [WIPO Overview 3.0](#), section 2.6.2. Similarly, prior panels have considered that where a domain name consists of a trademark plus an additional term (at the second- or top-level), UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1. In this case, a disputed domain name reproducing Complainant’s trademark in its entirety with Complainant’s founder name creates an impermissible risk of implied affiliation.

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

C. Registered and Used in Bad Faith

Third, 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.

The circumstances to this case leave no reasonable doubts that Respondent was fully aware of Complainant and its rights in the KUSTO trademark when registering the disputed domain name and that the latter clearly is directed thereto. Moreover, Respondent itself has stated in its email of July 24, 2024, that the (true) domain name owner had no intention of renewing the disputed domain name, however, that the latter in fact was not an exact match for Complainant’s personal name; by the same time, the disputed domain name

reproduces Complainant's KUSTO trademark in its entirety combined with Complainant's founder name, which creates an impermissible risk of implied affiliation with Complainant (see Section B. above). This, in turn, allows the Panel to conclude that it is more likely than not that Respondent registered and made use of the disputed domain name in connection with some kind of activity intended to take unfair advantage of or otherwise abuse Complainant's KUSTO trademark (e.g. by unduly profiting from the recognition which is undisputedly connected to both Complainant's KUSTO trademark and personal name). Such circumstances, however, constitute bad faith registration and use of the disputed domain name at least in the broader sense of the Policy (see WIPO 3.0, section 3.1.).

The Panel, therefore, holds that Complainant has established the third element of the Policy, too.

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, <yerkintatishevkusto.com>, be transferred to Complainant.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: October 10, 2024