

ADMINISTRATIVE PANEL DECISION

Kenco Group v. Steven Wheeler, promedlhs
Case No. D2024-3439

1. The Parties

Complainant is Kenco Group, United States of America (“United States”), represented by ZeroFox, United States.

Respondent is Steven Wheeler, promedlhs, United States.

2. The Domain Name and Registrar

The disputed domain name <kencoqroup.com> (the “Disputed Domain Name”) is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 12, 2024. On August 22, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On August 23, 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 (Private Registration) and contact information in the Complaint. The Center sent an email communication to Complainant on August 23, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on September 11, 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 September 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 2, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on October 3, 2024.

The Center appointed Richard W. Page as the sole panelist in this matter on October 8, 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 privately held company that provides logistics services. Complainant specializes in distribution and fulfillment, transportation management, materials handling services, and warehouse real estate management. Complainant operates across all of North America, has over 5,000 employees, and has been operating since 1950. Complainant has taken great measures over the last 74 years to cultivate a strong reputation in its industry and to solidify itself as an internationally recognized brand.

Complainant owns a registered trademark under “KENCO US OPERATING HOLDINGS LLC” for its primary logo, which in plain text reads “kenco” (the “KENCO Mark”): United States Registration No. 7,352,364, registered on April 9, 2024.

Complainant also has a strong presence online through its official domain name <kencogroup.com>, which was registered in 1997.

The Disputed Domain Name was registered on May 28, 2024, and resolves to a website which appears to have no content.

5. Parties’ Contentions

A. Complainant

Complainant contends that the Disputed Domain Name is confusingly similar to the KENCO Mark because of the intentional misspelling of “group”. The replacement of the “g” in group with “q” makes the Disputed Domain Name visually similar to Complainant’s official domain name and contains the entirety of the plain text element “kenco” in the KENCO Mark. Complainant further contends that this is a typical example of typosquatting.

Complainant alleges that the Disputed Domain Name has not been used, nor prepared for use, for any bona fide offering of good or services. The Disputed Domain Name currently does not resolve, to any active website and there is no evidence or archive of any content being hosted in the past.

Complainant further alleges that there was previously an mail exchange (“MX”) record associated with the Disputed Domain Name, which suggests preparation for or intent to engage in email communication under the guise of Complainant. Complainant further alleges the existence of evidence of the use of the Disputed Domain Name to send impersonating emails in the form of traceroute and metadata.

Complainant further alleges that based on metadata, emails were sent from “[...]@kencoqroup.com” to a Complainant’s client with the subject line “MAM April Inv 5 & backup - Remittance update ACH Info.” Complainant further submits that this email record suggests Respondent has registered the Disputed Domain Name with the intent to commit an invoice scam.

Complainant further alleges that there is no presence of content that would qualify as non-commercial or fair use. Complainant further alleges that it is not aware of, nor can it find, any other businesses that commonly go by the Disputed Domain Name or operate a brand or trade name related to the Disputed Domain Name.

Complainant further alleges that it has not authorized, licensed, or otherwise permitted Respondent to use the KENCO Mark or to suggest any connection between the two parties.

Complainant further alleges that, considering the similarity of the Disputed Domain Name to Complainant's official website and the KENCO Mark, and considering the emails sent to Complainant's client, Respondent was aware of Complainant's rights in the KENCO Mark when he registered the Disputed Domain Name. Complainant further submits that Respondent intends to disrupt Complainant's business by creating confusion regarding the KENCO Mark and Complainant's reputation to impersonate Complainant. The Disputed Domain Name hosts no content referencing "kenco" to justify any legitimate use of the Disputed Domain Name.

Complainant submits that Respondent has done all of this while obfuscating his contact and registration information using a privacy service. Complainant further submits that, not only does this indicate that Respondent is not likely to be working in a public or official capacity, but the lack of attribution is intended as a shield in the course of its fraudulent and illegal activities.

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: "A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable."

Even though Respondent has failed to file a Response or to contest Complainant's assertions, the Panel will review the evidence proffered by Complainant to verify that the three essential elements of the claims are met. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.3.

Paragraph 4(a) of the Policy directs that Complainant must prove each of the following three elements:

- i) that the Disputed Domain Name registered by Respondent is identical or confusingly similar to the KENCO Mark in which Complainant has rights; and,
- 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.

A. Identical or Confusingly Similar

[WIPO Overview 3.0](#), section 1.2.1 states that registration of the KENCO Mark is prima facie evidence of Complainant having enforceable rights in Complainant.

Complainant has shown rights in respect of the KENCO Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

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 KENCO Mark and the Disputed Domain Name. [WIPO Overview 3.0](#), section 1.7.

The entirety of the plain text of the KENCO Mark is reproduced within the Disputed Domain Name. Accordingly, the Disputed Domain Name is confusingly similar to the KENCO Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the addition of intentional misspelling of “group” as “qroup” does not prevent a finding of confusing similarity between the Disputed Domain Name and the KENCO 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 the Disputed Domain Name.

Paragraph 4(c) of the Policy allows three nonexclusive methods for the Panel to conclude that Respondent has rights or a legitimate interest in the Disputed Domain Name:

(i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services; or

(ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Disputed Domain Name, even if you have acquired no trademark or service mark rights; or

(iii) you [Respondent] are making a legitimate noncommercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the KENCO Mark.

Although the overall burden of proof in UDRP proceedings is on Complainant, panels have recognized that proving Respondent lacks rights or legitimate interests in the Disputed Domain Name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of Respondent. As such, where Complainant makes out a prima facie case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name (although the burden of proof always remains on Complainant). If Respondent fails to come forward with such relevant evidence, 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.

Panels have held that the use of the Disputed Domain Name for illegal activity, here claimed as an invoice scam, can never confer rights or legitimate interests on 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 the Disputed Domain Name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have found that the non-use of the Disputed Domain Name do not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the KENCO Mark, and the composition of the Disputed Domain Name, and finds that in the circumstances of this case the passive holding of the Disputed Domain Name does not prevent a finding of bad faith under the Policy.

The Panel finds that the nature of the Disputed Domain Name containing a typo of Complainant's official domain name <kencogroup.com>, supports a finding of bad faith. [WIPO Overview 3.0](#), section 3.2.1.

The Panel finds that Respondent's use of the Disputed Domain Name to create misleading email addresses indicates actual knowledge of Complainant's rights in the KENCO Mark. Complainant's registration of the KENCO Mark prior to the registration of the Disputed Domain Name also shows Respondent's constructive knowledge of Complainant's rights in the KENCO Mark. [WIPO Overview 3.0](#), section 3.2.2.

Panels have held that the use of the Disputed Domain Name for illegal activity, here claimed to be an invoice scam 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.

The Panel 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 <kencoqroup.com> be transferred to Complainant.

/Richard W. Page/

Richard W. Page

Sole Panelist

Date: October 16, 2024