

## **ADMINISTRATIVE PANEL DECISION**

Kimley-Horn and Associates, Inc. v. Roger Honey, Honey  
Case No. D2024-3874

### **1. The Parties**

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

The Respondent is Roger Honey, Honey, United States.

### **2. The Domain Name and Registrar**

The disputed domain name <kimlleyhorn.com> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 23, 2024. On September 24, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On September 24, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name that differed from the named Respondent (Redacted for Privacy / Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 25, 2024, 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 amended Complaint on September 25, 2024.

The Center verified that the Complaint and 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 the Respondent of the Complaint and the Amended Complaint, and the proceedings commenced on September 30, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 20, 2024. The Respondent did not submit a response. Accordingly, the Center notified the Respondent’s default on October 21, 2024.

The Center appointed A. Justin Ourso III as the panelist in this matter on October 25, 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, an American corporation that provides planning, engineering, and design consulting services, owns a United States registration, No. 2,788,474, for its KIMLEY-HORN trademark, issued on December 2, 2003, for financial analysis and consultation services in Class 36; and for engineering consultation, engineering design, software design, and environmental consultation services to assure compliance with environmental laws and regulations, in Class 42; and a United States registration, No. 4,685,771, for its KIMLEY HORN design trademark, issued on February 10, 2015, for the same services in the same classes.

The Respondent registered the Domain Name on September 19, 2024, and used it that same day to send an email impersonating a Complainant employee and targeting a Complainant client in an attempt to divert payments to the Respondent.

#### **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 Domain Name.

Notably, the Complainant contends that the Respondent has engaged in intentional misspelling of the Complainant's trademark and has sent an email impersonating a Complainant employee and targeting a Complainant client in a fraudulent attempt to divert fee payments to the Respondent.

##### **B. Respondent**

The Respondent did not submit a response to the Complaint or the Amended Complaint.

#### **6. Discussion and Findings**

A complainant must prove three elements to obtain relief: (i) the domain name is identical or confusingly similar to a trademark in which the complainant has rights; (ii) the respondent has no rights or legitimate interests in the domain name; and (iii) the respondent registered and is using the domain name in bad faith. Policy, paragraph 4(a).

##### **A. Identical or Confusingly Similar**

The Panel finds that the Complainant's registrations establish its trademark rights. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.1.

The Domain Name consists of the Complainant's trademark, omitting the hyphen and adding a second letter "l" immediately adjacent to the existing letter "l." The Panel finds that the trademark is sufficiently recognizable within the Domain Name for the Domain Name to be confusingly similar to the trademark. [WIPO Overview 3.0](#), section 1.7. Additionally, a domain name that consists of an intentional misspelling of a trademark is considered to be confusingly similar to the subject mark for the purposes of the first element. [WIPO Overview 3.0](#), section 1.9. Accordingly, the Panel concludes that the Complainant has proven the first element: the Domain Name is confusingly similar to a trademark in which it has rights.

## **B. Rights or Legitimate Interests**

The Respondent has not claimed the existence of any circumstance under the Policy, paragraph 4(c), that demonstrates that a respondent has rights to, or legitimate interests in, a domain name. The Complainant, on the other hand, has shown that it established its trademark rights before the Respondent registered the Domain Name; the record contains no evidence that the Respondent is commonly known by the Domain Name; it has not authorized the Respondent to use its trademark; and the Respondent has used the Domain Name for illegal activity, which is not a bona fide commercial use, a legitimate noncommercial use, or a fair use of the Domain Name. These constitute prima facie a showing that the Respondent lacks any rights or legitimate interests in the Domain Name under the Policy, paragraph 4(a)(ii), shifting the burden of production on this second element to the Respondent to come forward with relevant evidence proving rights or legitimate interests in the Domain Name. [WIPO Overview 3.0](#), sections 2.1 and 2.13. The Respondent has not submitted any evidence to rebut the prima facie showing.

Additionally, the name of the Respondent identified by the Registrar does not resemble the Domain Name and the email address for the Respondent does not resemble the Domain Name, which corroborate that the Respondent is not commonly known by the Domain Name and the Respondent failed to provide any evidence of an actual or a planned bona fide commercial use, a noncommercial use, or a fair use of the Domain Name, or even to respond to the Complaint.

More importantly, the Panel finds that the Complainant has proven that the Respondent impersonated a Complainant employee in a fraudulent attempt to misdirect payment of its invoices to the Respondent. Panels have categorically held that the use of a domain name for impersonation to perpetrate a fraud can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. Accordingly, the Panel concludes that the Complainant has proven the second element: the Respondent lacks rights or legitimate interests in the Domain Name.

## **C. Registered and Used in Bad Faith**

The Respondent impersonated a Complainant employee in an attempt to perpetrate a fraud by misdirecting the payment of the Complainant's invoices to the Respondent, which is *per se* illegal activity and a bad faith use of the Domain Name. [WIPO Overview 3.0](#), sections 3.1.4 and 3.4. This finding compels the Panel's conclusion that the Respondent (1) intentionally registered the Domain Name in bad faith to impersonate the Complainant and target its clients and (2) used it in bad faith to impersonate the Complainant and target its clients. [WIPO Overview 3.0](#), sections 3.1.4, and 3.4. The Panel's findings that the Respondent engaged in typosquatting and failed to submit a response to the Complaint support the conclusion of bad faith. [WIPO Overview 3.0](#), sections 3.2.1, and 4.3. Accordingly, the Panel concludes that the Complainant has proven the third element: the Respondent registered and is using the Domain Name in bad faith.

## **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 Domain Name <kimlleyhorn.com> be transferred to the Complainant.

*/A. Justin Ourso III/*

**A. Justin Ourso III**

Panelist

Date: November 1, 2024