

ADMINISTRATIVE PANEL DECISION

De Longhi Benelux S.A. v. Tulloch, Lucas
Case No. DAU2022-0009

1. The Parties

The Complainant is De Longhi Benelux S.A., Luxembourg, internally represented.

The Respondent is Tulloch, Lucas, Australia.

2. The Domain Name and Registrar

The disputed domain name <kenwoodworld.com.au> (the “Disputed Domain Name”) 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 May 23, 2022. On May 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On May 24, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on May 28, 2022, 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 May 30, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .au Dispute Resolution Policy (the “Policy” or “.auDRP”), the Rules for .au Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .au Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 9, 2022. In accordance with the Rules, paragraph 5(a), the due date for Response was June 29, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 30, 2022.

The Center appointed Nicholas Weston as the sole panelist in this matter on July 4, 2022. 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.

On July 26, 2022, the Panel issued the Administrative Panel Order No. 1 (“Panel Order No. 1”), notified by the Center to the Parties on July 27, 2022, requesting the Complainant amend the Complaint, naming the registered holder of the Disputed Domain Name as the Respondent, on or before August 1, 2022, and the Respondent was granted the opportunity to comment on the Complainant’s filing within five calendar days from the date of the Complainant’s filing.

The Complainant filed its amended Complaint in response to the Panel Order No. 1 on July 28, 2022. The Respondent did not submit any reply to the Complainant’s filing.

4. Factual Background

The Complainant is the parent entity of appliance maker, Kenwood, which it acquired in 2001. Kenwood manufactures and markets a range of kitchen appliances and has operations in more than 40 countries. The Complainant holds registrations for the trade mark KENWOOD in numerous countries, including Australian Registered Trade Mark No. 588563, registered in class 7 on October 15, 1992.

The Complainant is also the owner of numerous domain names that include the words “kenwood” and “world” including, via subsidiary Kenwood, <kenwoodworld.com> which is the address of its main website.

The Complainant has provided evidence that the Disputed Domain Name resolves to a Pay-Per-Click (“PPC”) parking page and that it was contacted by the registrant contact associated with the Respondent to offer the Disputed Domain name for sale for USD 3,000.

5. Parties’ Contentions

A. Complainant

The Complainant cites its trade mark registrations of the trade mark KENWOOD in various countries, including Australia, as *prima facie* evidence of ownership.

The Complainant claims that the Disputed Domain Name was registered on October 26, 2021.

The Complainant submits that the mark KENWOOD is distinctive and that its rights in that mark predate the registration of the Disputed Domain Name. It submits that the Disputed Domain Name is confusingly similar to its trade mark, because the Disputed Domain Name incorporates in its entirety the KENWOOD trade mark and that any initial interest confusion is not alleviated by the additional word “world”.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because the Respondent has no trade mark rights in, or license to use, the KENWOOD mark. The Complainant contends that “there is no evidence showing that the Respondent might be commonly known by the Domain Name or by any names corresponding to it” and that “the mere registration of a domain name does not give the owner a right or a legitimate interest in respect of the Domain Name.”

Finally, the Complainant alleges that the registration and use of the Disputed Domain Name was, and currently is, in bad faith. On the issue of registration, the Complainant contends that the Respondent must have had the KENWOOD trade mark in mind when it registered the Disputed Domain Name given that it “is a well-established trade mark in the industry.”

On the issue of use, the Complainant has supplied evidence that the Disputed Domain Name resolves to a PPC parking page, and claims that the Disputed Domain Name “has been acquired with the exclusive purpose of being sold to De Longhi Group for valuable consideration in excess of the documented out-of-pocket costs directly related to the (Disputed) Domain Name.”

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that, for the Complainant to succeed, it has the burden of proving the following:

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

A. Identification of the "correct" respondent

It is unclear whether the proceeding was filed against the correct Respondent. The term "Respondent" is not defined in the Policy. "Respondent" is defined in the Rules as "the registered holder of a domain name against which a complaint is initiated".

The Complaint, as filed, did not identify as the Respondent the individual or entity recorded in the Whois search results at the time the Complaint was filed as the "Registrant", but rather another person named as "Registrant Contact" and "Tech Contact". The Panel notes that the named person appears to have been the individual advertising the sale of the disputed domain name to the Complainant.

Paragraph 3(b) of the Rules provides that "(b) The complaint including any annexes shall be submitted in electronic form and shall (relevantly): (v) Provide the name of the Respondent (domain name holder) and all information (including any postal and email addresses and telephone and fax numbers) known to Complainant regarding how to contact Respondent or any representative of Respondent, including contact information based on pre-complaint dealings, in sufficient detail to allow the Provider to send the complaint as described in Paragraph 2(a)."

This Panel finds that the words "or any representative of the Respondent" is a reference in the context of notifying contact details rather than an opportunity to substitute as the proper Respondent the notified contact person for the registered holder of the Disputed Domain Name.

Paragraph 10 of the Rules gives the Panel the power to (relevantly) "(a) ...conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Policy and these Rules. (b) In all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case. (c) The Panel shall ensure that the administrative proceeding takes place with due expedition. It may, at the request of a Party or on its own motion, extend, in exceptional cases, a period of time fixed by these Rules or by the Panel.." Paragraph 12 states: "In addition to the complaint and the response, the Panel may request or permit, in its sole discretion, further statements or documents from either of the Parties."

Accordingly, the Panel made a procedural order requesting that the Complaint be amended by the Complainant, naming the "Registrant" of the Disputed Domain Name as the Respondent, due by August 1, 2022, and afforded the Respondent five calendar days from the date of the Complainant's submission to comment on the Complainant's assertions and to submit such comments to the Center. As the Center did not receive any comment from the Respondent on the Complainant's assertions, the proceeding continued to a decision on the material filed.

B. Identical or Confusingly Similar

The Complainant must first establish that the Disputed Domain Name is identical with, or confusingly similar to, the Complainant's name, trade mark or service mark by demonstrating that it has rights in a trade mark at the date the Complaint was filed and, if that is the case, the Disputed Domain Name must also be identical or confusingly similar to the trade mark.

This Panel finds that the Complainant has rights in the KENWOOD trade mark acquired through use and registration.

Turning to whether the Disputed Domain Name is identical or confusingly similar to the KENWOOD trade mark, the Panel observes that the Disputed Domain Name comprises: (a) an exact reproduction of the Complainant's trade mark KENWOOD; (b) followed by the word "world"; (c) followed by the country code Top-Level Domain ("ccTLD") ".com.au".

It is well established that the ccTLD used as technical part of a domain name may be disregarded (see: *BT Financial Group Pty Limited v. Basketball Times Pty Ltd*, WIPO Case No. [DAU2004-0001](#)). The comparison to be made is with the Second-Level portion of the Disputed Domain Name, specifically: "kenwoodworld".

The Panel finds that the Disputed Domain Name, which contains the trade mark KENWOOD in its entirety, is confusingly similar to the KENWOOD trade mark. In cases where a domain name incorporates the entirety of a trademark, the domain name will normally be considered confusingly similar to that mark, regardless of the addition of other terms. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, section 1.8¹, ([WIPO Overview 3.0](#)).

Accordingly, the Panel finds that the Complainant has established the first element of paragraph 4(a) of the Policy.

C. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the Disputed Domain Name. Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that the Respondent has rights or legitimate interests in the Disputed Domain Name:

- (i) before any notice to the Respondent of the dispute, the Respondent's 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) the Respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain name even if the Respondent has acquired no trade mark or service mark rights; or
- (iii) the Respondent is 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 trade mark or service mark at issue.

The Complainant has not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use the KENWOOD trade mark. The Complainant has prior rights in the KENWOOD trade mark which precede the Respondent's registration of the Disputed Domain Name by nearly 30 years having regard to the Australian trade mark registration alone. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the Disputed Domain

¹ Noting the substantial substantive similarities between the Policy and the Uniform Domain Name Dispute Resolution Policy, the Panel has referred to prior UDRP cases and the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), where appropriate.

Name, and the burden is thus on the Respondent to produce evidence to rebut this presumption, see: *GlobalCenter Pty Ltd v. Global Domain Hosting Pty Ltd*, WIPO Case No. [DAU2002-0001](#).

The Respondent has failed to submit a Response and so has not shown that it has acquired any trade mark rights in respect of the Disputed Domain Name or that the Disputed Domain Name is used in connection with a *bona fide* offering of goods or services. To the contrary, at the time of this Decision, the Disputed Domain Name resolves to a landing page displaying PPC links for “small kitchen appliances”, “kitchen appliances”, and “kenwood kitchen machine”, clearly capitalizing on the reputation and goodwill associated with the Complainant’s trade mark that is entirely incorporated within the Disputed Domain Name. In the circumstances, such use does not amount to a *bona fide* offering of goods or services under the Policy.

There has been no evidence adduced to show that the Respondent has been commonly known by the Disputed Domain Name, nor does any of the evidence demonstrate that the Respondent is making legitimate non-commercial or fair use of the Disputed Domain Name.

The Panel therefore finds that the Complaint fulfils the second condition in paragraph 4(a)(ii) of the Policy.

D. Registered or Subsequently Used in Bad Faith

The third element of the Policy that the Complainant must also demonstrate is that the disputed domain name has been registered or subsequently used in bad faith. Paragraph 4(b) of the Policy sets out certain circumstances to be construed as evidence of both.

The evidence that the Respondent registered and has used the Disputed Domain Name in bad faith is overwhelming. The *onus* is on the Respondent to make the appropriate enquiries when registering a domain name. Paragraph 2 of the Policy clearly states: “It is your [domain-name holder’s] responsibility to determine whether your domain name registration infringes or violates someone else’s rights.” Noting the global reach of the Internet and the ability for the Respondent to conduct a simple search that would have alerted the Respondent to the Complainant’s prior rights, the Respondent’s registration of the Disputed Domain Name incorporating the Complainant’s famous trade mark could not be attributable to pure coincidence and creates a presumption of bad faith.

The Panel finds that the Respondent must have been aware of the relevant trade mark. The Panel’s finding is reinforced given the Complainant’s use of the domain name <kenwoodworld.com>. The Panel finds that the Respondent has taken the Complainant’s trade mark and incorporated it into the Disputed Domain Name without the Complainant’s consent or authorization, for the very purpose of capitalizing on the reputation of the trade marks by diverting Internet users to its PPC parking page, presumably to generate revenue. This Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its PPC parking page by creating a likelihood of confusion with the Complainant’s name or mark as to the source, sponsorship, affiliation, or endorsement of that website or of a product or service on that website contrary to paragraph 4(b)(iv) of the Policy.

Further, this Panel accepts the Complainant’s evidence that the Disputed Domain Name has been offered for sale to the Complainant starting November 19, 2021, for USD 3,000. While the person making such offers was not the Respondent, the person’s information was included in the publicly-available WhoIs as a contact for the Respondent and, further to the Panel’s consideration of Paragraph 3(b) of the Rules, the Panel finds such person to be an authorized representative of the Respondent. Moreover, the Respondent has not rebutted the Complainant’s assertions that the Respondent had made such offers for sale, which the Panel infers as acknowledgement by the Respondent that such offers were made with its authorization. In the absence of evidence from the Respondent in relation to its expenditure associated with the Disputed Domain Name, the Panel finds that the Respondent has registered the Disputed Domain Name for the purpose of selling, renting, or otherwise transferring the Disputed Domain Name registration to another person for valuable consideration likely in excess of the Respondent’s reasonable documented out-of-pocket costs directly related to the Disputed Domain Name, contrary to paragraph 4(b)(i) of the Policy.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) of the Policy.

7. Decision

For all 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 <kenwoodworld.com.au> be transferred to the Complainant.

/Nicholas Weston/

Nicholas Weston

Sole Panelist

Date: August 9, 2022