

ADMINISTRATIVE PANEL DECISION

KPMG International Cooperative v. Gaby Bati

Case No. D2022-0163

1. The Parties

The Complainant is KPMG International Cooperative, Netherlands, represented by Taylor Wessing LLP, United Kingdom (the “Complainant”).

The Respondent is Gaby Bati, Israel (the “Respondent”).

2. The Domain Name and Registrar

The disputed domain name <kpmg-consulting.com> (the “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 January 18, 2022. On January 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 19, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. The Center sent an email communication to the Complainant on January 21, 2022, regarding Mutual Jurisdiction, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on January 24, 2022.

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 the Respondent of the Complaint, and the proceedings commenced on January 25, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 14, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 16, 2022.

The Center appointed Albert Agustinoy Guilayn as the sole panelist in this matter on March 3, 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.

4. Factual Background

A. The Complainant

The Complainant is one of the world's leading providers of audit, tax, and advisory services, operating a network of a large number of independent firms which are affiliated with the Complainant. That network operates in approximately 147 countries, counting with more than 219,000 employees.

The Complainant has been recurrently ranked for many years as one of the so-called "Big Four" professional services firms, together with Deloitte, Ernst & Young, and PricewaterhouseCoopers. The current network has been using its current form and initials, KPMG, for over 30 years. In this respect, the Complainant owns more than 480 trademark registrations based on the initials "KPMG" throughout the world. These include, United States of America trademark registration No. 2339547 and European Union trademark registration No. 1011220 for the word mark KPMG, covering auditing, taxation services, and advisory services in classes 35 and 36 (among other goods and services), filed on (respectively) July 3, 1997, and December 3, 1998.

The Complainant has provided numerous evidences of the "KPMG" brand having been consistently ranked among the world's top brands for many years. As a matter of fact, the Complainant's trademark rights have been recognized in more than 20 decisions adopted under the Policy.

B. The Respondent

The Respondent appears to be a resident of Israel without the Panel having been able to confirm any further information on him since he has neither filed any response to the Complaint, nor communicated in any manner with the Center, the Complainant or the Panel in the context of this procedure.

C. The Domain Name

The Domain Name was registered on November 19, 2021 and it is not connected to an active webpage. Regardless of that, the Complainant is aware of the Domain Name having been used by the Respondent in a fraudulent email scam attempt. Indeed, on January 3, 2022, a client of the Complainant in Uruguay received a fraudulent email from someone identifying himself as an employee of the Complainant, from the Accounting Advisory Mergers and Acquisitions Department, and using the email address "[...].@kpmg-consulting.com". In that email, the sender alleged to be a KPMG partner employed by the Complainant and provided bank details to proceed with the transfer of a very large amount of money.

This proved to be a false message, being merely aimed at creating the appearance necessary to convince the recipient of the message to proceed to a payment in the context of a transaction ultimately fraudulent.

5. Parties' Contentions

A. Complainant

The Complainant contends that:

- The disputed domain name is confusingly similar to the KPMG trademarks on which the Complainant has rights.

- The Respondent has no rights or legitimate interests in respect of the disputed domain name, but it registered it for attempting to execute - at least - a fraudulent transaction.

- Taking into account the circumstances mentioned in the previous point, the Respondent registered and used the disputed domain name in bad faith.

- As a consequence of the above-mentioned findings, the Domain Name should be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

In accordance to paragraph 4(a) of the Policy, the Complainant must prove the Panel the concurrence of three circumstances in order to obtain the transfer of the disputed domain name.

Said circumstances are the following ones:

(i) To prove that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

(ii) To prove that the Respondent does not hold rights or legitimate interests in respect of the disputed domain name.

(iii) To prove that the disputed domain name has been registered and is being used by the Respondent in bad faith.

A. Identical or Confusingly Similar

The comparison between the Domain Name and the Complainant's KPMG trademarks shows one main difference between them: the Domain Name is composed by combination of the KPMG trademark with the term "consulting".

In this respect, the Panel considers that the Domain Name is confusingly similar to the KPMG trademark. Pursuant to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.8, "[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element".

Consequently, the Panel considers that the Domain Name is confusingly similar to the KPMG trademarks owned by the Complainant.

B. Rights or Legitimate Interests

Taking into account the use of the Domain Name for fraud purposes, it is obvious that in this case the Respondent should be considered as having no rights or legitimate interests in respect of the Domain Name.

Certainly, taking into account the obvious connection between the Domain Name and the trademarks owned by the Complainant, seeing as the additional term "consulting" is descriptive of the services offered by the Complainant under the KPMG trademarks, the Domain Name carries a risk of implied affiliation to the Complainant (contrary to the fact), which cannot constitute fair use. See section 2.5.1 of the WIPO Overview 3.0.

In any case, any such fair use appears to be discarded in this case, taking into account the phishing attack that was attempted through the Domain Name after it was registered. Indeed, the Domain Name was a crucial element to create an appearance of normality in connection with the sending of an email using an address connected to the Domain Name for fraud purposes. This use was clearly intended to confuse the recipient of the email on the origin of the request for issuing a payment, constituting an obvious case of phishing.

Actually, as set forth in section 2.13.1 of the [WIPO Overview 3.0](#), “Panels have categorically held that the use of a domain name for illegal activity (e.g. [...] phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent” (in this respect, please see, for example, *Euroview Enterprises LLC v. Jinsu Kim*, WIPO Case No. [D2016-1124](#); or *Twitter, Inc. v. Moniker Privacy Services/ accueil des solutions inc*, WIPO Case No. [D2013-0062](#)).

The Panel understands that this is fully applicable to this case and, therefore, that the second element of the Policy is met.

C. Registered and Used in Bad Faith

The circumstances in this case leave no doubt about the fact that the Respondent was fully aware of the Complainant’s rights in the KPMG trademarks when registering the Domain Name and that the latter clearly is directed thereto. Moreover, using the Domain Name for phishing activities by sending fraudulent emails to unsuspecting users is an obvious case of registration and use in bad faith. As a matter of fact, the alleged sender of the emails in question impersonated an employee of the Complainant, clearly showing the intent to use the Domain Name with such fraud intention.

In this sense, section 3.4 of the [WIPO Overview 3.0](#) confirms that “Panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending email, phishing, identity theft, or malware distribution. [...] Many such cases involve the respondent’s use of the domain name to send deceptive emails, e.g., to obtain sensitive or confidential personal information from prospective job applicants, or to solicit payment of fraudulent invoices by the complainant’s actual or prospective customers” (in this respect see, for example, *Sony Corporation v. WhoisGuard Protected, WhoisGuard, Inc. / David Grant*, WIPO Case No. [D2020-3162](#); *Haas Food Equipment GmbH v. Usman ABD, Usmandel*, WIPO Case No. [D2015-0285](#); or *BJ’s Wholesale Club v. Lisa Katz, Domain Protection LLC / Domain Hostmaster, Customer ID: 64382986619850 Whois Privacy Services Pty*, WIPO Case No. D2015-1601).

Bearing in mind all the above, the Complainant considers that the third condition of the Policy is also met in this case.

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, <kpmg-consulting.com> be transferred to the Complainant.

/Albert Agustinoy Guilayn/
Albert Agustinoy Guilayn
Sole Panelist
Date: March 8, 2022