

ADMINISTRATIVE PANEL DECISION

**Kempinski Aktiengesellschaft (Kempinski AG), Kempinski Hotels SA v.
Domain Administrator, See PrivacyGuardian.org / dulongzhuan
Case No. D2022-1842**

1. The Parties

The Complainants are Kempinski Aktiengesellschaft (Kempinski AG), Germany and Kempinski Hotels SA, Germany, internally represented.

The Respondent is Domain Administrator, See PrivacyGuardian.org, United States of America (“U.S.”) / dulongzhuan, Philippines.

2. The Domain Name and Registrar

The disputed domain name <kempinsi.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 23, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. Also on May 23, 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 June 1, 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 June 8, 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 June 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 10, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 11, 2022.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on July 15, 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

The Complainants operate one of the world's leading luxury hotel groups, with a 125-year history. The Complainants' portfolio includes more than 80 hotels and residence worldwide.

The first Complainant in this administrative proceeding is Kempinski Aktiengesellschaft (Kempinski AG), a company organized under the law of Germany. Kempinski AG is the owner of numerous trademarks registered all over the world as well as quiet a huge number of domain names including the KEMPINSKY trademark.

The second complainant is Kempinski Hotels SA, is a subsidiary of Kempinski Aktiengesellschaft, with its registered office at Geneva, Switzerland. Kempinski Hotels SA is an authorized user of the KEMPINSKI trademark.

The disputed domain name <kempinsi.com> was registered on May 8, 2021, and, according to the Complainant it resolved to a website containing adult content. Currently the disputed domain name does not resolve to an active website.

5. Parties' Contentions

A. Complainant

The disputed domain name is confusingly similar to the Complainants' trademark.

The Respondent should be considered as having no rights or legitimate interests in respect of the disputed domain name that is the subject of the Complaint.

No legitimate or fair use is made by the Respondent, since he has a clear intent for commercial gain and is misleading the Complainants' clients and is tarnishing the Complainants' trademark by using it for a web with adult content.

The disputed domain name should be considered as having been registered and used in bad faith by the Respondent. Indeed, by using the disputed domain name, the Respondent intentionally attempted to attract for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainants' trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or the service on this website.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy states that a respondent is required to submit to a mandatory administrative proceeding in the event that the complainant asserts to the applicable provider, in compliance with the Rules, that:

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

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the Policy, the Complainants must first of all establish rights in a trademark or service mark and secondly establish that the disputed domain name is identical or confusingly similar to a trademark in which the Complainants have rights.

It results from the evidence provided that the Complainants are the registered owners of various trademarks for KEMPINSKI.

There is a consensus view among UDRP panels that a domain name which contains a common or obvious misspelling of a trademark normally will be found to be confusingly similar to such trademark, where the misspelled trademark remains the dominant or principal component of the domain name, see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at paragraph 1.9). In the light of the above, it is the Panel's view that the disputed domain name is confusingly similar to the Complainants' trademark KEMPINSKI since it reproduces the trademark without the second letter "k".

The Panel has therefore no doubt that paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of 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 use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

There is no evidence of the existence of any of those rights or legitimate interests. The Complainants have not authorized, licensed, or permitted the Respondent to register or use the disputed domain name or to use the trademark.

The Complainants has prior rights in the trademarks, which precede the Respondent's registration of the disputed domain name.

The Complainants have therefore established a *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name and thereby shifted the burden of production to the Respondent.

The Respondent has failed to show that it has acquired any trademark 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.

Therefore, the Panel finds that the Complainant has satisfied the second requirement of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Complainant must prove both that the disputed domain name was registered and used in bad faith.

The Complainant's allegations with regard to the Respondent's registration and use of the disputed domain name in bad faith have been considered by the Panel. The Respondent has not contested these allegations.

Based on the evidence included in the Complaint (including number of trademark registrations, number of hotels and more than a century in commerce), the Panel concludes that the Complainant's trademarks are well known. Thus the Panel infers that Respondent was aware of the Complainants' trademarks when he registered the disputed domain name.

The Panel accepts the Complainant's submission that the disputed domain name resolved to a webpage offering adult content. Respondent's use of the disputed domain name to divert consumers to a pornographic website is evidence of bad faith use (See *V&V Supremo Foods, Inc. v. pxlchk1@gmail.com*, WIPO Case No. [D2006-1373](#); *Six Continents Hotels, Inc. v. Seweryn Nowak*, WIPO Case No. [D2003-0022](#); *America Online, Inc. v. Viper*, WIPO Case No. [D2000-1198](#)).

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(iii) 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 <kempinsi.com> be transferred to the Complainant.

/Pablo A. Palazzi/

Pablo A. Palazzi

Sole Panelist

Date: July 29, 2022