

## **ADMINISTRATIVE PANEL DECISION**

Kueski S.A.P.I. de C.V., SOFOM, E.N.R. v. fei Li  
Case No. D2023-0717

### **1. The Parties**

The Complainant is Kueski S.A.P.I. de C.V., SOFOM, E.N.R., Mexico, represented by ZeroFox, United States of America (“United States”).

The Respondent is fei Li, China.

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

The disputed domain name <keuskicash.com> 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 February 16, 2023. On February 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 16, 2023, 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 (Domains by Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 23, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Center also sent a request for clarification to the Complainant on February 23, 2023. The Complainant filed an amended Complaint on March 22, 2023.

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 March 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 13, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 14, 2023.

The Center appointed Luca Barbero as the sole panelist in this matter on April 25, 2023. 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 is a Mexican company which operates an online platform at the domain name <kueski.com> - registered on May 27, 2009 - offering personal loans under the products Kueski Pay and Kueski Cash.

The Complainant is the owner of the following trademark registrations for KUESKI CASH, as per trademark registration details submitted as Annexes 3 and 4 to the Complaint:

- Mexico trademark registration No. 2087344 for KUESKI CASH (word mark), filed on March 4, 2019 and registered on February 25, 2020, in international class 36;
- United States trademark registration No. 6352537 for KUESKI CASH (word mark), filed on August 18, 2020 and registered on May 18, 2021, in international class 36.

The disputed domain name <keuskicash.com> was registered on September 26, 2021 and is not pointed to an active website.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that the disputed domain name is confusingly similar to the trademark KUESKI CASH in which the Complainant has rights as it reproduces the trademark in its entirety with the mere difference that the letters "u" and "e" have been swapped around and the generic Top-Level Domain ("gTLD") ".com" has been added.

With reference to rights or legitimate interests in respect of the disputed domain name, the Complainant states that, while the Respondent has the right to establish a website for the purpose of legitimate criticism, comparison and commentary, it may not do so via a domain name that hides this purpose with the specific goal of misdirecting users to that website under the mistaken belief that it is affiliated with the Complainant. The Complainant also highlights that the disputed domain name is not used in connection with a criticism or commentary website.

The Complainant contends that the Respondent in the case at hand deliberately chose a name which is confusingly similar to the domain name used for the Complainant's official website to deliberately divert unsuspecting viewers to the Respondent's website by creating confusion as to the source and affiliation with the Complainant, which in itself is proof of the Respondent's lack of rights or legitimate interests in the disputed domain name.

With reference to the circumstances evidencing bad faith, the Complainant indicates that the disputed domain name is currently redirecting to the Complainant's official website and submits that, since the Complainant does not have control of the disputed domain name, the redirection could be changed at a moment's notice by the Respondent, taking advantage of unsuspecting visitors.

The Complainant emphasizes that mail exchanger (MX) records have also been set up in the Domain Name System (DNS) configuration of the disputed domain name, meaning that the Respondent could create phishing emails using the disputed domain name.

The Complainant further highlights that the Respondent's registration and use of the disputed domain name was clearly made for the purpose of disrupting the business of the Complainant and to attempt to attract Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's website.

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

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

## 6. Discussion and Findings

According to paragraph 15(a) of the Rules: “A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.” Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- (i) that the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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 and is being used in bad faith.

### A. Identical or Confusingly Similar

The Panel finds that the Complainant has established rights over the trademark KUESKI CASH based on the trademark registrations cited under section 4 above.

As highlighted in section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), the first element functions primarily as a standing requirement, and the threshold test for confusing similarity typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Panel finds that the disputed domain name is confusingly similar to the trademark KUESKI CASH as it reproduces the trademark in its entirety swapping only over the letters “e” and “u” of the first term “kueski”.

As stated in section 1.9 of the [WIPO Overview 3.0](#), “a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element”.

Moreover, the gTLD “.com” can be disregarded when comparing the similarities between a domain name and a trademark (section 1.11 of the [WIPO Overview 3.0](#)).

Therefore, the Panel finds that the Complainant has proven that the disputed domain name is confusingly similar to a trademark in which the Complainant has established rights according to paragraph 4(a)(i) of the Policy.

### B. Rights or Legitimate Interests

It is well established that the burden of proof lies on the complainant. However, satisfying the burden of proving a lack of the respondent’s rights or legitimate interests in respect of the domain name according to paragraph 4(a)(ii) of the Policy is potentially onerous, since proving a negative can be difficult considering such information is often primarily within the knowledge or control of the respondent.

Accordingly, in line with previous UDRP decisions, it is sufficient that the Complainant show a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name in order to shift the burden of production on the Respondent. If the Respondent fails to demonstrate rights or legitimate interests in the disputed domain name in accordance with paragraph 4(c) of the Policy or on any other basis, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Panel finds that the Complainant has made a *prima facie* case and that the Respondent, by not having submitted a Response, has failed to demonstrate rights or legitimate interests in the disputed domain name in accordance with paragraph 4(c) of the Policy for the following reasons.

According to the evidence on record, there is no relationship between the Complainant and the Respondent and the Complainant has not authorized the Respondent to register or use its trademark or the disputed domain name. Moreover, there is no element from which the Panel could infer the Respondent’s right over

the disputed domain name, or that the Respondent might be commonly known by the disputed domain name.

The Complainant states that the disputed domain name has redirected to its official website to which the Respondent has not rebutted. At the time of this Decision, the disputed domain name does not point to any active website. Therefore, the Panel finds that there is no evidence that the disputed domain name might have been used by the Respondent in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's trademark.

Therefore, the Panel finds that the Complainant has proven that the Respondent has no rights or legitimate interests in the disputed domain name according to paragraph 4(a)(ii) of the Policy.

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

Paragraph 4(a)(iii) of the Policy requires that the Complainant prove that the disputed domain name was registered and is being used by the Respondent in bad faith.

The Panel finds that, in light of the prior registration and use of the trademark KUESKI CASH in connection with the Complainant's financial services provided online via the Complainant's website at "www.kueski.com", the Respondent was or could have been aware of the Complainant's trademark at the time of registration of the disputed domain name.

Moreover, in light of the mere two letter difference - *i.e.* the inversion of the letters "e" and "u" of the first term in the Complainant's trademark - between the disputed domain name and the Complainant's registered trademark, there is clearly confusing similarity here. The Panel considers such activity a classic example of typosquatting (see *Manheim Auctions Inc. v. Whois ID Theft Protection*, WIPO Case No. [D2006-1044](#)). This conclusion was also reached in *Allied Building Products Corp v. Alliedbuildingproducts.com c/o Whois Identity Shield*, WIPO Case No. [D2006-0833](#) ("it is therefore a reasonable inference from this that the Respondent knew of the Complainant's business and wanted to exploit the name to divert Internet traffic from it, probably to benefit from pay-by-click arrangements with alternative suppliers").

The Panel notes that the disputed domain name does not currently resolve to any active website. As stated in section 3.3 of the [WIPO Overview 3.0](#), the "passive holding" or non-use of a domain name does not prevent a finding of bad faith under the doctrine of passive holding.

In the case at hand, in view of (i) the distinctiveness of the Complainant's trademark KUESKI CASH, with which the disputed domain name is confusingly similar, (ii) the failure of the Respondent to submit a Response or to provide any evidence of actual or contemplated good faith use, and (iii) the implausibility of any good faith use to which the disputed domain name may be put considering it is a clear typosquatting of the Complainant's trademark, the Panel finds that the current passive holding of the disputed domain name does not prevent a finding of bad faith.

Therefore, the Panel finds that the Complainant has also proven that the Respondent registered and is using the disputed domain name in bad faith according to 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 <keuskicash.com> be transferred to the Complainant.

*/Luca Barbero/*

**Luca Barbero**

Sole Panelist

Date: May 10, 2023