

ADMINISTRATIVE PANEL DECISION

Keller Group plc v. lawrenceanthony, lawrenceanthony
Case No. D2023-4151

1. The Parties

The Complainant is Keller Group plc, United Kingdom, represented by Barker Brettell LLP, United Kingdom.

The Respondent is lawrenceanthony, lawrenceanthony, Viet Nam.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 5, 2023. On October 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On October 6, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Unidentified) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 12, 2023, 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 October 12, 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 October 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 7, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 9, 2023.

The Center appointed Jeremy Speres as the sole panelist in this matter on November 22, 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 in this proceeding, a United Kingdom company established in 1860, is a large independent ground engineering contractor, providing technically-advanced and cost-effective foundation, retention, and soil treatment solutions. It has operations in more than 40 countries across six continents.

The Complainant owns trade mark registrations for its KELLER trade mark in many jurisdictions, including International trade mark registration no. 1413014 in classes 1, 2, 6, 7, 9, 12, 17, 19, 35, 37, 38, 39, 40, 41, 42, and 45, which was registered on July 18, 2017, and which designates Viet Nam, amongst other jurisdictions.

The Domain Name was registered on February 2, 2023, and resolves to a website in Vietnamese entitled “SM66” offering online gambling services.

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 Domain Name was registered and used in bad faith in order to divert traffic from the Complainant’s own website, mislead customers into believing that there is a link between the Complainant and the Respondent and to disrupt the Complainant’s business activities.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant’s trade mark and the Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the Domain Name. Accordingly, the Domain Name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here “constructionfl”, may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the Domain Name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Name such as those enumerated in the Policy or otherwise.

For the reasons discussed in relation to bad faith below, it is likely that the Domain Name was registered in order to take advantage of the Complainant’s reputation in its mark for the Respondent’s presumed financial advantage. The Respondent’s registration and use of the Domain Name in these circumstances cannot represent a *bona fide* offering of goods or services under paragraph 4(c)(i) of the Policy and cannot confer rights or legitimate interests under paragraph 4(c)(iii) (*Sistema de Ensino Poliedro Vestibulares Ltda., Editora Poliedro Ltda. v. Anonymize, Inc. / STANLEY PACE*, WIPO Case No. [D2022-1981](#)).

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent has provided no explanation as to why it chose the Domain Name. There is no semantic relationship or any other obvious connection between the Domain Name and the gambling content to which it resolves which may have imbued the Respondent’s actions with *bona fides*. It does not make much sense to use a domain name incorporating English words for a purely Vietnamese website that does not have any clear connection to those English words (*IPi Italia S.p.A. v. gennymoda.com*, WIPO Case No. [D2003-0866](#)).

The Complainant’s KELLER mark has been recognised as being well known by prior UDRP panels. See *Keller Group plc v. Alan Cummins*, WIPO Case No. [D2023-0775](#). UDRP panels have consistently found that registration of a domain name that is confusingly similar to a famous or well known trade mark by an unaffiliated entity can by itself create a presumption of bad faith. [WIPO Overview 3.0](#) at section 3.1.4.

The Domain Name incorporates the Complainant’s well known mark along with language descriptive of a) the nature of the Complainant’s business (in the form of “construction”); and b) a geographic location where the Complainant operates (Florida), which indicates bad faith targeting. [WIPO Overview 3.0](#) at section 3.2.1. The Panel draws an adverse inference from the Respondent’s failure to take part in the present proceeding where an explanation is certainly called for. [WIPO Overview 3.0](#) at section 4.3.

In the circumstances, it is likely that the Respondent sought to take advantage of the Complainant's reputation for its own commercial gain, falling squarely within paragraph 4(b)(iv) of the Policy.

Based on the available record, the Panel finds that the Complainant has established the third element 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 Domain Name <kellerconstructionfl.com> be transferred to the Complainant.

/Jeremy Speres/

Jeremy Speres

Sole Panelist

Date: December 6, 2023