



CANADIAN INTERNATIONAL INTERNET DISPUTE RESOLUTION CENTRE

DOMAIN NAME DISPUTE

ADMINISTRATIVE PANEL

DECISION

CIIDRC number:	case 15008- UDRP	Decision date:	April 20, 2021
Domain Name:	klir.com		
Panel:	Alan L. Limbury (Presiding Panelist), Michael Erdle, Steven M. Levy, Esq.		
Complainant:	Klir Platform Europe Limited, represented by Bill Mayo, Canada.		
Respondent:	David Hendrix, represented by John Berryhill, United States.		
Registrar:	GoDaddy.com, LLC		

1. PROCEDURAL HISTORY

On March 16, 2021, the above-named Complainant, Klir Platform Europe Limited, filed a Complaint with the Canadian International Internet Dispute Resolution Centre (the “Centre” or “CIIDRC”) via the CIIDRC online platform.

On March 18, 2021, the Centre transmitted by email to the Registrar, GoDaddy.com, LLC, a request for registrar verification. On March 19, 2021, the Registrar transmitted by email to CIIDRC its verification response naming the Respondent in this administrative proceeding, David Hendrix,

as the Registrant of the <klir.com> domain name (the “Domain Name”), which the Registrar confirmed had been placed on Registrar LOCK.

On March 22, 2021, CIIDRC confirmed compliance of the Complaint with the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “URDP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the CIIDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”) and commencement of the dispute resolution process. That day, pursuant to Rule 4 and Supplemental Rule 5, CIIDRC notified the Respondent of this administrative proceeding and forwarded to the Respondent a Notice with login information and the link to the Complaint.

The Respondent filed a response on April 2, 2021. The CIIDRC forwarded a copy to the Complainant that day.

The Respondent has elected for a Panel consisting of three members.

On April 6, 2021, the Centre appointed Alan L. Limbury as Presiding Panelist, Michael Erdle, FCI Arb., C. Arb., C. Med. and Steven Levy, Esq. as Panelists in this matter. Each Panelist has provided a statement of acceptance and declaration of impartiality and independence, as required by the Rules.

2. FACTS ALLEGED BY THE PARTIES

Complainant

The Complainant, Klir Platform Europe Limited says it is a corporation under the laws of Ireland and was founded in 2014. It is a leader in providing software solutions that help water utilities manage and comply with their regulatory obligations.

On March 8, 2021, a company related to the Complainant, Klir Trading Company Limited, assigned to the Complainant United States registered trademark KLIR (Reg.No.5816748, registered July 30, 2019), European registered trademark KLIR (Reg. No. 017805086, registered 21 July, 2018) and Canadian trademark application to register KLIR (App. No. 1882822, filed February 13, 2018).

The Complainant, Klir Trading Company Limited and their affiliates, which are licensed users of the KLIR trademark (collectively “Klir”), have been using the KLIR trademark for several years in

the United States, Europe and Canada, as well as in numerous other countries around the world, and intend to continue such use in the future.

Because the Complainant does not have the <klir.com> domain name, marketing emails are often blocked by anti-spam software or ignored. The Complainant's clients and prospective clients are government agencies and utilities that are particularly wary of scams and non-legitimate companies, which makes this a more significant issue than it might be otherwise.

The original owner of the <klir.com> domain name, Klir Technologies, used the Domain Name between 2005 and 2008. The Complainant believes that the Respondent acquired the Domain Name for US\$5,000 about four years ago.

The Complainant has made several attempts to acquire the <klir.com> domain name from the Respondent through the GoDaddy Auction website beginning on September 20, 2017, when the Complainant offered to purchase it for CA\$5,706. The Respondent made a counter-offer to sell the Domain Name for CA\$34,615. Between September 20, 2017, and February 13, 2018, the Complainant repeated its offer to purchase the Domain Name for around US\$5,000. The Respondent's counter-offers ranged from CA\$29,289 on January 24, 2018, to CA\$63,389 on February 7, 2018.

In 2020, the Complainant tried again to purchase the Domain Name from the Respondent through the GoDaddy Auction website. On January 13, 2020, the Complainant offered to pay CA\$5,070 and the Respondent counter-offered at CA\$38,037. After further back and forth, with the Respondent maintaining a price of over CA\$30,000, the Complainant increased its offer to \$8,749 on July 19, 2020. The Complainant increased its offer to CA\$10,143 on August 1, 2020 and to CA\$11,411 on September 2, 2020. The Respondent did not lower its price but instead increased it to CA\$38,037 on October 1, 2020. The Complainant made a final offer to purchase the Domain Name through the GoDaddy Auction site for just over CA\$19,000 on December 8, 2020 but received no further counter-offers.

The Complainant also made offers to purchase the Domain Name for US\$20,000 in late 2020 through an intermediary at GoDaddy. This offer was also not accepted. The Complainant was advised by the intermediary that the Respondent would only entertain offers of at least US\$30,000.

Respondent

The Respondent says he is a domain name dealer with a collection of four-letter domain names

Domain Name: klir.com

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including:

chpq.com	gpvk.com	jdxe.com	klir.com
latr.com	opjh.com	oxjb.com	pdbk.com
qatl.com	qavw.com	qkpy.com	qkta.com
rxxi.com	tekr.com	ujbj.com	vbpu.com
vkpe.com	wfya.com	xbgb.com	xxdo.com.

The Respondent obtained the <klir.com> domain name in a public auction concluded on April 30, 2016, the transfer of which was concluded on May 7, 2016.

The Complainant was not founded in 2014 as “Klir Platform Europe Limited”. The Irish Companies Registration Office record for the Complainant shows that the company founded in 2014 was named “Elm Consulting & Solutions Limited” and changed its name to “Klir Platform Europe Limited” by resolution dated August 14, 2018 and recorded on September 12, 2018. That date is consistent with the formation of “Klir Trading Company Limited” on January 2, 2018 and with the registration of Complainant’s <klir.io> domain name on September 20, 2017.

3. PROCEDURAL ISSUE: IDENTITY OF THE COMPLAINANT

The Respondent says the Complaint initially identifies Klir Platform Europe Limited as the Complainant but then goes on to state: “In the rest of this submission, “Klir” refers collectively to Klir Platform Europe Limited, Klir Trading Company Limited and their affiliates, which are licensed users of the KLIR trademark”. The Respondent requests that the Complainant be required to identify which entities, including un-named “affiliates” are intended to have admitted to the Mutual Jurisdiction for judicial proceedings under UDRP Paragraph 4(k).

The Panel notes that the Complainant, Klir Platform Europe Limited, has submitted itself to the location of the principal office of the concerned Registrar, GoDaddy.com, LLC, as the Mutual Jurisdiction. The Panel declines the Respondent’s request.

4. CONTENTIONS OF THE PARTIES

- **Complainant**

The registration of the <klir.com> domain name falls squarely within the scope of the Policy. The Domain Name is identical to the KLIR trademark. Because the Respondent has never used the Domain Name, it is clear that it has no rights or legitimate interests in the Domain Name. Based

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on the evidence, the Respondent acquired the <klir.com> domain name in around 2017 but has never used it and there is nothing to suggest it has ever intended to use it. Instead, the Respondent listed the Domain Name for sale but has been unwilling to accept offers of up to US\$20,000. The Complainant has no reason to believe that the Respondent is commonly known by the Domain Name.

The facts clearly indicate that the Respondent acquired the Domain Name primarily (in fact solely) for the purpose of selling it to the Complainant or a competitor for an amount that is well in excess of any out-of-pocket expenses the Respondent may have incurred (including the original purchase price of US\$5,000). The Respondent acted in bad faith with respect to the acquisition of the <klir.com> domain name and continues to act in bad faith in refusing to sell the Domain Name for a reasonable amount.

- **Respondent**

The Complaint was filed as the culmination of a years-long campaign of harassment of the Respondent in an attempt to obtain the Respondent's senior four-letter domain name at prices the Respondent will not accept. The Complainant obviously will not be deterred and the Respondent intends to seek appropriate punitive measures against the Complainant in the Mutual Jurisdiction at the earliest opportunity.

The Complainant is late by quite a number of years in relation to any evidence of a trade or service mark prior to the Respondent's registration of the Domain Name.

The Respondent has never used the Domain Name for anything to do with water treatment, etc.; has not attempted to trade on the Complainant's junior reputation; has not attempted to pass himself off as the Complainant; and has not used the Domain Name to divert consumers to competitive offerings of water treatment compliance software in which the Complainant's collective trades. The Respondent is the senior owner of a legitimately acquired asset which may be of substantial value to any number of prospective users who may desire to purchase a short four-letter domain name for purposes having nothing to do with the Complainant. For example, "Klir" is a surname and "KLIR" is also the subject mark of three other junior trademark registrations and applications filed in the UK, Mexico and US, by parties other than the Complainant and claiming goods and services in classes that are different from those claimed by the Complainant.

None of the factors which might "de-legitimize" the Respondent's senior registration and use of

the Domain Name are at issue here. The Respondent has not used the Domain Name to target or trade off the junior reputation of the Complainant. The Respondent acquired the <klir.com> domain name in 2016. It is the Complainant which copied the Respondent's domain name when the Complainant knew that <klir.com> was registered, but decided to register <klir.io> and change its corporate name in 2018, thus creating the conflict of which it complains here. Having legitimately acquired the Domain Name senior to the Complainant's limited claim in connection with its specific goods or services, the Respondent is entitled to dispose of its legitimate interests in the Domain Name in any manner he sees fit.

The bad faith element is one of intent, and involves a deliberate predatory targeting of the mark in question. Bad faith registration cannot be found where a domain name was registered prior to the establishment of the trade or service mark at issue. Here, the Complainant has shown no evidence of a trade or service mark pre-dating registration of the Domain Name by the Respondent. The Respondent's registration of the Domain Name was entirely consistent with the Respondent's well-documented acquisition of four-letter domain names. That purpose has nothing to do with the Complainant, and certainly had nothing to do with the Complainant's non-existent rights at the relevant time.

The exemplary bad faith set forth in 4(b)(i) requires a showing that, at the time the domain name was registered, it was the primary purpose of the registrant to sell the domain name to the owner of a trademark or a competitor thereof. The Respondent acquired the Domain Name in 2016. The Complainant incorrectly believes the Respondent acquired the Domain Name in 2017, which is **still** earlier than any demonstrated right of the Complainant. Either way, the Complainant has not presented a shred of evidence that the Respondent's registration of the Domain Name could have been in any way motivated by a "primary purpose" involving the Complainant's non-existent rights at the relevant time.

The plan was to file this utterly meritless proceeding in order to pressure the Respondent into accepting a price which the Complainant unilaterally deems "reasonable". It is a typical "Plan B" UDRP scenario described on the CIIDRC's own website under "Common Mistakes In UDRP Complaints" as:

"The name "Plan B" refers to a complainant's use of a UDRP complaint as a backup after its attempt to purchase the domain name (plan A) fails. A typical scenario begins where the complainant wants a particular domain name that's already taken by someone else. Perhaps they've come up with a new product, are rebranding an existing one, feel the words

in the domain are relevant to their industry, or their company has new management who asks “why don’t we already own that website address?” So they reach out to the domain registrant and inquire about a purchase but the asking price is too high. Maybe the registrant realizes they’ve got a tiger by the tail where a company has already publicly launched its new brand and the domain name is suddenly getting lots of traffic. **After failing to negotiate a purchase, the brand owner, or its counsel, considers using the UDRP as an inexpensive alternative to going to court. Perhaps they believe that filing a complaint will give them leverage in negotiating a purchase.** They may also have read that ¶ 4(b)(i) of the Policy says that bad faith registration and use of a domain can be demonstrated where the registrant attempts to sell the disputed domain name to “the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of [its] documented out-of-pocket costs directly related to the domain name.” So a UDRP complaint is filed and the domain owner either responds to defend itself (sometimes with very experienced UDRP defense counsel) or, more often, it defaults in the case. **The Panel then gets the case and quickly discovers one of a number of things. Maybe the disputed domain name was created prior to the earliest date on which the complainant can prove trademark rights;** the domain name is made up of generic or descriptive terms and is not targeting the complainant’s trademark; or the domain is used legitimately and for non-competitive purposes. In these situations, even a respondent’s offer to sell the name at a very high price may not, alone, carry a claim of bad faith. Panels may find RDNH in Plan B cases as the complaint was brought in bad faith, to harass the domain registrant, or with a complainant’s knowledge that it had no reasonable chance of success in the claim. Of course, if the asking price for a domain was high before the UDRP complaint was filed, you can just imagine where it goes after a decision denying the case.”

Accordingly, the Respondent submits the Complainant has not carried its burden in relation to the third element, and that the Complainant’s disregard of basic UDRP principles, falls far short of what should be expected in terms of diligence and good faith under the Policy Rule 15(e).

- **Remedy Sought**

The Complainant seeks the transfer to it of the Domain Name.

The Respondent seeks the dismissal of the Complaint.

5. DISCUSSION AND FINDINGS

5.1 Requirements

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that the Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (2) the Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

The Panel will consider each of these requirements in turn.

5.2 Analysis

5.2.1 Whether the Domain Name is Identical or Confusingly Similar to a Mark in which the Complainant has Rights

The relevant date at which the Complainant must show that it has rights in a trademark is the date of the filing of the Complaint, in this case March 16, 2021. *See, e.g., Philip Morris Products S.A. v. Timur Dzadzamiya*, D2021-0067 (WIPO Mar. 22, 2021) ("The submitted evidence shows that the Complainant owns several trademark registrations for the HEETS trademark. Pursuant to section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), this satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case.")

The Complainant has shown that it obtained rights in the KLIR trademark on March 8, 2021, when Klir Trading Company Limited, a company related to the Complainant, assigned to the Complainant United States registered trademark KLIR (Reg.No.5816748, registered July 30, 2019) and European registered trademark KLIR (Reg. No. 017805086, registered 21 July, 2018). Because the Canadian application has not yet proceeded to registration, the Complainant does not presently have rights in any Canadian registered trademark for KLIR.

The **<klir.com>** domain name is identical to the Complainant's KLIR trademark since the inconsequential gTLD ".com" may be ignored.

The Complainant has established this element.

4.2.2 Whether the Respondent has No Rights or Legitimate Interests in respect of the Domain Name

Paragraph 4(c) of the Policy sets out three illustrative circumstances as non-exhaustive examples which, if established by the Respondent, shall demonstrate rights to or legitimate interests in respect of the Domain Name for the purposes of paragraph 4(a)(ii) of the Policy, *i.e.*

- (i) before any notice to the Respondent of the dispute, the use by the Respondent 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 non-commercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

Because this element requires the Complainant to prove a negative, it is sufficient for the Complainant to establish a *prima facie* showing of absence of rights or legitimate interests in respect of the Domain Name on the part of the Respondent, whereupon the evidentiary burden shifts to the Respondent to show that he does have rights or legitimate interests in the Domain Name. See *Neal & Massey Holdings Limited v. Gregory Ricks*, FA 1549327 (FORUM Apr. 12, 2014).

The Complainant asserts that the Respondent acquired the Domain Name in 2017 and has not since used it, instead offering it for sale and seeking a higher price than the Complainant is prepared to pay. There is no dispute that the Respondent is not commonly known by the Domain Name and has not used the Domain Name to offer goods or services of any kind. It is common ground that the Respondent has offered the Domain Name for sale to the public at large and has rejected all the Complainant's numerous offers, commencing on September 20, 2017, the same day on which the domain name <klir.io> was registered by the Complainant or one of its related entities.

Despite its assertion that the Complainant and/or its related entities have been using the KLIR trademark for several years in the United States, Europe, Canada and numerous other countries, the Complainant has provided no evidence of any such use prior to its 2018 name change or the registration in July 2018 by its related company, Klir Trading Company Limited, of a European registered trademark for the KLIR mark (Reg. No. 017805086).

The Respondent's evidence in relation to this element is that he is a domain name dealer and has registered a number four-letter acronymic domain names, including the Domain Name <klir.com>. The disputed Domain Name, like other four-letter domains, has inherent value and was acquired by the Respondent in 2016, before the Complainant's trademark rights came into existence. It has never been used to target the Complainant.

See *Franklin Mint Federal Credit Union v. GNO, Inc.*, FA 0860527 (FORUM Mar. 9, 2007): "The fact that Respondent appears to be a generic domain name reseller supports findings that Respondent has rights or legitimate interests in the <fmcu.com> domain name pursuant to Policy ¶ 4(a)(ii)."; *Digel Aktiengesellschaft v. Vinay Shan*, D2018-1328 (WIPO Aug. 9, 2018) ("the registration of large numbers of domain names for the purpose of offering them for sale to third parties is not an inherently objectionable activity under the Policy (subject to the caveat below) and is capable of comprising a *bona fide* offering of goods and services.")

The Panel finds the Respondent had a right and legitimate interest when he acquired the Domain Name in 2016, before the Complainant or any related entity had any rights or interest in the KLIR trademark or trade name, and continues to have a legitimate interest in the Domain Name.

The Complainant has failed to establish this element.

Whether the Respondent has Registered and Used the Domain Name in Bad Faith

Paragraph 4(b) of the Policy sets out four illustrative circumstances, which, though not exclusive, shall be evidence of the registration and use of the Domain Name in bad faith for purposes of paragraph 4(a)(iii) of the Policy, i.e.

- (i) circumstances indicating that the Respondent has registered or acquired the Domain Name primarily for the purpose of selling, renting or otherwise transferring the Domain Name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the Domain Name;
- (ii) or the Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct;
- (iii) or the Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or by using the Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other

on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on its website or location.

The Complainant contends that this case falls squarely within the terms of Paragraph 4(b) of the Policy in that the Respondent acquired the Domain Name primarily (in fact solely) for the purpose of selling it to the Complainant or a competitor for an amount that is well in excess of any out-of-pocket expenses the Respondent may have incurred (including the original purchase price of US\$5,000) and that the Respondent acted in bad faith with respect to the acquisition of the <klir.com> domain name and continues to act in bad faith in refusing to sell the Domain Name for a reasonable amount.

The Respondent, a domain name dealer with a collection of four-letter domain names, has shown that the Complainant was incorporated in 2014 under the name "Elm Consulting & Solutions Limited" and changed its name to Klir Platform Europe Limited in 2018. Respondent supports these assertions with submitted screenshots from the Irish Companies Registration Office. The Respondent acquired the Domain Name through an auction, completed on May 7, 2016. Short domain names are inherently valuable. See *Franklin Mint Federal Credit Union v. GNO, Inc.*, supra.

The Complainant has itself shown that the Domain Name was registered before the Complainant or any related entity acquired rights in the KLIR trademark. It follows that the Respondent could not have targeted the Complainant or otherwise acquired the Domain Name "primarily (in fact solely) for the purpose of selling it to the Complainant or a competitor", as alleged in the Complaint, nor for any of the other purposes set out in Paragraph 4(b) of the Policy. *HBA Holding LLC v. William Sylvester*, D2021-0048 (WIPO Mar. 22, 2021) (relief denied where "Complainant initiated this UDRP again asserting common law rights in ITDC but without any proof that such rights existed or were known to consumers or the relevant trade in November 2018 when Respondent acquired the disputed domain name.")

It is clear from the evidence that the Respondent could not have acquired the Domain Name primarily for the purpose of selling it to the Complainant, since the Complainant has not demonstrated any right or ownership in the KLIR mark at that time. The Respondent has not used the Domain Name to target the Complainant or its KLIR mark or otherwise acted in bad faith with respect to the Domain Name.

The Panel finds that the Respondent did not act in bad faith with respect to the acquisition of the <klir.com> Domain Name and does not act in bad faith in rejecting the Complainant's offers to buy it.

The Complainant has failed to establish this element.

Reverse domain name hijacking

Paragraph 15(e) of the Rules provides that if “after considering the submissions the panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding”. Reverse Domain Name Hijacking (RDNH) is defined under the Rules as “using the UDRP in bad faith to attempt to deprive a registered domain-name holder of a domain name”.

The mere lack of success of the complaint is not itself sufficient for a finding of Reverse Domain Name Hijacking. Rather, as stated in the WIPO Jurisprudential Overview 3.0, paragraph 4.16:

“Reasons articulated by panels for finding RDNH include: (i) facts which demonstrate that the complainant knew it could not succeed as to any of the required three elements – such as the complainant's lack of relevant trademark rights, clear knowledge of respondent rights or legitimate interests, or clear knowledge of a lack of respondent bad faith (see generally section 3.8) such as registration of the disputed domain name well before the complainant acquired trademark rights...”

Here the Complainant and its legal representative had clear knowledge of lack of Respondent's bad faith registration and use because the <klir.com> Domain Name was registered before the Complainant or any related entity acquired rights in the KLIR mark. The Panel finds this to be a classic example of a “Plan B” case as described above. *Daniel Biro / RealtyPRO Network, Inc. v. Ben Kueh / Computerese*, FA 1929289 (FORUM Mar. 29, 2021) (“here there is the added factor that Complainant had made unsuccessful attempts to purchase <realtypro.com> from Respondent. It would not have been exhausting to learn from a modicum of research that initiating a UDRP proceeding under these circumstances fits the definition of a Plan B scheme to deprive Respondent of his property.”)

5 DECISION and ORDER

For the above reasons, in accordance with Paragraph 4 of the Policy, Paragraph 15 of the Rules, and Rule 10 of the Supplemental Rules, the Panel concludes that relief shall be **DENIED** and

orders that the <klir.com> domain name **REMAIN WITH** the Respondent. The Panel also declares that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.

Made as of April 20,2021.

SIGNATURE OF PANEL

Alan Limbury (Chair)

Michael Erdle

Steven Levy, Esq.

