



Asian Domain Name Dispute Resolution Centre

seoul

(Seoul Office)

ADMINISTRATIVE PANEL DECISION

Case No. : KR-2400260

Complainant: KUMHO TIRE CO., INC.

(Authorized Representative for Complaint: Jeonghwan Kim, HMP Law)

Respondent: Mohammad Armstrong, Faith Barber, Zhang Qiang, Eve Bryant, and
Emma Howe

Disputed Domain Names:

[kumhotirejapan.com; kumhotirespain.com; kumhotirebrasil.com;
kumhotireaustralia.com; kumhotireuk.com; kumhotirefrance.com;
kumhotiresverige.com]

1. The Parties and Contested Domain Name

The Complainant is KUMHO TIRE CO., INC. of 658, Eodeung-daero, Gwangsan-gu, Gwangju, Republic of Korea.

The Respondents are Mohammad Armstrong, Faith Barber, Zhang Qiang for, Eve Bryant, and Emma Howe.

The Disputed Domain Names at issue are ‘kumhotirejapan.com; kumhotirespain.com; kumhotireaustralia.com; kumhotireuk.com; kumhotirefrance.com; kumhotiresverige.com’, registered with ALIBABA.COM

SINGAPORE E-COMMERCE PRIVATE LIMITED and “kumhotirebrasil.com” with Paknic Private Limited.

2. Procedural History

The Complaint was filed with the Seoul Office of the Asian Domain Name Dispute Resolution Center (ADNDRC)[“Center”] on June 13, 2024, seeking for cancellation of the domain names in dispute.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the Centre’s Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

On June 25, 2024, the Center sent emails to the two Registrars asking for the detailed data of the registrants and verification of the language of registration agreement. On June 26, 2024, ALIBABA.COM SINGAPORE E-COMMERCE PRIVATE LIMITED replied to the Center with its verification response, advising that the language of registration agreement is English, and the Respondents for six domain names [kumhotirejapan.com; kumhotirespain.com; kumhotireaustralia.com; kumhotireuk.com; kumhotirefrance.com; kumhotiresverige.com] are listed as the registrants, providing the insufficient contact details missing full postal addresses. On June 27, 2024, and Paknic Private Limited also replied to the Center with its verification response, advising that the Respondent for [kumhotirebrasil.com] is listed as the registrant, providing the contact details, and the language of registration agreement is English.

In accordance with the Rules, On July 9, 2024, the Center sent Notification of Complaint and Commencement of the Administrative Proceeding to both parties simultaneously. As the proceedings commenced on July 9, 2024, the due date for the

Response was July 28, 2024. But, no response was received from the Respondents by the due date.

On July 29, 2024, the Center appointed Mr. Chinsu Lee as Sole Panelist in the administrative proceeding and with the consent for the appointment, impartiality and independence declared and confirmed by the Panelist, the Center, in accordance with Paragraph 7 of the Rules, organized the Panel of this case in a legitimate way.

On July 31, 2024, after the initiation of proceedings in this case, the Panel requested supplementary documentation from the Complainant to support and clarify its allegations; however, the Complainant failed to provide the requested documentation.

3. Factual background

The Complainant, doing business as ‘**KUMHO TIRE CO., INC.**’, is a South Korean tire manufacturer with a global presence. It exports tires worldwide and maintains an extensive network of sales organizations. The Complainant also manages its website using the domain name (<https://www.kumhotire.com/>). In July 2018, ‘Doublestar’, a Chinese company, acquired the Complainant from its former parent, the ‘Kumho Asiana Group’, making it a subsidiary of the tire conglomerate ‘Doublestar’.

The Disputed Domain Names, consisting of seven different URLs — <**kumhotirejapan.com**>, <**kumhotirespain.com**>, <**kumhotirebrasil.com**>, <**kumhotireaustralia.com**>, <**kumhotireuk.com**>, <**kumhotirefrance.com**>, and <**kumhotiresverige.com**> — were all registered on November 9, 2023.

The registrants of these Disputed Domain Names are not uniformly the same entity, indicating that the Disputed Domain Names are owned by different entities. All the Disputed Domain Names, except for <**kumhotirebrasil.com**>, are currently inactive, with each displaying the error message ‘*cannot connect to site*’. And the Disputed

Domain Name <**kumhotirebrasil.com**> links to a website where the trademarks “**KUMHO TIRE**” and “**ECSTA**” are prominently displayed on the first page. Furthermore, the products offered for sale on this website are presented in such a manner that makes tire products appear to be manufactured by the Complainant.

4. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

The Complainant alleges that it is the rights holder of the registered trademark “**KUMHO TIRE**” and the owner of the domain name (*<https://www.kumhotire.com>*). The Complainant further alleges that the Disputed Domain Names, registered by the Respondent, are not only identical to this trademark but that the contents hosted on these Disputed Domain Names are confusingly similar to those of the Complainant’s official website using the domain name *<https://www.kumhotire.com>*.

The Complainant alleges that the Respondent has no rights or legitimate interests in the Disputed Domain Names, based on the fact that the Complainant does not know the identity of the Respondent and has never granted the Respondent any authorization to create domain names or websites, to use the Complainant’s trademark, or to market products under the trademark “**KUMHO TIRE**”.

The Complainant alleges that the Respondent has registered and is using the Disputed Domain Names in bad faith. The basis for this allegation is that the Respondent has appended country names such as Japan, Spain, Brazil, Australia, the United Kingdom, France, and Sverige (Sweden) to the Complainant’s trademark “**KUMHO TIRE**” in the Disputed Domain Names, thereby creating the misleading impression that the Respondent is authorized by the Complainant to operate websites representing the trademark in those countries.

B. Respondent

None of the Respondents for the Disputed Domain Names (7 domain names) have submitted any response to the Complainant's allegations in this case.

5. Discussion and Findings

The Policy is designed to resolving disputes involving allegations of abusive domain name registration and use. *Milwaukee Electric Tool Corporation v. Bay Verte Machinery, Inc. d/b/a The Power Tool Store*, [WIPO Case No. D2002-0774](#). Accordingly, the jurisdiction of this panel is limited to providing a remedy in cases of “the abusive registration of domain names”, also known as “cybersquatting”. See *Weber-Stephen Products Co. v. Armitage Hardware*, [WIPO Case No. D2000-0187](#); *Lindeva Living Trust, Kim W. Lu Trustee v. Domain Privacy Service FBO Registrant / 510 Pacific Ave, Pacific Venice*, [WIPO Case No. D2015-1105](#); See Final Report of the WIPO Internet Domain Name Process, April 30, 1999, Paragraphs 169 and 170.

Paragraph 15(a) of the Rules provides that the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any other rules or principles of law that the panel determines to be applicable.

Paragraph 4(a) of the Policy requires that the complainant prove each of the following three elements to obtain a decision that a domain name should be either cancelled or transferred:

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

Cancellation or transfer of the domain name are the sole remedies provided to the complainant under the Policy, as set forth in Paragraph 4(i).

Paragraph 4(b) of the Policy sets forth four situations under which the registration and use of a domain name is deemed to be in bad faith, but does not limit a finding of bad faith to only these situations.

Paragraph 4(c) of the Policy in turn identifies three means through which a respondent may establish rights or legitimate interests in a domain name. Although the complainant bears the ultimate burden of establishing all three elements of Paragraph 4(a) of the Policy, UDRP panels have recognized that this could result in the often-impossible task of proving a negative, requiring information that is primarily if not exclusively within the knowledge of the respondent. Thus, the consensus view is that Paragraph 4(c) of the Policy shifts the burden of production to the respondent to come forward with evidence of a right or legitimate interest in the domain name, once the complainant has made *prima facie* showing. See, e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, [WIPO Case No. D2000-0270](#).

A) Identical / Confusingly Similar

The Panel begins its deliberation by assessing whether the Complainant has established trademark or service mark rights in “**KUMHO TIRE**”.

The definition of “trademark or service mark” in Paragraph 4(a)(i) of the Policy includes both registered and common law marks. Relevant case law illustrates that registration of a trademark constitutes *prima facie* evidence of the Complainant’s rights in the mark, including foreign registrations. See *The British Broadcasting Corporation v. Jaime Renteria*, [WIPO Case No. D2000-0050](#); *United Artists Theatre Circuit, Inc. v. Domains for Sale Inc.*, [WIPO Case No. D2002-0005](#); and *The Professional Golfers’ Association of America v. Golf Fitness Inc.*, a/k/a Golf

Fitness Association, [WIPO Case No. D2001-0218](#). See also, [WIPO/D2002-1039](#) (*microsoft.com*) and [WIPO/D2001-1015](#) (*limitedtoonline.com*).

However, neither domain names nor trade names themselves qualify as “trademark or service mark” under Paragraph 4(a)(i) of the Policy. Nevertheless, if the Complainant successfully demonstrates that the domain name or trade name functions as a trademark and provides factual evidence of such, it may be recognized as a common law trademark.

UDRP reports and case descriptions explicitly state that the rules are designed to protect trademarks, both registered and common law, rather than mere trade names, because trade names do not receive the same universal protection as trademarks: See [NAF/FA118308](#) (*diversifiedmortgage.com*).

Moreover, **the Policy does not address the identity or confusing similarity between the “domain names” of the Complainant and the Respondent.** However, if a domain name is proven to function as a common law trademark, it may fall within the scope of Paragraph 4(a)(i) of the Policy. It should be understood that the mere popularity of a website is not sufficient to establish rights under Paragraph 4(a)(i) of the Policy: See [WIPO/D2001-1106](#) (*linkorama.com*).

The Complainant claims to hold rights to the trademark “**KUMHO TIRE**”, citing **South Korean registered trademarks No. 40-1561404-0000 (Exhibit 9) and 40-0154631-0000 (Exhibit 10)**. However, according to the database maintained by KIPRIS (Korea Intellectual Property Rights Information Service), both trademarks are currently jointly owned by ‘**KUMHO Engineering & Construction Co., Ltd.**’ and ‘**KOREA KUMHO PETROCHEMICAL CO., LTD.**’. In addition, **the record of registered trademark No. 40-0154631-0000 indicates that the Complainant relinquished its ownership of this trademark on March 14, 2007.**

Furthermore, a review of the website operated under the Complainant’s domain name (<https://kumhotire.com>) reveals that “**KUMHO TIRE**” is used only as a trade

name or domain name, with no evidence of its application to actual tire products. The tire products marketed by the Complainant mainly bear trademarks such as **EnnoV**, **Majesty**, **ECSTA**, **CRUGEN**, **SOLUS**, **SuperMile**, and **PorTran**. **And no evidence was submitted to show that “KUMHO TIRE” is employed as a service mark, which is a mark used to identify the source of services provided for the benefit of others, not for its own products or business.**

Licensees and franchisees, in addition to **trademark owners**, may have rights relevant to the Paragraph of 4(a)(i) of the Policy. However, when a licensee initiates a complaint independently, rather than jointly with the trademark owner as a co-complainant, panels frequently require the licensee to provide evidence of either an exclusive license or that the trademark owner has consented to the licensee bringing an action under the Policy. This requirement is to ensure that the complaining party has a legitimate standing: See [NAF/FA109053](#) (*principalsecrets.com*) and [WIPO/D2001-0790](#) (*okidata.net*).

Under the general principles of trademark law, the term “tire”, when associated with tire products, is considered generic and lacks the inherent distinctiveness to indicate the source of the product. Therefore, within the mark “**KUMHO Tire**”, it is the “**KUMHO**” portion that confers distinctiveness to the mark. Thus, the primary element in “**KUMHO Tire**” is the name “**KUMHO**”. Nevertheless, “**KUMHO Tire**”, as a whole, may represent a specific subsidiary within the KUMHO group that is exclusively engaged in manufacture or sale of tires.

Therefore, in order to establish rights under Paragraph 4(a)(i), the Complainant must show that it is either the owner of the registered trademark “**KUMHO Tire**” or the exclusive licensee duly authorized by the owner of the trademark to use the “**KUMHO Tire**”.

Alternatively, the Complainant is required to convincingly claim and prove that the use of “**KUMHO Tire**” goes beyond the mere representation of a subsidiary

within the KUMHO Group. It is crucial to demonstrate that “**KUMHO Tire**” has developed distinctiveness as a trademark or service mark, thereby serving as an independent source clearly distinct from the KUMHO Group.

After the initiation of the proceedings in this case, the Panel requested supplementary documentation from the Complainant to support its claim of rights to “**KUMHO Tire**”. However, the Complainant failed to submit any documentation that could prove their rights to the “**KUMHO Tire**” trademark.

Furthermore, the registrant address for the Complainant’s domain name <kumhotire.com> is listed as 76, Saemunan-ro, Jongno-gu, Seoul, which is different from the address of the Complainant’s principal place of business listed in the application documents as 68, Saemunan-ro, Jongno-gu, Seoul. The Panel requested an explanation for this discrepancy from the Complainant, but no clarification was provided.

Therefore, for purposes of the present Policy proceeding, the Panel concludes that the Complainant has failed to establish any unregistered or common law trademark or service mark rights in “KUMHO TIRE”.

B) Rights and Legitimate Interests / Registered and Used in Bad Faith

Considering the Panel’s determination under Paragraph 4(a)(i) of the Policy, it is unnecessary for the Panel to address issues of rights or legitimate interests regarding the bad faith registration and use of the Disputed Domain Names under Paragraphs 4(a)(ii) and (iii) of the Policy.

Even if the Complainant had satisfied the first element of the UDRP, the Complainant has failed to adequately argue or provide evidence for the second and third elements set forth in Paragraphs 4(a)(ii) and 4(a)(iii). Moreover, reference to the guidelines set forth in Paragraphs 4(b) and 4(c) of the Policy would likely have

enhanced the Complainant's ability to effectively demonstrate compliance with each criterion.

Finally, it should be noted that this decision does not limit the parties' right to seek further legal remedies before a court of competent jurisdiction.

6. Decision

For the foregoing reasons, the Complaint is denied.

辦理士
李鎮秀

Chinsu Lee

Sole Panelist

Dated: August 12, 2024