# Decision for dispute CAC-UDRP-102527

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| Case number | **CAC-UDRP-102527** |
| Time of filing | **2019-06-11 11:42:21** |
| Domain names | **keringsfoundation.com** |

## Case administrator

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| Name | **Šárka Glasslová (Case admin)** |

## Complainant

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| Organization | **KERING** |

## Complainant representative

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| Organization | **Nameshield (Laurent Becker)** |

## Respondent

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| Organization | **See PrivacyGuardian.org** |

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the holder of the following trademark registrations of the sign KERING (the "KERING trademark"):

- the trademark KERING with registration No.3920561, registered in France on 16 May 2012 for goods and services in International Classes 3, 14, 18, 25, 28, 35, 36, 38 and 41; and

- the International trademark KERING with registration No.1381530, registered on 5 May 2017 for goods and services in International Classes 1 – 45.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant operates a foundation whose activities are aimed at fighting the violence against women and improving their lives.

The Complainant's official website for its foundation is located at www.keringfoundation.org.

The disputed domain name <keringsfoundation.com> was registered on 7 August 2018. It resolves to a website that mimics the official website of the Complainant and features its official logo.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant submits that the disputed domain name is confusingly similar to the Complainant's KERING trademark, as it incorporates the trademark in its entirety. According to the Complainant, the inclusion of the term "foundation" in the disputed domain name is not sufficient to escape the finding that the disputed domain name is confusingly similar to the KERING trademark.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it is not commonly known by the disputed domain name, is not related in any way to the Complainant or to its business, and has not been authorized by the Complainant to use the KERING trademark. The Complainant points out that the disputed domain name makes reference to it and the Respondent is not making a bona fide offering of goods or services through the disputed domain name or a legitimate non-commercial or fair use of it.

According to the Complainant, the disputed domain name has been registered and is being used in bad faith. The Complainant has registered the KERING trademark in 2012, which is several years before the registration of the disputed domain name, while the disputed domain name resolves into a website referencing to the Complainant's foundation. In view of this, the Complaint contends that the Respondent has registered the disputed domain name with knowledge of the Complainant's KERING trademark and has intentionally attempted to attract for commercial gain Internet users to its website by creating a likelihood of confusion with the Complainant's KERING trademark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or of a product or service on that website.

RESPONDENT:

The Respondent did not reply to the Complainant's contentions and did not submit any arguments or evidence in its defense.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be

inappropriate to provide a decision.

## PRINCIPAL REASONS FOR THE DECISION

Pursuant to the Policy, paragraph 4(a), a complainant must prove each of the following to justify the transfer of a domain name:

(i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;

(ii) the respondent has no rights or legitimate interests in respect of the domain name; and

(iii) the respondent has registered and is using the domain name in bad faith.

In this case, the Provider has employed the required measures to achieve actual notice of the Complaint to the Respondent, and the Respondent was given a fair opportunity to present its case.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: "[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name …"

In this proceeding, the Respondent has not used the opportunity provided to it under the Rules and has not submitted a substantive Response addressing the contentions of the Complainant and the evidence submitted by it.

The Complainant has provided evidence and has thus established its rights in the KERING trademark.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the general Top-Level Domain ("gTLD") section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). The Panel sees no reason not to follow the same approach here, so it will disregard the ".com" gTLD section of the disputed domain name.

The relevant part of the disputed domain name is therefore the sequence "keringsfoundation". It consists of the elements "kerings" and "foundation". The "kerings" element incorporates the KERING trademark with the addition of the letter "s". This element is distinctive and dominates the disputed domain name, while the "foundation" element is generic and refers to the not-for-profit activities of the Complainant. In view of this, it is likely that Internet users may regard the disputed domain name as referring to the official website of the Complainant for its foundation, the likelihood of which is increased by the fact that the disputed domain name is also confusingly similar to the domain name <keringfoundation.org> where the official website of the Complainant for its foundation is located.

In view of the above, the Panel finds that the disputed domain name is confusingly similar to the KERING trademark in which the Complainant has rights.

While 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 often-impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because it is not commonly known by the disputed domain name, is not related in any way to the Complainant or to its business, and has not been authorized by the Complainant to use the KERING trademark. According to the Complainant, the disputed domain name makes reference to it, and the Respondent is not making a bona fide offering of goods or services through the

disputed domain name or a legitimate non-commercial or fair use of the disputed domain name. Thus, the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not submitted a Response and has not alleged that is has rights and legitimate interests in the disputed domain name and has not disputed the Complainant's allegations in this proceeding.

The disputed domain name is confusingly similar to the KERING trademark and Internet users may regard it as the official website of the Complainant for its foundation. It is not denied by the Respondent that the disputed domain name resolves to a website that mimics the official website of the Complainant for its foundation and features the official logo of the latter, and the KERING trademark was registered six years before the registration of the disputed domain name.

In the lack of any denial by the Respondent of the Complainant' contentions, the above combination of circumstances satisfies the Panel that it is more likely than not that the Respondent, being aware of the goodwill of the Complainant's KERING trademark, has registered and used the disputed domain name in an attempt to exploit the trademark's goodwill to attract Internet users to the Respondent's website and probably collect their personal data. In the Panel's view, such activity does not appear to be legitimate.

In view of the above, the Panel is of the opinion that the evidence in the case file supports the prima facie case made by the Complainant, and finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

"(i) circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location."

As discussed above, the disputed domain name fully incorporates the KERING trademark in combination with the element "foundation" which makes it appear as the official website of the Complainant for its foundation. The KERING trademark has been registered six years before the registration of the disputed domain name, which resolves to a website that mimics the official website of the Complainant without containing any disclaimer, but invites users to "visit the Kering group site www.keringsfoundation.com", which is different from the web address of the Complainant's official website. It appears that the Respondent attempts to illegitimately impersonate the Complainant, which conclusion is further supported by the fact that the Respondent has used privacy services for the registration of the disputed domain name and its real identity has not been disclosed by the Registrar.

Taking all this into account, the Panel accepts that as more likely than not that the Respondent has registered the disputed domain name with knowledge of the Complainant and targeting the KERING trademark in an attempt for commercial gain to attract traffic to the disputed domain name by confusing Internet users that they are reaching an official online location of the Complainant. This satisfies the Panel that the Complainant has established that the Respondent has registered and used the disputed domain name in bad faith under Paragraph 4(b) (iv) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **KERINGSFOUNDATION.COM**: Transferred

## PANELLISTS

| Name | **Assen Alexiev** |
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DATE OF PANEL DECISION 2019-07-22

Publish the Decision