

Decision for dispute CAC-UDRP-104994

Case number **CAC-UDRP-104994**

Time of filing **2022-11-21 09:24:41**

Domain names **kncircet.com**

Case administrator

Organization **Denisa Bilík (CAC) (Case admin)**

Complainant

Organization **CIRCET**

Complainant representative

Organization **NAMESHIELD S.A.S.**

Respondent

Name **Eoin moore**

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 owner of several trademarks.

In particular, CIRCET owns:

- EUTM "CIRCET" n°018200743 filed on February 24, 2020 and registered on August 13, 2020 for classes 9, 37, 38 and 42;
- IR "CIRCET" n° 1530135 registered on February 26, 2020 for classes 9, 37, 38 and 42;
- IR "CIRCET" n° 1530128 registered on February 26, 2020 for classes 9, 37, 38 and 42.

FACTUAL BACKGROUND

CIRCET informs that the Complainant is a world leading telecom network service provider. In particular, according to CIRCET, the Complainant is present in 14 countries in Europe, North Africa and America and, in 2021, its business generated €2.42 billion in total sales and had 15,350 employees worldwide. The Complainant is the owner of several trademark registrations consisting of the term CIRCET and also of various domain names including CIRCET such as <circet.com>. The Complainant informs that the disputed domain name <kncircet.com> was registered on May 6, 2022.

According to the Complainant the disputed domain name <kncircet.com> is confusingly similar to its trademark as it incorporates the

CIRCET trademark in its entirety. The Complainant contends that the addition of the prefix KN is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark CIRCET especially in consideration of the fact that the Complainant operates in Ireland and UK via its entity KN CIRCET. Furthermore, according to the Complainant, the addition of the gTLD ".com" must be simply disregarded since it is a mere technical requirement of every domain name.

In addition, it is the Complainant's view that the Respondent is not known as the disputed domain name. The Complainant also informs that neither licence nor authorization has been granted to the Respondent to make any use of the Complainant's trademark. Therefore, according to the Complainant, the Respondent has no rights or legitimate interests on the disputed domain name.

The Complainant also notes that, given the distinctiveness and reputation of the Complainant's trademark, it is reasonable to interfere that the Respondent has registered the domain name with full knowledge of the Complainant's trademark. Furthermore, in the Complainant's view, the Respondent has not demonstrated any activity in respect of the disputed domain name and it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate and prejudicial of the Complainant rights. Finally, the Complainant informs that MX servers are configured on <kncircet.com> which suggests that the disputed domain name may be actively used for email purposes. Therefore, the Complainant contends that the domain name in dispute was registered and is being used in bad faith.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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

Paragraph 4(a) of the Policy provides that to obtain the transfer of the disputed domain name, the Complainant must prove that each of the following elements is present:

- (i) the disputed 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 disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

1) The Complainant, under the first requirement of paragraph 4(a) of the Policy, needs to establish that the disputed domain name is confusingly similar to a trademark or a service mark in which it has rights. The Complainant owns several trademark rights over the sign CIRCET. The Panel finds that it is confusingly similar to the disputed domain name, as the trademark is entirely included in it. As stated by the Complainant the additional element KN is likely to worsen the likelihood of confusion, because the Complainant operates in Ireland and UK via an entity named KN CIRCET. In any case, the Complainant's CIRCET trademark is clearly recognizable within the

disputed domain name and the additional prefix KN does not prevent a finding of confusing similarity under the first element (see GUCCIO GUCCI SPA v. Zhan Jinrong and others, WIPO Case No. D2020-2558 related to the domain name <knguci.com>). Finally, in accordance with the consensus view of past UDRP panels, the Panel finds that the Top-Level domain (".COM" in this case) is not sufficient to exclude the likelihood of confusion since it is a mere technical requirement included in all domain names. The Complainant therefore succeeds on the first element of the Policy.

2) The Complainant provided prima facie evidence that the Respondent does not have rights or legitimate interests in respect of the disputed domain name as it is not commonly known under the disputed domain name and was never authorized to use it by the Complainant. The Respondent, in the absence of any response, has not shown any fact or element to justify prior rights or legitimate interests in the disputed domain name. The Complainant therefore succeeds also on the second element of the Policy.

3) The disputed domain name resolves to a simple hosting page in which it is basically announced that <kncircet.com> has been successfully registered by HOSTINGIRELAND.IE. In consideration of the above it must be obviously considered not in use. This circumstance does not prevent a finding of bad faith use. Previous Panels have held that the passive holding of a domain name can be considered as use in bad faith (see, between many others, Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003 and Cleveland Browns Football Company LLC v. Andrea Denise Dinoia, WIPO Case No. D2011-0421).

Furthermore, it is the Panel's view that the disputed domain name has been registered in bad faith because the Respondent was or must have been perfectly aware of the existence of CIRCET trademark, which is highly distinctive and unique for the registered goods and services, when the same Respondent registered the domain name <kncircet.com>. When considering this, in conjunction with the fact that the Respondent has been passively holding the disputed domain name and has not submitted any evidence suggesting that the domain name was selected for a legitimate use or purpose, an inference of bad faith registration and use is made by the Panel (see, between many others, Incipio Technologies, inc. v. Starfield Services Ltd, WIPO Case No. D2011-0418).

Finally, the Complainant has provided evidence that the Respondent has set up "MX-records" for the disputed domain name. This entails that the Respondent can send e-mails through the e-mail address "@kncircet.com". The Respondent can therefore use the disputed domain name to send fraudulent e-mails such as messages containing spam and/or phishing attempts that Internet users could well assume were sent by the Complainant. (See also Confédération Nationale du Crédit Mutuel, Crédit Industriel et Commercial v. Khodor Dimassi, WIPO Case No. D2016-1980; Paris Saint-Germain Football v. MHP Private, WIPO Case No. D2019-0036). Albeit that there are no concrete examples of such use, it seems inconceivable that the Respondent will be able to make any good faith use of the disputed domain name as part of an e-mail address. The Panel finds that the mere conduct of making preparation for sending emails which are very likely to confuse the recipient of such e-mails as to their origin, is without justification and is inconsistent with the Complainant's exclusive rights in the CIRCET trademark (see Accenture Global Services Limited v. Registration Private, Domains by Proxy, LLC / Richa Sharma, Name Redacted, WIPO Case No. D2019-2453). In consideration of the above, the Panel deems that the domain name in dispute was registered and used in bad faith and accordingly that the Complainant has satisfied also the third element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **kncircet.com**: Transferred

PANELLISTS

Name	Guido Maffei
DATE OF PANEL DECISION	2022-12-23
Publish the Decision	
