

## **DISPUTE RESOLUTION SERVICE**

**D00018867**

### **Decision of Independent Expert**

Kespry, Inc.

and

Yang HongJuan

#### **1. The Parties:**

Kespry, Inc.  
1090A O'Brien Dr.  
Menlo Park  
San Mateo County  
California  
94025  
United States

Yang HongJuan  
No.4 ZhuLin Road  
Futian District  
Shenzhen  
518000  
China

#### **2. The Domain Name(s):**

kespry.co.uk ("the Domain Name")

### **3. Procedural History:**

I can confirm that I am independent of each of the parties. To the best of my knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the foreseeable future, that need be disclosed as they might be of such a nature as to call in to question my independence in the eyes of one or both of the parties.

The procedural history is as follows:

06 May 2017 01:52 Dispute received  
08 May 2017 09:27 Complaint validated  
08 May 2017 09:29 Notification of complaint sent to parties  
26 May 2017 02:30 Response reminder sent  
02 June 2017 16:54 Response received  
07 June 2017 10:40 Notification of response sent to parties  
09 June 2017 10:43 Reply received  
09 June 2017 10:43 Notification of reply sent to parties  
12 June 2017 16:26 Mediator appointed  
15 June 2017 14:45 Mediation started  
29 June 2017 13:49 Mediation failed  
29 June 2017 13:50 Close of mediation documents sent  
11 July 2017 02:30 Complainant full fee reminder sent  
11 July 2017 08:31 Expert decision payment received

### **4. Factual Background**

The Complainant is a US company, incorporated in Delaware on 17 June 2013. It manufactures and supplies commercial drones and related technology in the US under the name “Kespry”. Its website is at [www.kespry.com](http://www.kespry.com).

The Complainant owns the following registered trade marks for “KESPRY” in classes 9, 12 and 39:

- US trade mark no. 4,996,436, filed 5 October 2015 and claiming a first use date of 1 May 2015; and
- EU trade mark no. 015273279, filed 23 March 2016.

On 22 October 2014, the Complainant issued a press release on various business news websites announcing that it had raised \$10 million in financing.

The Respondent registered the Domain Name on 22 October 2014.

As of 5 March 2017, the Respondent used the Domain Name for a parking page with assorted subject headings (unrelated to drones) plus a “may be for sale” notice inviting inquiries to purchase the domain name.

On 16 March 2017, the Complainant sent a price enquiry to the Respondent. On the same day, the Respondent's representative responded with a price of \$9,999.

## **5. Parties' Contentions**

### Complaint

A summary of the Complaint is as follows:

The Complainant is well known through the US. It has promoted itself via its website and Twitter, gaining widespread media coverage.

The Complainant has generated millions of dollars in revenue from selling products bearing the "Kespry" mark.

The Complainant relies on recognition of its mark in the marketplace prior to the Respondent's registration of the Domain Name.

The Respondent has been found to have registered domain names corresponding to third party trade marks in at least five prior DRS decisions.

Registration of the Domain Name on the same day as the Complainant's press release is evidence of abusive registration. It is highly unlikely that this was a coincidence. The Respondent engaged in similar conduct in DRS 18171 (sprinklr.co.uk).

The Respondent's offer to sell the Domain Name for \$9,999 is further evidence of abusive registration.

The Respondent has no reasonable justification for registering the Domain Name which exactly matches the Complainant's trade mark, a coined term. It cannot sensibly refer to anyone other than the Complainant.

The Respondent registered the Domain Name to unfairly disrupt the Complainant's business and to block the Complainant from acquiring the Domain Name.

### Response

A summary of the Response is as follows:

The Respondent registered the Domain Name for one particular project "though it is not being started now" and is being parked temporarily. The Respondent has detailed plans to use the domain name in the near future. It intends to set up a health website. The word "spry" means "active; nimble; agile" and the Domain Name is therefore very suitable for the Respondent's intended usage.

The word “Kespry” was originally created by the Respondent. It is not generic. Although the Respondent has no trade mark, and is preparing to apply for one, it was entitled to register the Domain Name according to the general first come, first served principle applicable to domain names.

The Respondent was not aware of the Complainant, including the October 2014 press release, when it registered the Domain Name. The Respondent registered the Domain Name for its own needs, unrelated to the Complainant.

The Complainant has no rights.

Its trade marks are only registered in in classes 9, 12 and 39. The Complainant is not entitled to stop others using the word “Kespry” in other classes.

The application dates for the Complainant’s registered trade marks post-date registration of the Domain Name. The Complainant has provided no evidence that, before registration of the Domain Name, the Complainant registered a company in the UK or engaged in commercial or marketing activities in the UK or that the word “Kespry” was recognised by the UK public.

The Domain Name is not an abusive registration.

The Respondent registered the Domain Name “for the good wish usage”.

The Respondent did not want to sell the Domain Name and it is reserved for future online services. The parking pages are automatically generated and do not reflect the Respondent’s intentions.

The Respondent did not proactively approach or offer to sell to any particular person, including the Complainant. The offer to sell the Domain Name for \$9,999 “have nothing with the Respondent”.

The Complainant is guilty of reverse domain name hijacking (“RDNH”). The fact that the Complainant owns kespry.com does not give it the automatic right to obtain the Domain Name. The Complainant is a large company bullying the Respondent, and individual.

### Reply

A summary of the Reply is as follows:

The Respondent’s alleged plans for the Domain Name are belied by his failure to use the Domain Name for two and half years and by the existence of the “may be for sale” link on the website at the Domain Name.

The Respondent’s explanation for selection of the Domain Name is based on the meaning of “SPRY” but there is no mention of the remainder of the name: “KE”. Also,

the Respondent fails to say when he allegedly created the term and provides no supporting evidence. It is improbable that the Respondent independently created the term more than a year after the Complainant started using it and at the same time as the Complainant publicly announced funding.

The Complainant does not need to prove registration or use of its mark in the UK in order to establish rights under the DRS. It also suffices if the trade mark post-dates registration of the domain name.

There is no evidence supporting the Respondent's claim of RDNH. The Complainant is justified in using the DRS and has done so in good faith.

In addition to his history of abusive registrations, the Respondent has a history of making the same meritless agreements as he has used in this case.

## **6. Discussions and Findings**

### General

To succeed, the Complainant has to prove in accordance with paragraph 2 of the DRS Policy on the balance of probabilities, first, that it has "Rights" (as defined in paragraph 1 of the DRS Policy) in respect of a name or mark identical or similar to the Domain Name and, second, that the Domain Name, in the hands of the Respondent, is an "Abusive Registration" (as defined in paragraph 1 of the DRS Policy).

### Complainant's Rights

The meaning of "Rights" is defined in the DRS Policy as follows:

*"Rights means rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning"*

The Complainant's EU trade mark constitutes rights in the term "KESPRY" for the purposes of the Policy.

Although the Respondent contends otherwise, it does not matter that the trade mark was registered after registration of the Domain Name. The establishment of "rights" is assessed as at the date of filing the Complaint. The fact that a domain name pre-dates a trade mark is potentially relevant when considering the Respondent's state of mind in connection with abusive registration but it does not arise in relation to this first factor under the Policy.

Nor does it assist the Respondent that the Complainant has not demonstrated the existence of any trading or marketing activity in the UK, whether before or after registration of the domain name. First, a registered trade mark alone is sufficient to generate rights under the Policy. Second, overseas rights (unregistered and registered) can also suffice – see paragraph 1.5 of the DRS Experts’ Overview at [https://www.nominet.uk/wp-content/uploads/2015/08/Expert\\_Overview.pdf](https://www.nominet.uk/wp-content/uploads/2015/08/Expert_Overview.pdf). Here, it is unnecessary to consider the claimed overseas rights given the Complainant’s possession of an EU trade mark.

For the above reasons, I am satisfied that the Complainant has established rights in a name or mark which is identical to the Domain Name, disregarding the domain name suffix.

### Abusive Registration

Does the Domain Name constitute an abusive registration in the hands of the Respondent? Paragraph 1 of the DRS Policy defines “Abusive Registration” as a domain name which either:

- “i. was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainant’s Rights; OR*
- ii. has been used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant’s Rights.”*

I have little difficulty in concluding that that the Domain Name is an abusive registration for the following reasons:

1. It was registered on the same day that the Complainant issued a press release announcing that it raised \$10 million in financing. It is inherently unlikely that the Respondent independently coined the same made-up name on the same date as the press release. The lack of coincidence is reinforced by the circumstances set out below.
2. The Respondent has provided no evidence in support of his claim to have a “detail[ed] plan” to use the Domain Name for a health website. Furthermore, the Respondent’s attempt to justify this intended use on grounds that the domain name includes the word “sprit”, meaning “active; nimble; agile”, is in my view unconvincing. The word “sprit” is hardly a prominent part of the Domain Name and, on its own, is pronounced differently to that way that it sounds within the Domain Name. And, as the Complainant points out, the Respondent makes no mention of the remaining “ke” part of the domain name. Nor does the Respondent say why his alleged project has failed to materialise in the almost three years since the Domain Name was registered. Overall, this explanation by the Respondent looks like a belated attempt to justify and defend the registration rather than a genuine and legitimate rationale for its original acquisition.

3. The Respondent has been the subject of at least six adverse DRS decisions as follows: DRS 18863 (dollarshaveclub.co.uk), 18171 (sprinklr.co.uk), 18025 (stitchfix.co.uk), 14289 (lytro.co.uk), 12686 (lyxor.co.uk), 12473 (baupost.co.uk). While the presumption of abusive registration in paragraph 5.3 of the Policy does not apply as only two of those decisions occurred in the two years before the Complaint was filed, nonetheless they are a clear indicator that the Respondent has engaged in a pattern of abusive registrations. Indeed those other DRS cases are characterised by a similar modus operandi to that there, namely registration of .co.uk domain names reflecting the names of US companies which had just announced funding as well as similarly-worded DRS responses with unsupported claims of intended alleged use for projects which had not yet begun and “temporary” parking page use in the meantime. In his Response in this case, the Respondent avoids any mention of his involvement in these previous DRS cases.

## **7. Decision**

I find that the Complainant has rights in a mark which is identical to the Domain Name and that the Domain Name is, in the hands of the Respondent, an abusive registration. I therefore direct that the Domain Name kespry.co.uk be transferred to the Complainant.

**Signed:** Adam Taylor

**Dated:** 2 August 2017