

ADMINISTRATIVE PANEL DECISION

Harcros Chemicals Inc. v. george parker
Case No. D2023-0786

1. The Parties

Complainant is Harcros Chemicals Inc., United States of America (“U.S.” or “United States”), represented by Husch Blackwell LLP, United States.

Respondent is george parker, United States.

2. The Domain Name and Registrar

The disputed domain name <harcros.info> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 22, 2023. On February 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 22, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on February 23, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on February 28, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on March 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 22, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on March 24, 2023.

The Center appointed John C. McElwaine as the sole panelist in this matter on April 18, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

Complainant is a full-line chemical distribution and manufacturing company with facilities across the United States, India, and China. Relevant to this matter, Complainant is the owner of U.S. Reg. No. 1,752,109, for the mark HARCROS, registered on February 16, 1993, for a full line of chemicals in International Class 1 (the "HARCROS Mark").

On February 7, 2023, the Domain Name was registered with the Registrar. The Domain Name resolves to a website displaying pay-per-click advertisements.

5. Parties' Contentions

A. Complainant

As background in this matter, Complainant alleges that for more than three decades it has used the HARCROS Mark and invested resources in branding, advertising, marketing, and promoting its innovative and sustainable chemicals in the global market. Complainant also alleges that it uses the HARCROS Mark online and in connection with its website located at <harcros.com>.

With respect to the first element of the Policy, Complainant contends that the Domain Name is identical to the HARCROS Mark.

With respect to the second element of the Policy, Complainant alleges that Respondent has no rights to the HARCROS Mark and is not commonly known by the Domain Name. Complainant further alleges that Respondent is not making a *bona fide* offering of goods or services because there is no content at the website. Complainant contends, instead, that Respondent is using the Domain Name to send emails posing as an actual employee of Complainant. Complainant further asserts that the scheme involves this fake employee sending "Notice of Unpaid Invoice" emails using the Domain Name and requesting payment of outstanding balances from Complainant's customers.

With respect to the third element of the Policy, Complainant alleges that the evidence demonstrates that Respondent is using the Domain Name in bad faith to disrupt Complainant's business and capitalize on Complainant's HARCROS Mark. Complainant points out that the Domain Name was registered on February 7, 2023, and fraudulent emails were sent to Complainant's customers at least as early as February 8, 2023. As a result, Complainant asserts that there can be no reasonable dispute that Respondent registered the Domain Name for the purpose of creating a likelihood of confusion with Complainant's HARCROS Mark as to the source, sponsorship, affiliation, or endorsement of Respondent's conduct. Additionally, Complainant alleges that these actions were taken by Respondent to deceive Complainant's customers into sending Respondent money to pay purported "outstanding balances."

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Even though Respondent has defaulted, paragraph 4(a) of the Policy requires that, in order to succeed in this UDRP proceeding, Complainant must still prove its assertions with evidence demonstrating:

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

Because of Respondent's default, the Panel may accept as true the reasonable factual allegations stated within the Complaint and may draw appropriate inferences therefrom. See *St. Tropez Acquisition Co. Limited v. Anonymous Speech LLC and Global House Inc.*, WIPO Case No. [D2009-1779](#); *Bjorn Kassoe Andersen v. Direction International*, WIPO Case No. [D2007-0605](#); see also paragraph 5(f) of the Rules ("If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint"). Having considered the Complaint, the Policy, the Rules, the Supplemental Rules, and applicable principles of law, the Panel's findings on each of the above-cited elements are as follows.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires Complainant show that the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights. Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2. Complainant has provided evidence that it is the owner of a United States trademark registration for the HARCROS Mark.

Here, the Domain Name consists entirely of Complainant's HARCROS Mark. In other words, the Domain Name is identical to Complainant's mark, only following with a generic Top-Level Domain. Accordingly, the Panel finds the Domain Name to be identical to Complainant's HARCROS Mark. Thus, it is the Panel's finding that Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under the Policy, paragraph 4(a)(ii), Complainant has the burden of establishing that Respondent has no rights or legitimate interests in the Domain Name. Complainant need only make a *prima facie* showing on this element, at which point the burden of production shifts to Respondent to present evidence that it has rights or legitimate interests in the Domain Name. If Respondent has failed to do so, then Complainant is deemed to have satisfied its burden under paragraph 4(a)(ii) of the Policy. See *Vicar Operating, Inc. v. Domains by Proxy, Inc. / Eklin Bot Systems, Inc.*, WIPO Case No. [D2010-1141](#); see also *Nicole Kidman v. John Zuccarini, d/b/a Cupcake Party*, WIPO Case No. [D2000-1415](#); *Inter-Continental Hotels Corporation v. Khaled Ali Soussi*, WIPO Case No. [D2000-0252](#).

The Policy, paragraph 4(c), provides a non-exhaustive list of circumstances in which a respondent could demonstrate rights or legitimate interests in a contested domain name:

- "(i) before any notice to you of the dispute, your use 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

With respect to Complainant’s contention that Respondent is not commonly known by the Domain Name, the Panel notes that the Whois information lists Respondent as “george parker” and the Panel therefore finds, based on the record and the lack of evidence otherwise, that Respondent is not commonly known by the Domain Name. See *Moncler S.p.A. v. Bestinfo*, WIPO Case No. [D2004-1049](#) (the Panel notes that the Respondent’s name is “Bestinfo” and that it can therefore not be “commonly known by the Domain Name.”)

Complainant asserts that the Domain Name is being used for an email scam that involved use of the HARCROS Mark in the email address and in the signature line of the email. In addition, the email purports to be from the “General Credit Manager” of Complainant and requests payment for large sums of “outstanding balances”. The Panel finds that the purpose of registering the Domain Name was to engage in email scheme to defraud Complainant’s customers, which is not a *bona fide* offering of goods or services. [WIPO Overview 3.0](#), section 2.13.1 (“Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.”); see also, *CMA CGM v. Diana Smith*, WIPO Case No. [D2015-1774](#) (finding that the respondent had no rights or legitimate interests in the disputed domain name holding, “such phishing scam cannot be considered a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the Domain Name”.) The undisputed evidence of impersonation, deception, and fraud nullifies any possible basis for the acquisition of rights or legitimate interests by Respondent. See *Afton Chemical Corporation v. Meche Kings*, WIPO Case No. [D2019-1082](#).

Accordingly, Complainant has made a *prima facie* showing of Respondent’s lack of rights or legitimate interests and Respondent has failed to come forward to rebut that showing. As provided by paragraph 14 of the Rules, the Panel may draw such inferences from Respondent’s default as it considers appropriate. Therefore, the Panel is entitled to accept that Complainant has established the second element of the Policy; Respondent has no rights or legitimate interests in respect of the Domain Name, pursuant to the Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, Complainant must show that Respondent registered and is using the Domain Name in bad faith. Paragraph 4(b) of the Policy sets out a non-exhaustive list of factors constituting bad faith. Complainant contends that Respondent’s use of the Domain Name in connection with a scheme to defraud prospective job seekers for Respondent’s commercial gain is acting in opposition to Complainant and disrupting Complainant’s business.

Bad faith registration can be found where respondents “knew or should have known” of complainant’s trademark rights and nevertheless registered a domain name in which it had no rights or legitimate interests. See *Accor v. Kristen Hoerl*, WIPO Case No. [D2007-1722](#). Based on Complainant’s submission, which was not rebutted, Respondent must have known of Complainant’s HARCROS Mark, its products and even its customers, when Respondent registered the Domain Name particularly as Respondent sought to impersonate Complainant’s employee and sent at least one email claiming to be from General Credit Manager of Complaint. See *WhatsApp Inc. v. Francisco Costa*, WIPO Case No. [D2015-0909](#) (finding that “it is likely improbable that Respondent did not know about Complainant’s WHATSAPP trademark at the time it registered the Disputed Domain Name considering the worldwide renown it has acquired amongst mobile applications, and the impressive number of users it has gathered since the launch of the WhatsApp services in 2009”.) It is worth noting that the date of the alleged fraudulent email was February 8, 2023, which is the one day after the Domain Name was registered.

Additionally, Respondent is using the Domain Name in bad faith by intentionally attempting to attract, for commercial gain, Internet users by creating a likelihood of confusion with Complainant’s HARCROS Mark as to affiliation with Respondent’s website or online location in violation of paragraph 4(b)(iv) of the Policy. The

Domain Name is identical to Complainant's HARCROS Mark except for the Top Level Domain, which would mislead Internet users into thinking that Respondent's or its emails were from or affiliated with Complainant. See *eBay Inc. v. Douglas Bennett*, WIPO Case No. [D2015-1178](#).

The use of a confusingly similar, deceptive domain name for an email scam has previously been found by panels to be sufficient to establish that a domain name has been registered and is being used in bad faith. See *Samsung Electronics Co., Ltd. v. Albert Daniel Carter*, WIPO Case No. [D2010-1367](#); *Securitas AB, supra*, WIPO Case No. [D2013-0117](#). Moreover, in finding a domain name used only for an email scam was bad faith, the panel in *Kramer Law Firm, P.A. Attorneys and Counselors at Law v. BOA Online, Mark Heuvel*, WIPO Case No. [D2016-0387](#), pointed out that numerous UDRP panels have found such impersonation to constitute bad faith, even if the relevant domain names are used only for email. See, e.g., *Terex Corporation v. Williams Sid, Partners Associate*, WIPO Case No. [D2014-1742](#) ("Respondent was using the disputed domain name in conjunction with...an email address for sending scam invitations of employment with Complainant"); and *Olayan Investments Company v. Anthono Maka, Alahaji, Koko, Direct investment future company, ofer bahar*, WIPO Case No. [D2011-0128](#) ("although the disputed domain names have not been used in connection with active web sites, they have been used in email addresses to send scam emails and to solicit a reply to an 'online location'"); see also, [WIPO Overview 3.0](#), section 3.1.4.

For this reason, the Panel holds that Complainant has met its burden of showing that Respondent registered and is using the Domain Name in bad faith.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name, <harcros.info>, be transferred to Complainant.

/John C McElwaine/

John C McElwaine

Sole Panelist

Date: May 2, 2023