

ADMINISTRATIVE PANEL DECISION

Herr Foods Inc. v. virken irawan
Case No. D2023-0810

1. The Parties

The Complainant is Herr Foods Inc., United States of America (“United States”), represented by John Berryhill, Ph.d., Esq., United States.

he Respondent is virken irawan, Indonesia.

2. The Domain Name and Registrar

The disputed domain name <goodnaturedselects.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 22, 2023. On February 23, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 23, 2023, the Registrar transmitted by email to the Center its verification response:

- (a) confirming the disputed domain name is registered with it;
- (b) confirming the language of the registration agreement is English; and
- (c) disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint.

The Center sent an email communication to the Complainant on February 24, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on February 24, 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 the 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. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 23, 2023.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on April 6, 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

The Complainant is a privately owned producer of packaged snack foods with its headquarters in Pennsylvania in the United States. It was founded in 1946. It now produces over 350 products under several brands, has over 1500 employees and according to estimates from various sources earns revenues in the range of USD 500 million per year.

In 2013, the Complainant introduced a new range of baked snacks under the trademark GOOD NATURED SELECTS. One of the products in this range, the Good Natured Selects Tuscan Garden Medley, was selected as one of the Most Innovative New Products of 2013 by an expert panel at the annual Sweets & Snacks Expo held in Chicago sponsored by the National Confectioners Association.

The images of the packaging in evidence show the Complainant's trademark in a "logo" form:



However, the Complainant is also the owner of United States Registered Trademark No. 6,027,660, GOOD NATURED SELECTS, which was filed on August 30, 2019 and registered in the Principal Register on April 7, 2020 in respect of a range of food products in International Classes 29 and 30.

Prior to launching the new range, the design firm engaged by the Complainant to develop its branding and marketing had registered the disputed domain name on the Complainant's behalf on November 29, 2012. The Complainant used the disputed domain name to market its "Good Natured Selects" range from its launch until 2019.

In 2019, however, the Complainant decided to consolidate its online assets in one website under its domain name, "www.herrs.com". As a result of this strategy, the registration of the disputed domain name was later allowed to lapse.

In fact, the registration was not due to expire until November 29, 2020. It was not in fact deleted. Instead, on January 11, 2021, the Whois record was updated and by March 2021, the registration details changed to record an unknown registrant apparently located in Hanoi, Viet Nam. At some point after March 2021, the Respondent became the registrant (if the Respondent is not the person indicated by the March 2021 Whois record).

When the Complaint was filed, the disputed domain name resolved to an online gambling website, "Rubah4D". While there is some English on the website, most of the text is in Indonesian. According to the Complainant, the text on this website "Penyedia Keluaran Hk Tercepat Di Indonesia" machine-translates to "The fastest HK output provider in Indonesia".

5. Discussion and Findings

No response has been filed. The Complaint and Written Notice have been sent, however, to the Respondent at the electronic and physical coordinates confirmed as correct by the Registrar in accordance with paragraph 2(a) of the Rules. The courier attempting delivery of the Written Notice was unable to complete delivery. Bearing in mind the duty of the holder of a domain name to provide and keep up to date correct Whois details, therefore, the Panel finds that the Respondent has been given a fair opportunity to present his or its case.

When a respondent has defaulted, paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint in the absence of exceptional circumstances. Accordingly, paragraph 15(a) of the Rules requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable.

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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.

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

The Complainant has proven ownership of the registered trademark in the United States for GOOD NATURED SELECTS.

The Complaint also includes evidence that the Complainant's products are stocked in major retail outlets including the Complainant's own website, Amazon, Walmart, Kroger, Walgreens, BJs. These appear to be United States-based outlets.

In undertaking the comparison of the disputed domain name to the proven trademark(s), it is permissible in the present circumstances to disregard the generic Top Level Domain (gTLD) component as a functional aspect of the domain name system. See *e.g.* WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([WIPO Overview 3.0](#)), section 1.11.

Disregarding the ".com" gTLD, therefore, the disputed domain name is identical to the Complainant's registered trademark.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is identical with the Complainant's trademark and the requirement under the first limb of the Policy is satisfied.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant. Panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See e.g., [WIPO Overview 3.0](#), section 2.1.

The Respondent acquired the disputed domain name after the Complainant registered its trademark.

The Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it.

The disputed domain name is not derived from the Respondent's name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived. From the Complainant's TMview search, it does not appear that the Respondent owns a registered trademark corresponding to the disputed domain name.

As the Complainant contends, the combination of terms in the Complainant's trademark is not directly descriptive of either the Complainant's products or the services being offered from the Respondent's website. Nor is the particular combination an ordinary or common expression in English.

While gambling services are remote from the snack foods field in which the Complainant operates, the Panel accepts the Complainant's contention that the use of its trademark in the disputed domain name for such services does not qualify as a good faith offering of goods or services for the purposes of the Policy in the circumstances of this case.

Those circumstances are that the expression comprised in the disputed domain name has no apparent connection with the Respondent. It is not descriptive of gambling services. Further, the Complainant's trademark consists of English words which in combination have no obvious or commonly accepted meaning.

Further still, there does not appear to be any reason why a meaningless combination of English words comprised in the disputed domain name would be adopted for a website directed to an Indonesian audience. On the other hand, so far as the record in this proceeding shows, the three words in combination have significance through their use as the Complainant's trademark and, over a number of years, as the domain name for the Complainant's website for the Complainant's range of "Good Natured Selects" products.

Accordingly, the Panel finds it appears likely that the Respondent registered the disputed domain name to take advantage of the Complainant's reputation in its trademark. Targeting the Complainant's trademark in this way does not qualify as a good faith offering under the Policy. See *e.g. Sbarro Franchise Co. LLC v. xiao ming chen, chenxiao ming*, WIPO Case No. [D2022-0550](#).

Moreover, it appears that the provision of online gambling services of the kind offered through the Respondent's website is illegal under Indonesian law. See *e.g. Toyota Motor Sales, U.S.A., Inc. v. Privacy Service Provided by Withheld for Privacy ehf / Lexus mpo168*, WIPO Case No. [D2022-2413](#).

These matters, taken together, are sufficient to establish a *prima facie* case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain name. The basis on which the Respondent has adopted the disputed domain name, therefore, calls for explanation or justification. The Respondent, however, has not sought to rebut that *prima facie* case or advance any claimed entitlement. Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

C. Registered and Used in Bad Faith

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see *e.g. Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd*, WIPO Case No. [D2010-0470](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

There is no direct evidence that the Respondent was aware of the Complainant's trademark when registering the disputed domain name.

However, the circumstances referred to in section 5B above lead to an inference that the Respondent registered the disputed domain name to take advantage of its resemblance to the Complainant's trademark. Given that inference in the absence of any explanation or justification by the Respondent, the Panel finds that the Respondent registered the disputed domain name in bad faith.

That conclusion would be reinforced if, as the Complainant contends, the Respondent registered the disputed domain name as part of a "drop-catching" process. See *e.g. Supermac's (Holdings) Limited v. Domain Administrator, DomainMarket.com*, WIPO Case No. [D2018-0540](#) and *James Patrick Duffy v. Nie Nie*, WIPO Case No. [D2021-0713](#).

The Respondent's use of the disputed domain name to attract users to the Respondent's online gambling website is similar to the circumstances identified in paragraph 4(b)(iv) of the Policy as an example of registration and use in bad faith:

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

Further, use of the disputed domain name in connection with gambling services has the potential to tarnish the Complainant's reputation in its trademark. The Complainant's trademark is used for its range of products designed to be wholesome and made from natural ingredients. The Complainant's brand is also directed to consumers of all ages and, it is apparent from the Complainant's website, that the Complainant promotes the virtues of being a family run company with community engagement. Gambling services are not a good fit with this image. Indeed, it appears that online gambling services are illegal in Indonesia. The association of the Complainant's trademark with a gambling website, therefore, could well undermine the functioning of the trademark, all the more so where the gambling services appear to be illegal. See e.g. *Toyota Motor Sales, U.S.A., Inc. v. Privacy Service Provided by Withheld for Privacy ehf / Ixus mpo168*, WIPO Case No. [D2022-2413](#).

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 disputed domain name, <goodnaturedselects.com>, be transferred to the Complainant.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: April 20, 2023