

ADMINISTRATIVE PANEL DECISION

Hershey Chocolate & Confectionery LLC v. XI JINGPING

Case No. D2023-2045

1. The Parties

The Complainant is Hershey Chocolate & Confectionery LLC, United States of America ("US"), represented by Arnold & Porter Kaye Scholer LLP, US.

The Respondent is XI JINGPING, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <hershevs.com> ("Disputed 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 May 8, 2023. On May 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On May 9, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed 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 the Complainant on May 23, 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 May 25, 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 May 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 15, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 16, 2023.

The Center appointed Gabriela Kennedy as the sole panelist in this matter on August 30, 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 an American chocolate and confectionary company. The Complainant and its affiliated companies manufacture and sell products, including under the HERSHEY'S brand, throughout the US and elsewhere. The Complainant holds a number of trademark registrations for or containing the mark HERSHEY'S ("Complainant's Trademark") around the globe.

The relevant trademark registrations include, *inter alia*, US Trademark Registration No. 54041 for the mark ~~Hershey's~~ registered on June 19, 1906 in Class 30, US Trademark Registration No. 863592 for the mark HERSHEY'S registered on January 14, 1969 in Classes 1, 5, 29, 30, 31, and 32, and US Registration No. 1455684 for the mark HERSHEY registered on September 1, 1987 in Classes 35, 37, 39, 40, 41, and 42.

The Complainant's Trademark is also fully incorporated in the Complainant's domain names <hersheys.com> and <hersheyland.com>, both of which provide information about its HERSHEY'S products.

The Disputed Domain Name was registered by the Respondent on April 17, 2023. As of the date of this decision, the Panel notes that the Disputed Domain Name currently resolves to an inactive webpage which displays a message stating "hershevs.com refused to connect". However, the Complainant has provided evidence that the Disputed Domain Name was used in connection with a phishing scheme that targeted partners and vendors of the Complainant via the Respondent's email address "[...]"@hershevs.com".

5. Parties' Contentions

A. Complainant

The Complainant's primary contentions can be summarized as follows:

- (a) The Disputed Domain Name is identical or confusingly similar to the Complainant's Trademark. The Disputed Domain Name merely contains a minor misspelling of the Complainant's Trademark, where the letter "y" in the Complainant's Trademark was replaced with the letter "v". This *de minimis* variation does not prevent a finding of confusing similarity between the Disputed Domain Name and the Complainant's Trademark.
- (b) The Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent is not affiliated in any way with the Complainant and has not obtained any authorization from the Complainant to use the Complainant's Trademark as part of a domain name or otherwise. The Disputed Domain Name was registered by the Respondent with the sole purpose of defrauding the Complainant's partners and customers, which does not constitute legitimate or fair use of the Disputed Domain Name.
- (c) Both the Respondent's registration and use of the Disputed Domain Name establish the Respondent's bad faith. Given the history of the HERSHEY'S brand and reputation that the Complainant has acquired in the Complainant's Trademark, the Respondent must have been fully aware of the existence of the Complainant's rights in the Complainant's Trademark when the Respondent registered and used the Disputed Domain Name. Further, the Respondent used the Disputed Domain Name to impersonate the Complainant's employee to perpetrate a fraudulent phishing scheme against the Complainant's partners and vendors. The registration of the Disputed Domain Name also in itself constitutes typo-squatting and creates initial interest confusion among Internet users. Therefore, the Respondent has registered and used the Disputed Domain Name in bad faith.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements:

- (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 by the Respondent in bad faith.

A. Identical or Confusingly Similar

The Panel accepts that the Complainant has rights in the Complainant's Trademark, based on its various trademark registrations such as those listed in Section 4.

The Disputed Domain Name incorporates the Complainant's Trademark in its entirety save the replacement of the letter "y" with the letter "v", which are visually very similar especially in lowercase. UDRP panels have consistently found that a common, obvious, or intentional misspelling of a trademark does not alter the fact that the domain name at issue is confusingly similar to the mark in question. See section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Here, the Panel finds that the Disputed Domain Name contains sufficiently recognizable aspects of the Complainant's Trademark despite the minor misspelling.

As such, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's Trademark, and accordingly, paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

The Panel accepts that the Complainant has not authorized the Respondent to use the Complainant's Trademark. There is no relationship between the Complainant and the Respondent which would otherwise entitle the Respondent to use the Complainant's Trademark. Accordingly, the Panel is of the view that a *prima facie* case has been established by the Complainant and it is for the Respondent to show rights or legitimate interests in the Disputed Domain Name.

Once a complainant establishes a *prima facie* case in respect of the lack of rights or legitimate interests of a respondent in a disputed domain name, the respondent then carries the burden of demonstrating that it has rights or legitimate interests in the disputed domain name. Where the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent did not submit a formal Response. The fact that the Respondent did not submit a formal Response does not automatically result in a decision in favor of the Complainant. However, the Respondent's failure to file a formal Response may result in the Panel drawing appropriate inferences from such default. The Panel may also accept all reasonable and supported allegations and inferences flowing from the Complainant as true (see *Entertainment Shopping AG v. Nischal Soni, Sonik Technologies*, WIPO Case No. [D2009-1437](#); and *Charles Jourdan Holding AG v. AAIM*, WIPO Case No. [D2000-0403](#)).

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish rights or legitimate interests in the Disputed Domain Names by demonstrating any of the following:

- (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 name corresponding to the Disputed Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondent 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 non-commercial 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.

The Panel agrees with the Complainant that there is no evidence to show that the Respondent has trademark rights corresponding to the Disputed Domain Name, or that the Respondent has become known by the Disputed Domain Name.

There is no evidence to suggest that the Respondent's use of, or demonstrable preparations to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name, is in connection with a *bona fide* offering of goods or services or be regarded as legitimate non-commercial or fair use. The Respondent would likely not have adopted the Complainant's Trademark (or its misspelling) if not for the purpose of creating an impression that the Disputed Domain Name or any communication using the Disputed Domain Name is associated with or originates from the Complainant or otherwise is taking unfair advantage of the goodwill of the Complainant's Trademarks. In this regard, the Panel also notes that the typo-squatting nature of the Disputed Domain Name itself highlights the Respondent's intention to confuse Internet users unaware of the misspelled letter, which cannot constitute fair use.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name and the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar to a widely-known trademark by an unaffiliated entity can already in itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

After reviewing the supporting evidence submitted by the Complainant, the Panel agrees with the Complainant that the Complainant's Trademark appears to be well-known. A quick Internet search conducted by the Panel shows that the top search results returned for the mark HERSHEY'S relate to the Complainant's services and/or third party websites providing information relating to the Complainant's services. Along with the fact that the Disputed Domain Name incorporates an intentional misspelling of the Complainant's Trademark, the Panel agrees with the Complainant that the Respondent must have been aware of the Complainant and its rights in the Complainant's Trademark when registering and using the Disputed Domain Name.

In addition, the Panel finds that the following factors support a finding that the Disputed Domain Name was registered and has been used by the Respondent in bad faith:

- (i) The Respondent has used an email address associated with the Disputed Domain Name to send phishing emails to the Complainant's partners and vendors and deceive them into making fraudulent payments by impersonating the Complainant's employee;
- (ii) Even putting aside the phishing emails, it is difficult to conceive of any plausible use of the Disputed Domain Name that would amount to good faith use, given that the Disputed Domain Name has virtually incorporated the Complainant's Trademark in its entirety. Also, as discussed above, the Respondent lacks

any rights or legitimate interests in the Disputed Domain Name (see *Washington Mutual, Inc. v. Ashley Khong*, WIPO Case No. [D2005-0740](#)); and

(iii) The Respondent failed to respond to the Complainant's contentions and has provided no evidence of his actual or contemplated good faith use of the Disputed Domain Name.

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, <hershevs.com>, be transferred to the Complainant.

/Gabriela Kennedy/

Gabriela Kennedy

Sole Panelist

Date: September 13, 2023