

ADMINISTRATIVE PANEL DECISION

The Hand Group LLC v. See PrivacyGuardian.org, Domain Administrator
Case No. D2023-3378

1. The Parties

The Complainant is The Hand Group LLC, United States of America ("United States"), represented by Smith, Gambrell & Russell, LLP, United States.

The Respondent is See PrivacyGuardian.org, Domain Administrator, United States.

2. The Domain Name and Registrar

The disputed domain name <thedopestshops.com> is registered with NameSilo, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 7, 2023. On August 7, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 8, 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 Privacy, PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 15, 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 August 15, 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 August 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 12, 2023.

The Center appointed Evan D. Brown as the sole panelist in this matter on September 25, 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 purveyor of cannabis products. It owns the unregistered mark THE DOPEST which it claims to have begun using in 2021 in connection with the sale of chocolate bars and gummies containing or derived from hemp, vapes, and smoking articles. The Complainant filled an application in the United States Patent and Trademark Office (“USPTO”) for THE DOPEST on November 1, 2021 with Serial No. 97103108. The Complainant operates its activities under the domain name <thedopestshop.com>. According to the Whois information, the disputed domain name was registered on July 30, 2023. The Respondent has used the disputed domain name to publish a website that is a knockoff of the Complainant’s legitimate website.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the Complainant’s trademark; that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (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. The Panel finds that all three of these elements have been met in this case.

A. Identical or Confusingly Similar

This element requires the Panel to consider two issues: first, whether the Complainant has rights in a relevant mark; and, second, whether the disputed domain name is identical or confusingly similar to that mark. This element under the Policy functions primarily as a standing requirement. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 1.7.

The Panel finds the Complainant has unregistered or common law rights in the THE DOPEST mark for purposes of the Policy based on how the Complainant has used that mark in commerce. Though the Complainant does not have a registration for the mark, the Panel notes that the “Wayback Machine” site shows the mark in use on the Complainant’s website at least as early as December 2021. The Panel notes that Complainant has alleged that it makes extensive use of its mark under its domain name <thedopestshop.com>. In fact, the Complainant uses its trade name THE DOPEST on its website that it operates since at least October 2021. The disputed domain name is clearly a deliberate misspelling of Complainant’s domain name.

Consistent with UDRP panel practice, the Panel finds that Respondent has deliberately targeted Complainant's mark, and this fact supports a finding that Complainant's mark has achieved significance as a source identifier for purposes of the Policy. [WIPO Overview 3.0](#), sections 1.3.

The disputed domain name incorporates the THE DOPEST mark in its entirety with the term "shops", which does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's THE DOPEST mark. [WIPO Overview 3.0](#), section 1.8. The THE DOPEST mark remains recognizable for a showing of confusing similarity under the Policy.

Furthermore, the overall facts and circumstances the case, including the content of the website to which the disputed domain name resolves indicates that the Respondent is targeting the Complainant's unregistered trademark rights. This reinforces a finding of confusing similarity. [WIPO Overview 3.0](#), section 1.15.

Accordingly, the Panel finds that the Complainant has established this first element under the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

On this point, the Complainant asserts, among other things, that: (1) the Respondent has no relationship with the Complainant and is not operating a website licensed or approved by the Complainant, (2) the Complainant has not given to the Respondent authorization to use its mark or any permutation of them, (3) the Respondent is using the disputed domain name to confuse Internet users.

The Panel finds that the Complainant has made the required *prima facie* showing. The Respondent has not presented evidence to overcome this *prima facie* showing. Nothing in the record otherwise tilts the balance in the Respondent's favor.

Accordingly, the Panel finds that the Complainant has established this second element under the Policy.

C. Registered and Used in Bad Faith

The Policy requires a complainant to establish the domain name was registered and is being used in bad faith. The Policy describes several non-exhaustive circumstances demonstrating a respondent's bad faith use and registration. Under paragraph 4(b)(iv) of the Policy, a panel may find bad faith when a respondent "[uses] the domain name to intentionally attempt to attract, for commercial gain, Internet users to [respondent's] web site or other on-line location, by creating a likelihood of confusion with complainant's mark as to the source, sponsorship, affiliation, or endorsement of [respondent's] web site or location or a product or service on [the respondent's] web site or location".

The Respondent's bad faith registration and use of the disputed domain name is clear in this case. The record leaves no reasonable doubt that the Respondent targeted the Complainant and its THE DOPEST mark when it registered the disputed domain name. This is bolstered from the fact that the Respondent then used the disputed domain name to set up a website—likely for fraudulent purposes—imitating the Complainant. The Panel finds that the disputed domain name was registered and used in bad faith.

Accordingly, the Panel finds that the Complainant has established this third element under the Policy.

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 <thedopestshops.com> be transferred to the Complainant.

/Evan D. Brown/

Evan D. Brown

Sole Panelist

Date: October 9, 2023