

## **ADMINISTRATIVE PANEL DECISION**

Hershey Entertainment & Resorts Company v. Matthew Faust, Hershey Bears 2023 Calder Cup Champions Gear  
Case No. D2023-3384

### **1. The Parties**

Complainant is Hershey Entertainment & Resorts Company, United States of America ("United States"), represented by Saxton & Stump, United States.

Respondent is Matthew Faust, Hershey Bears 2023 Calder Cup Champions Gear, United States.

### **2. The Domain Name and Registrar**

The disputed domain name <hersheybears2023champs.com> is registered with Tucows Inc. (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 7, 2023. On August 8, 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 (Contact Privacy Inc. Customer 0167627711) and contact information in the Complaint. The Center sent an email communication to Complainant on August 15, 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 August 18, 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 August 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 12, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 25, 2023.

The Center appointed Georges Nahitchevansky as the sole panelist in this matter on October 2, 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, Hershey Entertainment & Resorts Company, owns and operates a professional hockey team in the American Hockey League. Complainant, under a license from Hershey Chocolate & Confectionary LLC (a subsidiary of The Hershey Company), uses the name and mark HERSHEY BEARS for its hockey team and for associated merchandise that Complainant sells. Complainant is the exclusive licensee of the HERSHEY BEARS mark and has used that name and mark for its hockey team since 1936.

The HERSHEY BEARS mark is registered in the United States and is owned by Hershey Chocolate & Confectionary LLC. These include numerous existing registrations for HERSHEY BEARS as a word mark or as part of a logo (Registrations Nos. 1648189, 1648884, 4651734, 5333035, 5333036, 5348895, 5441148, 5489654, 5489655, 5489657, 5489658, 5489659, 5510803, and 5558286), the earliest of which issued to registration in 1991.

Respondent registered the disputed domain name on June 24, 2023. Respondent thereafter used the disputed domain name for a website that offered for sale various clothing and other products through Shopify, an e-commerce platform. Complainant filed a Trademark Infringement Notice with Shopify on June 26, 2023, and Respondent's website was taken down on July 27, 2023. Currently, the disputed domain name resolves to a web page that states "Sorry, this store is currently unavailable."

#### **5. Parties' Contentions**

##### **A. Complainant**

Complainant maintains that as an exclusive licensee of Hershey Chocolate & Confectionary LLC, and user of the HERSHEY BEARS mark, it has standing to initiate this proceeding. Complainant further asserts that the HERSHEY BEARS mark is well-known on account of Complainant's longstanding use of the name and mark since 1936, in conjunction with its professional hockey team.

Complainant contends that the disputed domain name is confusingly similar to the HERSHEY BEARS mark as the HERSHEY BEARS mark is fully incorporated in the disputed domain name and includes additional wording that expressly relates to the fact that Complainant's hockey team won the 2023 American Hockey League Championship.

Complainant asserts that the Respondent has no rights or legitimate interests in the disputed domain name as Respondent has not used, or made preparations to use, the disputed domain name with a *bona fide* offering of goods or services and has instead used the disputed domain name for a website offering for sale counterfeit goods bearing the HERSHEY BEARS trademark.

Lastly, Complainant argues that the disputed domain name has been registered and used in bad faith by Respondent for the sale of counterfeit goods for Respondent's profit. Complainant further argues that Respondent knowingly registered the disputed domain name, which is based on the HERSHEY BEARS mark and the Complainant's hockey team, which won the 2023 American Hockey League Championship, for purposes of attracting Internet users to Respondent's website. Complainant further notes that Respondent's website prominently featured Complainant's HERSHEY BEARS logo, thus making it clear that Respondent had actual knowledge of Complainant's rights.

## B. Respondent

Respondent did not reply to Complainant's contentions.

## 6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (i) the disputed 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 disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

### A. Identical or Confusingly Similar

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. See section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). Here, while Complainant does not own the HERSHEY BEARS trademark or the associated registration, Complainant has provided sufficient evidence that it is the exclusive trademark licensee of the HERSHEY BEARS mark by virtue of a license granted by the trademark owner Hershey Chocolate & Confectionary LLC. As such, Complainant has sufficient rights in the HERSHEY BEARS mark under the Policy for purposes of establishing standing to file this Complaint. [WIPO Overview 3.0](#) at section 1.4.1 and relevant cases cited therein.

Given that Complainant has established its rights in the HERSHEY BEARS mark and that Complainant has used that mark in connection with its professional hockey team and for associated merchandise well before the disputed domain name was registered, the remaining question under the first element of the Policy is whether the disputed domain name (typically disregarding the generic Top-Level Domain such as ".com") is identical or confusingly similar with Complainant's mark. See *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#). The threshold for satisfying this first element is low and generally panels have found that fully incorporating the identical mark in a disputed domain name is sufficient to meet the standard of the first element.

In the instant proceeding, the disputed domain name is confusingly similar to Complainant's HERSHEY BEARS mark as it fully incorporates the identical HERSHEY BEARS mark in the disputed domain name. The addition of the number and word "2023 champs" at the tail of the disputed domain name does not prevent the disputed domain name from being confusingly similar to Complainant's HERSHEY BEARS mark as that mark is clearly visible and the dominant component of the disputed domain name.

The Panel therefore finds that Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in Complainant's HERSHEY BEARS mark and in showing that the disputed domain name is confusingly similar to that trademark.

### B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the complainant must make at least a *prima facie* showing that the respondent possesses no rights or legitimate interests in a disputed domain name. *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once the complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

The evidence submitted in this proceeding shows that Respondent has used the disputed domain name for a website that features Complainant's HERSHEY BEARS logo and which appears to offer clothing products bearing the HERSHEY BEARS mark and relating to Complainant's hockey team and its 2023 championship win, such as jerseys, t-shirts, and hoodies. Complainant maintains that these are counterfeit products. Whether the products are in fact counterfeit products is not altogether clear as there is no evidence showing that the goods are actually counterfeit products as opposed to genuine products bearing the HERSHEY BEARS marks that were legitimately sourced for resale by Respondent through an independent authorized source.

That being said, the Panel notes that not only does the disputed domain name suggest a connection to Complainant and its hockey team, but the text within Respondent's website was written in a way to make the website appear to be a legitimate site operated or authorized by Complainant. Cumulatively, these facts seem to render Respondent's activities suspicious, particularly as Respondent did not reply to Complainant's takedown of the Shopify web page at the disputed domain name, and given that Respondent has chosen not to appear in this proceeding to defend its actions or Complainant's assertion that the goods being sold on Respondent's website are counterfeit products.

In all, Respondent's actions do not appear to be legitimate. Beyond the likelihood that the goods in question may be counterfeits, Respondent is clearly attempting to sell its products in a way that purposefully makes them appear to be authorized by Complainant. Simply put, it is not legitimate for Respondent to essentially suggest some form of connection, sponsorship or endorsement by Complainant for purposes of selling products. Respondent is not connected to Complainant and taking measures that in their totality misleadingly imply some form of affiliation with Complainant is not a legitimate or fair use even under the "*Oki Data Test*". [WIPO Overview 3.0](#) at sections 2.5.1 and 2.8.2

Given that Complainant has established with sufficient evidence that it owns rights in the HERSHEY BEARS mark, and given Respondent's above noted actions, the Panel concludes that Respondent does not have rights or legitimate interests in the disputed domain name and that none of the circumstances of paragraph 4(c) of the Policy are evident in this case.

### **C. Registered and Used in Bad Faith**

Respondent's actions, as noted above, including his failure to respond to the takedown of its Shopify page at the disputed domain name or to appear in this proceeding, make it more likely than not that Respondent opportunistically registered and used the disputed domain name, which is based on Complainant's HERSHEY BEARS mark, to intentionally and misleadingly attract Internet users to Respondent's website to sell unauthorized or counterfeit products for Respondent's own profit. See [WIPO Overview 3.0](#), section 3.1.4 (and cases cited therein).

That Respondent registered and used the disputed domain name in bad faith is further underscored by Respondent's clear attempt to position the website as somehow connected to or authorized by Complainant to celebrate Complainant's hockey team championship in 2023. The use of a disputed domain name that conjures up the HERSHEY BEARS team and championship in 2023 along with a web page that prominently feature the HERSHEY BEARS logo are, at the very least, confusing and likely to heighten the misconception that the website and the products being sold therein are authorized by Complainant.

Accordingly, the Panel finds that Complainant succeeds under this element of 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 <hersheybears2023champs.com> be transferred to Complainant.

*/Georges Nahitchevansky/*

**Georges Nahitchevansky**

Sole Panelist

Date: October 16, 2023