

## ADMINISTRATIVE PANEL DECISION

### Heaven Hill Distilleries, Inc. v. Domains By Proxy, LLC / Name Redacted Case No. D2022-0999

#### 1. The Parties

The Complainant is Heaven Hill Distilleries, Inc., United States of America (“United States”), represented by Wyatt, Tarrant & Combs, LLP, United States.

The Respondent is Domains By Proxy, LLC, United States / Name Redacted.<sup>1</sup>

#### 2. The Domain Name and Registrar

The disputed domain name <heavenhiill.net> (the “Domain Name”) is registered with Wild West Domains, LLC (the “Registrar”).

#### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 23, 2022. On March 24, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On the same date, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on March 29, 2022 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 the same date.

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”).

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<sup>1</sup> The Respondent appears to have used the name of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on April 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 26, 2022.

By email dated April 7, 2022 a third party notified the Center that she had received by post a Written Notice of the Complaint and requested further explanations. On April 8, 2022 the Center sent an email communication to this third party informing her that a Complaint had been filed against an individual named as a Respondent in the amended Complaint (based on information provided by the Registrar in response to the Center's request for registrant identity verification). The Center also requested that the third party identify herself, clarifying her relationship (if any) to the individual named as a Respondent in the amended Complaint.

On April 9, 2022, the third party requested by email that the Center confirms the legitimacy of the Written Notice. By email dated April 12, 2022 the Center confirmed to the third party that the Complaint had been filed against an individual named as a Respondent in the amended Complaint and indicated that it had obligations under the Rules with respect to notification of a Complaint that include ensuring that Notification of the Complaint is forwarded to the contact details for the registrant of record as listed in the Whois data, or such as may be provided by the concerned Registrar. By email dated April 12, 2022 the Center informed the Parties of the email communications received from the third party.

On April 12, 2022 the third party sent email communications to the Center requesting to inform her of the content of the Complaint and the identity of the Complainant. By email dated April 13, 2022 the Center indicated the name of the Complainant to the third party. It further informed her that it can forward the Complaint at her email address, noting its obligations under paragraph 2(h) of the Rules in that case to copy the Complainant and Respondent to such correspondence. By email dated April 20, 2022 the Center informed the Parties of the third party communications received by the Center on April 12, 2022.

By emails dated April 20 and April 23, 2022 the third party requested to have a copy of the Complaint sent at her postal address or, alternatively, by email to a lawyer. By email dated April 26, 2022 the Center requested the third party to provide contact details of her lawyer, if she is represented, which she failed to do in her reply email of April 26, 2022.

On April 27, 2022 the Center notified the Parties that it will proceed to Panel appointment. On April 28, 2022, the third party indicated it would not take further action regarding the present matter.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on May 4, 2022. 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 was founded as a bourbon distiller and distributor in 1935. Today, the Complainant is the sixth largest spirits supplier in the United States, maintaining a broad portfolio of whiskeys, liqueurs, vodkas, rums, and other spirits.

The Complainant owns trademark registrations in the United States and worldwide for its HEAVEN HILL brand, all registered before the registration of the Domain Name, for example United States Registration No. 5934138 registered on December 10, 2019 and European Union Trade Mark No. 001871235 registered on December 12, 2001. The Complainant also holds registrations for domain names that include its HEAVEN HILL trademark.

The Domain Name was registered on February 7, 2022. The Complainant has documented that the Domain Name has redirected to a pay-per-click webpage and been used in connection to a fraudulent email scheme. At the time of drafting the Decision, the Domain Name resolved to an error page.

## **5. Parties' Contentions**

### **A. Complainant**

The Complainant provides evidence of trademark registration, and argues that the Domain Name is virtually identical to the Complainant's trademark. The Domain Name is an intentional misspelling of the Complainant's trademark, adding a second "i" to the "hill" portion of the Domain Name.

The Complainant asserts that the Respondent has made no *bona fide* offering of goods and services, is not commonly known by the Domain Name, and is not making noncommercial fair use of the Domain Name. Accordingly, the Respondent cannot establish legitimate rights in the Domain Name. The Respondent has used the Domain Name for a pay-per-click webpage. Moreover, the Domain Name has been used to set up an email account involved in a phishing attempt.

The Complainant argues that the Respondent has intentionally attempted to attract Internet users, for commercial gain, by creating confusion with the Complainant's trademark, evident from the use of the Domain Name. The Respondent's registration and use of the Domain Name is typosquatting. The fact that the Domain Name for the time being is not used but only resolves to an error page does not demonstrate a lack of bad faith on the part of the Respondent, see the doctrine of passive holding.

### **B. Respondent**

The Respondent did not reply to the Complainant's contentions. However, as referenced above, the Center received several communications from a third party between April 7 and 28, 2022 – such communications did not clarify the third party's relationship to the Respondent (if any) or indicate any ownership or interest in the Domain Name, or otherwise impact the Complainant's contentions.

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar**

The Complainant has established that it has rights in the trademark HEAVEN HILL. The test for confusing similarity involves a comparison between the trademark and the Domain Name. The Domain Name incorporates the Complainant's trademark in its entirety and is different to the trademark by only one character. The minor alteration does not prevent a finding of confusing similarity between the Domain Name and the trademark, see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.9.

For the purpose of assessing under paragraph 4(a)(i) of the Policy, the Panel may ignore the generic Top-Level Domain, see [WIPO Overview 3.0](#), section 1.11.

The Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

### **B. Rights or Legitimate Interests**

There is no evidence in the case file that the Respondent can establish rights in the Domain Name. The Domain Name has resolved to a pay-per-click webpage, which does not indicate a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the Complainant's mark, see [WIPO](#)

[Overview 3.0](#), section 2.9. Moreover, the Respondent's use of the Domain Name to send phishing emails is clearly not *bona fide*, but rather evidence of bad faith, see below.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name in accordance with paragraph 4(a)(ii) of the Policy.

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

The Panel finds it probable that the Respondent was aware of the Complainant when the Respondent registered the Domain Name. The Domain Name is a typosquatting of the Complainant's trademark. The Respondent has not provided any evidence of good-faith use. The use of the Domain Name to set up an email account used for phishing purposes is further evidence of bad faith. Finally, the Respondent's use of a privacy protection service to conceal its identity, and apparent use of false contact details, further point to bad faith.

For the reasons set out above, the Panel concludes that the Domain Name was registered and is being used in bad faith, within the meaning of paragraph 4(a)(iii) 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 Domain Name <heavenhiill.net> be transferred to the Complainant.

*/Mathias Lilleengen/*

**Mathias Lilleengen**

Sole Panelist

Date: May 18, 2022