

ADMINISTRATIVE PANEL DECISION

Heaven Hill Distilleries, Inc. v. Rhonda Turner, Fletcher Media Co
Case No. D2022-1268

1. The Parties

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

Respondent is Rhonda Turner, Fletcher Media Co, United States.

2. The Domain Name and Registrar

The disputed domain name <deepeddyfication.com> (the “Domain Name”) 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 April 9, 2022. On April 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 11, 2022, 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 Complainant on April 14, 2022, 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 April 14, 2022.

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 April 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 17, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on May 23, 2022.

The Center appointed John C. McElwaine as the sole panelist in this matter on May 30, 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

Complainant is a spirits supplier in the United States. DEEP EDDY vodka was first introduced as a brand in April 2010 by Complainant's predecessor-in-interest. Since the brand's introduction, Complainant has spent over USD 100,000,000 in marketing since 2017 and made over USD 85,000,000 in revenue in 2021. Relevant to this proceeding, Complainant owns several registrations for DEEP EDDY, including:

- DEEP EDDY (U.S. Reg. No. 3895007), registered on December 21, 2010 in Class 33;
- DEEP EDDY (Australia Trade Mark No. 1602548), registered on August 27, 2014 in Class 33;
- DEEP EDDY (Canada Reg. No. TMA929269), registered on February 18, 2016 in Class 33;
- DEEP EDDY (Mexico Reg. No. 1454631), registered on May 15, 2014 in Class 33;
- DEEP EDDY (European Union Trade Mark No. 012507901), registered on May 28, 2014 in Class 33.

Collectively, these registered trademark rights are referred to herein as the "DEEP EDDY Mark" or "Complainant's Mark".

Additionally, Complainant has owned the registration for the domain name <deepeddyvodka.com> since December 2, 2009. Complainant owns at least seven other domain names that include the DEEP EDDY Mark.

The Domain Name was registered on December 2, 2021. At the time the Complaint was filed, the Domain Name resolved to a parked website displaying third-party links to ads and other businesses. Complainant has not authorized Respondent's registration or use of the Domain Name.

Respondent does not offer goods or services of its own on the parked website. Rather, the website provides mostly links to cleaning services. However, the website also resolved to a pay-per-click ("PPC") ad for vodka, which is the main product sold under Complainant's DEEP EDDY Mark. Respondent is provided with revenue from the click-through advertising. Additionally, the Domain Name is offered for sale.

5. Parties' Contentions

A. Complainant

Complainant argues that the Domain Name should be transferred to Complainant due to the reasons described below. Complainant alleges as follows:

With respect to the first element of the Policy, Complainant alleges that the Domain Name is essentially identical to Complainant's mark and thus confusingly similar. Complainant contends that the Domain Name incorporates Complainant's DEEP EDDY Mark in its entirety. Moreover, the Domain Name replaced the term "vodka" from Complainant's domain name with the common suffix "-fication". Complainant notes that the suffix "-fication" means "a making, creating, causing". Complainant argues that the addition of a common suffix does not distinguish the Domain Name from Complainant's Mark and serves to create confusion between the Domain Name and Complainant's Mark.

With respect to the second element, Complainant alleges first that Respondent is not using the Domain

Name in connection with a *bona fide* offering of goods or service. Complainant argues that the Domain Name resolves to a website with PPC searches, including one for vodka, and thus is not a *bona fide* use. Second, Complainant contends that Respondent is not commonly known by the Domain Name. Complainant did not authorize Respondent to register the Domain Name using Complainant's Mark. Moreover, Complainant alleges that Respondent's use of Complainant's Mark within the Domain Name is done solely to piggyback off of goodwill associated with the DEEP EDDY Mark. Third, Complainant alleges that there is no indication that Respondent has made a legitimate noncommercial or fair use of the Domain Name. Complainant argues that Respondent is engaged in a typosquatting scheme meant to intentionally confuse and profit off of Internet users.

With respect to the third element, Complainant argues that the Domain Name is registered and used in bad faith. Complainant argues that this element is met because Respondent intentionally sought to confuse Internet users as to the source, sponsorship, affiliation, or endorsement of their website with Complainant's Mark for commercial gain. Complainant contends as well that Respondent's typosquatting is dispositive of bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 4 of the Policy requires that a complainant demonstrate the following in order to succeed in a UDRP proceeding:

- (i) The 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 Domain Name; and
- (iii) Respondent has registered and used the Domain Name in bad faith.

Due to the absence of a response from Respondent, the Panel may accept the factual allegations stated in the Complaint as true and may draw appropriate inferences therefrom. See *St. Tropez Acquisition Co. Limited v. AnonymousSpeech LLC and Global House Inc.*, WIPO Case No. [D2009-1779](#); *Bjorn Kassoe Andersen v. Direction International*, WIPO Case No. [D2007-0605](#); see also paragraph 5(f) of the Rules ("If a respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint").

Complainant bears the burden of establishing these three elements by a preponderance of the evidence. See *Bootie Brewing Company v. Deanna D. Ward*, WIPO Case No. [D2003-0185](#). Taking into consideration the Complaint, the Policy, the Rules, the Supplemental Rules, and other applicable principals of law, the Panel's findings on each of the three elements are as follows.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires that Complainant show beyond a preponderance of evidence that Respondent's Domain Name is identical or confusingly similar to Complainant's Mark.

Complainant has established the threshold requirement that they have trademark rights by showing ownership of several registrations for the DEEP EDDY Mark. 4(a)(i) of the Policy; WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.

The Domain Name includes Complainant's Mark in its entirety. The use of the entirety of Complainant's

Mark is sufficient to establish that the Domain Name is confusingly similar. See *Vicar Operating, Inc. v. Domains by Proxy, Inc. / Ekin Bot Systems, Inc.*, WIPO Case No. [D2010-1141](#); *F. Hoffmann-La Roche AG v. MEDISOURCE LTD*, WIPO Case No. [D2009-0990](#).

Here, Respondent's Domain Name included the addition of the suffix "-fication" to the end of Complainant's distinctive DEEP EDDY Mark. The DEEP EDDY Mark remains clearly recognizable in the Domain Name, and so this addition does not prevent a finding of confusing similarity. [WIPO Overview 3.0](#), section 1.8.

In sum, the Domain Name is confusingly similar to Complainant's Mark because it contains the entirety of the DEEP EDDY Mark. For these reasons, pursuant to paragraph 4(a)(i) of the Policy, the Panel finds that Complainant has shown a preponderance of the evidence that the Domain Name is confusingly similar to Complainant's Mark.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(a)(ii) of the Policy, Complainant has the burden of establishing that Respondent does not have rights or legitimate interests in the Domain Name. Complainant must make only a *prima facie* showing of this element. See *The Wikimedia Foundation, Inc. v. Abid Karmali*, WIPO Case No. [D2018-0708](#). The burden then shifts to Respondent to present evidence that it has rights or legitimate interests in the Domain Name. If Respondent fails to meet this burden, then Complainant is deemed to have shown that Respondent has no rights or legitimate interests in the Domain Name. See *Wikimedia Foundation, Inc. v. Withheld for Privacy Purposes, Privacy Service Provided by Withheld for Privacy ehf / Olive Digital*, WIPO Case No. [D2021-3336](#).

A lack of response allows the Panel to infer that the evidence would not be favorable to Respondent. See *Alcoholics Anonymous World Services, Inc., v. Lauren Raymond*, WIPO Case No. [D2000-0007](#); *Ronson Plc v. Unimetal Sanayi ve Tic. A.S.*, WIPO Case No. [D2000-0011](#). Additionally, due to the lack of response, it may be assumed that a respondent has no rights or legitimate interests in the domain name at issue. See *Osram GmbH v. Nguyễn Trần Dũng*, WIPO Case No. [D2021-0304](#). Here, Respondent was properly served by the Center and failed to respond to the Complaint. Inferences made from this lack of a response support the findings below.

As stated in paragraph 4(c) of the Policy, a respondent may demonstrate rights or legitimate interests in a Domain Name: (i) if the Domain Name is used in connection with a *bona fide* offering of goods; (ii) if Respondent has been commonly known by the Domain Name; or (iii) if Respondent is making a legitimate noncommercial or fair use of the Domain Name.

Complainant has satisfied paragraph 4(c) of the Policy. First, the Domain Name is not used in connection with a *bona fide* offering of goods. Past panels have recognized that the use of a domain name to host a parked page with pay-per-click links is not a *bona fide* offering of goods when "such links compete with or capitalize on the reputation and goodwill of [...] complainant's mark or otherwise mislead Internet users." See [WIPO Overview 3.0](#), section 2.9; *Express Scripts, Inc. v. Windgather Instruments Ltd. / Mr. Cartwright*, WIPO Case No. [D2007-0267](#). However, the Panel does note that parking webpages may be permissible in some circumstances, as discussed in section 2.9 of [WIPO Overview 3.0](#). Nevertheless, none of those factors are seen here. Due to the similarity of the Domain Name when compared to Complainant's DEEP EDDY Mark, Respondent's use of the Domain Name is an attempt to redirect Internet users to its PPC advertising site or to solicit offers for purchase of the parked Domain Name. Thus, it is evident that Respondent seeks to capitalize on Complainant's Mark and mislead Internet users.

Second, Respondent is not commonly known by the Domain Name. Absent other information, it is reasonable to infer when a Whois search reveals no correlation between the domain name and a respondent that the respondent is not commonly known by that domain name. See *LK International AG v. Fundacion Private Whois*, WIPO Case No. [D2013-0135](#). Here, the Whois search identified Respondent as Rhonda Turner, Fletcher Media Co. There is no evidence that Respondent is known as "Deep Eddy" or "Deep Eddyfication". Thus, it is reasonable to infer that Respondent is not commonly known by the Domain Name.

Third, Respondent cannot show that their use is a “legitimate noncommercial or fair use” under paragraph 4(c)(iii). The Domain Name resolves to a website with PPC ads - a plainly commercial use. Such activity is not considered a fan site, criticism, or other activity that may be considered legitimate noncommercial or fair. See *Overstock.com, Inc. v. Metro Media*, WIPO Case No. [DME2009-0001](#) (respondent’s use of the disputed domain name to establish a parking page was “plainly not noncommercial”).

Therefore, the Panel finds that Complainant made a *prima facie* showing of Respondent’s lack of rights or legitimate interests in the Domain Name. Respondent failed to rebut this showing; therefore, the Panel may draw such inference from Respondent’s default as it considers appropriate. For these reasons, the Panel finds that pursuant to paragraph 4(a)(ii) and 4(c), Respondent has no rights or legitimate interests in the Domain Name.

C. Registered and Used in Bad Faith

Complainant must show that according to paragraph (a)(iii) of the Policy, Respondent registered and is using the Domain Name in bad faith. The Policy under paragraph 4(b) provides a non-exhaustive list of factors that may be used when considering whether Respondent has registered and used the Domain Name in bad faith. There are several indications here that the Domain Name is registered and used in bad faith.

Previous panels have found that while parking a domain name is not always necessarily an activity of bad faith, it may be considered bad faith “where the registrant is using the domain name in this manner because of its similarity to a mark [...] in the hope and expectation that that similarity would lead to confusion on the part of Internet users and result in an increased number of Internet users being drawn to that domain name parking page.” See *Blue Cross and Blue Shield Association, Empire HealthChoice Assurance, Inc. dba Empire Blue Cross Blue Shield and also dba Empire Blue Cross v. Private Whois Service / Search and Find LLC. / Michigan Insurance Associates / 4 Letter Domains Inc. / New York Health Ins.*, WIPO Case No. [D2010-1699](#). Moreover, “it does not matter that when the Internet user arrives at the pay-per-click site that it then becomes clear that the website is unconnected with the trade mark holder.” See *id.* As seen above, the Domain Name is confusingly similar to Complainant’s Mark. Thus, it can be inferred that Respondent’s parking of the Domain Name is bad faith because it is likely that Respondent intentionally choose a confusingly similar domain name to Complainant’s Mark in order to draw Internet users to the parked page.

Moreover, according to paragraph 4(b)(iv) of the Policy, bad faith may be shown if “by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location”. See *MathForum.com, LLC v. Weiguang Huang*, WIPO Case No. [D2000-0743](#) (finding bad faith under paragraph 4(b)(iv) of the Policy where the respondent registered a domain name confusingly similar to the complainant’s mark and the domain name was used to host a commercial website that offered similar services offered by the complainant under its mark); *CEAT Limited, CEAT Mahal, v. Vertical Axis Inc. / Whois Privacy Services Pty Ltd*, WIPO Case No. [D2011-1981](#) (finding bad faith as a result of respondent’s general offer to sell the domain name); *Virgin Enterprises Limited v. Balticsea LLC / Contact Privacy Inc. Customer 0134432592*, WIPO Case No. [D2016-2148](#) (finding that a general offering to sell the domain name was evidence of registration of the domain name in bad faith). Here, Respondent used a confusingly similar Domain Name in order to direct Internet users to their website with PPC links. Moreover, one of those links was for vodka, which is the same type of product that is sold by Complainant under its DEEP EDDY Mark. Lastly, the website is listed for sale. Thus, it is clear that Respondent intentionally attempted to attract, for commercial gain, Internet users to their website by creating a likelihood of confusion with Complainant’s Mark.

Although Respondent did not respond to Complainant, the Panel may draw conclusions from the established facts in the Complaint. See *Harvey Norman Retailing Pty Ltd v. Oxford-University*, WIPO Case No. [D2000-0944](#). Accordingly, the Panel holds that Complainant has shown a preponderance of the evidence that Respondent registered and used the Domain Name in bad faith under paragraphs 4(a)(iii) and 4(b)(iv) 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, <deepeddyfication.com>, be transferred to Complainant.

/John C. McElwaine/

John C. McElwaine

Sole Panelist

Date: June 13, 2022