

ADMINISTRATIVE PANEL DECISION

Homethreads.com LLC v. Domain Administrator, PrivacyGuardian.org / Chen Zihua, Fangrenye Technology
Case No. D2022-1328

1. The Parties

The Complainant is Homethreads.com LLC, United States of America (“U.S.”), represented by Greenspoon Marder, LLP, U.S.

The Respondent is Domain Administrator, PrivacyGuardian.org, U.S. / Chen Zihua, Fangrenye Technology, China.

2. The Domain Name and Registrar

The disputed domain name <homethreads.shop> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 13, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. Also on April 13, 2022, 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 and contact information in the Complaint.

The Center sent an email communication to the Complainant on April 20, 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 amendment to the Complaint on April 21, 2022.

The Center verified that the Complaint together with the amendment to the 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 April 25, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 15, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 16, 2022.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on May 18, 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 is a Florida limited liability company, which operates a retail website at “www.homethreads.com” featuring a range of furniture and other home goods. A declaration by the Complainant’s Chief Executive Officer states that the Complainant is the owner of the HOMETHREADS trademark, in use since at least January 1, 2018, adding that the Complainant advertises its goods and services actively via the Internet and through newspapers, magazines, radio and other media.

An article in “Westchester Magazine” entitled “How Homethreads Became the Nation’s Fastest-Growing Home Décor Site” dated August 10, 2021 notes that the Complainant’s business was launched in 2017, that it is on track to earn USD 50 million in 2021, and that it has a target of USD 1 billion earnings by 2026. The business is reported to support a curated assortment of 30 consumer-known brands and has offices in White Plains and Boca Raton, U.S.

The disputed domain name was created on March 8, 2022. Until it was blocked, the website associated with the disputed domain name was a cloned copy of the Complainant’s website with an alternative contact number and email address substituted for those of the Complainant.

On March 15, 2022, the Complainant submitted a report regarding the website associated with the disputed domain name to the content delivery network which acted as its web host. Following upon such complaint, the website associated with the disputed domain name was blocked.

5. Parties’ Contentions

A. Complainant

The Complainant contends as follows:

Identical or confusingly similar to a trademark in which the Complainant has rights

The Complainant has valid and enforceable common law rights in its HOMETHREADS trademark through continuous and exclusive use of said mark in commerce. The Complainant has operated its website under such mark since 2018 and the mark is prominently displayed throughout said site. The Complainant is the senior user of such mark since the Respondent did not register the disputed domain name until March 8, 2022.

The disputed domain name is identical and confusingly similar to the Complainant’s mark because it consists entirely of such mark with the Top-Level Domain (“TLD”) “.shop” on the end. The TLD has consistently been ruled irrelevant for the purposes of the identity or confusing similarity assessment. Furthermore, the TLD exacerbates confusion as “shop” is the descriptive word that describes the Complainant’s online retail services. The Respondent’s cloned website of the Complainant was designed to impersonate the Complainant and further mislead Internet users to believe that the disputed domain name is associated with the Complainant.

Rights or legitimate interests

The Respondent has no rights or legitimate interests in the disputed domain name. The HOMETHREADS mark belongs to the Complainant and the Respondent directly copied the Complainant’s website. The Complainant has neither authorized nor licensed the Respondent to use the disputed domain name. It has

no right to reproduce the content of the Complainant's website. There is no evidence to suggest that the Respondent's use of the disputed domain name relates to a *bona fide* offering of goods or services. The disputed domain name was registered years after the Complainant began using the HOMETHREADS mark. There is conclusive proof that the disputed domain name was used to impersonate the Complainant, except with the Respondent's contact information substituted. Such usage is not *bona fide*.

The Respondent represented to its Registrar that its use of Whois privacy would be in good faith and that none of the content associated with the disputed domain name would infringe upon the legal rights of any third party. A reasonable, prudent person would have made an Internet search to determine whether HOMETHREADS was owned by a third party. There is no legitimate or good faith reason for the registration of the disputed domain name. There is no evidence that the Respondent has been commonly known by the disputed domain name. The Respondent's cloned website is strong evidence that the Respondent deliberately used the disputed domain name to divert traffic from the Respondent's site to its own and there is no evidence of any legitimate noncommercial or fair use of the disputed domain name.

Registered and used in bad faith

The Respondent specifically targeted the Complainant's website by cloning the same with only a slight modification to reflect its own contact number and email address. The Respondent registered and is using the disputed domain name solely for the purpose of attracting Internet users to its website by creating a likelihood of confusion with the Complainant's website and misleading consumers to believe that they are on the Complainant's website. It is a reasonable inference that the Respondent's purpose of registration and use of the disputed domain name was to either disrupt or create confusion for the Complainant's business in bad faith. The Respondent's copying of the Complainant's website demonstrates its intent to target the Complainant's mark and to pass itself off as the Complainant in order to defraud the Complainant's customers.

It is believed that the Respondent hid behind a content delivery network which acted as its web host in order not to disclose the true web host, thereby hiding the true endpoint of such traffic. The extent to which the Respondent has concealed its identity is evidence that the disputed domain name was registered in bad faith. The fact that said network blocked the Respondent's website upon a complaint by the Complainant is strong evidence that the disputed domain name was registered in bad faith.

The Respondent is using the disputed domain name to forward traffic to its cloned website and screenshots taken on March 18, 2022 show such copying along with substitution of the Respondent's contact details. This evidence strongly suggests that the Respondent intentionally attempted to attract for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. Such deliberate traffic diversion can perpetuate identity theft and phishing schemes to steal the Complainant's customer information.

There is no plausible circumstance under which the Respondent could legitimately register or use the disputed domain name and it was therefore registered and 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.

A. Identical or Confusingly Similar

The first element inquiry under the Policy usually proceeds in two parts. First, the Complainant must demonstrate UDRP-relevant rights in a trademark, whether registered or unregistered. Secondly, such trademark is compared with the disputed domain name, typically on a straightforward side-by-side basis, usually disregarding the TLD, to assess identity or confusing similarity. If, on the basis of such comparison, the disputed domain name is seen to be identical to the Complainant's trademark, identity will generally be found, while if the Complainant's mark is otherwise recognizable in the disputed domain name, confusing similarity will usually be found.

In the present case, the Complainant claims that it possesses a common law trademark in the mark HOMETHREADS, which it says that it has been using since 2018. Section 1.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") sets out the types of evidence generally required to establish an unregistered mark for the purposes of the Policy, namely (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys. In the present case, the evidence consists principally of the media report into the Complainant's business activities, coupled with a formal declaration from one of the Complainant's principals. No independent evidence has been presented of the length of time during which the HOMETHREADS mark has been used by the Complainant.

The Panel determined that it would be relatively straightforward to obtain some evidential support for the Complainant's claim to first use of the HOMETHREADS mark by way of a perusal of the entries for the Complainant's website on the Internet Archive "Wayback Machine" (see section 4.8 of the [WIPO Overview 3.0](#): "it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision"). The "Wayback Machine" entries demonstrate that the Complainant's website was in operation, using the HOMETHREADS mark throughout, as early as October 14, 2017. This evidence, together with that of the media report regarding the Complainant's business dated August 10, 2021 including details of the Complainant's sales, and the Complainant's CEO's declaration, is sufficient for the Panel to find that the Complainant has unregistered trademark rights in the HOMETHREADS mark on the basis of factors (i), (ii) and (iv) of section 1.3 of the [WIPO Overview 3.0](#). Furthermore, although Panels do not typically consider website content in connection with the first element assessment, it can be relevant where, as here, it affirms the Complainant's position regarding its claim to unregistered trademark rights in the HOMETHREADS mark, as the fact that the Respondent has cloned the Complainant's website indicates that the Respondent is making a deliberate reference to the Complainant's business and is thereby targeting the said trademark.

Despite the fact that there is sufficient material on the record for finding that the Complainant possesses unregistered trademark rights, the evidence provided by the Complainant was not substantial. The Panel notes that it would have preferred to see far greater evidence, particularly in respect of the Complainant's claim regarding factor (iii) (advertising using the mark). This factor was merely the subject of a conclusory allegation that was not vouched by way of anything other than the CEO's declaration. As section 1.3 of the [WIPO Overview 3.0](#) indicates, conclusory allegations, even if undisputed in the particular UDRP case, would not normally suffice.

Turning to the comparison exercise, it may be seen that the disputed domain name is identical to the Complainant's said mark, disregarding the TLD. The Respondent has filed no Response and therefore has made no comment regarding the Complainant's claim to unregistered trademark rights or as to the question

of identity or confusing similarity between the disputed domain name and the Complainant's mark.

In all of these circumstances, the Panel finds that the disputed domain name is identical to the Complainant's trademark and accordingly that the Complainant has carried its burden with regard to paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists several ways in which the Respondent may demonstrate rights or legitimate interests in the disputed domain name:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

The consensus of previous decisions under the Policy is that a complainant may establish this element by making out a *prima facie* case, not rebutted by the respondent, that the respondent has no rights or legitimate interests in a domain name. In the present case, the Panel finds that the Complainant has established the requisite *prima facie* case based on its submissions that the Respondent has registered an identical domain name to the Complainant's HOMETHREADS mark, has used this in connection with a cloned version of the Complainant's website (other than substituted contact details), could not be said to be making a *bona fide* offering of goods and services thereby, is not commonly known by the disputed domain name, and is not making any legitimate noncommercial or fair use thereof.

In the above circumstances, the burden of production shifts to the Respondent to bring forward evidence of any rights or legitimate interests which it might have in the disputed domain name. The Respondent has remained silent and has not engaged with the present proceeding. There are no submissions or evidence available which might have supported any claim of rights or legitimate interests in respect of the disputed domain name. The Panel has been unable to determine any likely rights or legitimate interests which the Respondent might have claimed had it participated in this administrative proceeding. Furthermore, the use of the disputed domain name in connection with a website cloning that of the Complainant, presumably with a view to diverting the Complainant's customers to the Respondent's substituted contacts, could not be regarded as conferring any rights or legitimate interests upon the Respondent, whether in terms of paragraph 4(c)(i) of the Policy or otherwise.

In all of these circumstances, the Panel finds that the Respondent has failed to rebut the Complainant's *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name, and accordingly that the Complainant has carried its burden in terms of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides four, non-exclusive, circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out of pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) 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.”

In the circumstances of the present case, the Panel finds that there is evidence of the registration and use of the disputed domain name in bad faith based on the circumstances set out in paragraph 4(b)(iv) of the Policy. The disputed domain name has been used in connection with a cloned version of the Complainant's retail website where the only substituted details were the Respondent's contact information. The use of the disputed domain name in this fashion affirms that the Respondent was aware of the Complainant and of the Complainant's unregistered HOMETHREADS trademark at the point of registration of the disputed domain name.

It is clear to the Panel from the evidence on the present record that the Respondent deliberately intended to target the Complainant and the Complainant's mark for the purposes of diverting its customers to the Respondent, due to the substitution of alternative contact details on its otherwise cloned version of the Complainant's website. Such intentional diversion of the Complainant's customers on the part of the Respondent is an indicator of registration and use in bad faith under the Policy. Furthermore, the use of an identical domain name to a complainant's mark in connection with a website which clones the complainant's own website is manifestly considered evidence of bad faith under the Policy in its own right (see, for example, *FIL Limited v. Stewart Lawton*, WIPO Case No. [D2021-2218](#) and *Olympus Corporation v. WhoisGuard Protected, WhoisGuard, Inc. / Flash Webs*, WIPO Case No. [D2021-0382](#)).

In all of the above circumstances, the Panel finds that the disputed domain name has been registered and is being used in bad faith and therefore that the Complainant has carried its burden in terms 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 disputed domain name <homethreads.shop> be transferred to the Complainant.

/Andrew D.S. Lothian/

Andrew D. S. Lothian

Sole Panelist

Date: June 1, 2022