

ADMINISTRATIVE PANEL DECISION

Hershey Chocolate & Confectionery LLC v. Cab
Case No. D2022-3098

1. The Parties

The Complainant is Hershey Chocolate & Confectionery LLC, United States of America (“United States”), represented by Arnold & Porter Kaye Scholer LLP, United States.

The Respondent is Cab, China.

2. The Domain Name and Registrar

The disputed domain name <hersheya.com> (the “Domain Name”) is registered with Click Registrar, Inc. d/b/a publicdomainregistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 22, 2022. On August 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On August 23, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 August 26, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 15, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 16, 2022.

The Center appointed Ian Lowe as the sole panelist in this matter on September 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

The Complainant is a major United States manufacturer and seller of chocolate and confectionary products and snacks. Since 1894 it has sold a range of candy, chocolate and confectionary products under the HERSHEY'S mark. The Complainant operates a website at "www.hersheys.com", amongst others, promoting its Hershey's products.

The Complainant (together with its associate companies) is the proprietor of numerous registered trademarks around the world in respect of HERSHEY'S, including United States trademark number 0054041 stylized word mark HERSHEY'S registered on June 19, 1906, United States trademark number 0863592 HERSHEY'S registered on January 14, 1969 and European Union Trade Mark number 000381814 HERSHEY'S registered on June 4, 1999.

The Domain Name was registered on March 28, 2022. The contact details provided by the Respondent on registration are self-evidently false. The Domain Name does not currently resolve to an active website, but at the time of preparation of the Complaint it resolved to a website featuring pornographic images and links to a number of pornography websites and gaming/gambling websites.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to its HERSHEY'S trademark, that the Respondent has no rights or legitimate interests in respect of the Domain Name, and that the Respondent registered and is using the Domain Name in bad faith.

B. Respondent

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

6. Discussion and Findings

For this Complaint to succeed in relation to the Domain Name the Complainant must prove that:

- (i) the Domain Name is confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has uncontested rights in its HERSHEY'S trademarks, both by virtue of its numerous trademark registrations around the world and as a result of the goodwill and reputation acquired through its widespread use of the mark for over 125 years. Ignoring the generic Top-Level Domain ("gTLD") ".com", the Domain Name comprises the entirety of the Complainant's HERSHEY'S word mark save for the substitution of the letter "a" for the letter "s". In the Panel's view, this alteration does not detract from the confusing similarity between the Domain Name and the Complainant's mark.

Accordingly, the Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Complainant has made out a *prima facie* case that the Respondent could have no rights or legitimate interests in respect of the Domain Name. There is no evidence that the Respondent has ever been known by the Domain Name. The Respondent has not used the Domain Name in connection with a *bona fide* offering of goods or services but for a webpage comprising numerous pornographic images and pay-per-click links to other pornography websites and gaming/gambling websites.

The Respondent has never been licensed or otherwise authorized by the Complainant to use its HERSHEY'S trademarks.

The Respondent has chosen not to respond to the Complaint to explain its use of the Domain Name or to take any other steps to counter the *prima facie* case established by the Complainant. In the circumstances, the Panel finds that the Respondent does not have any rights or legitimate interests in respect of the Domain Name.

C. Registered and Used in Bad Faith

In light of the undoubted notoriety of the Complainant's mark and the very minor difference between the mark and the Domain Name, the Panel is in no doubt that the Respondent had the Complainant and its rights in the HERSHEY'S mark in mind when it registered the Domain Name. Accordingly, in the Panel's view, the Respondent registered the Domain Name for commercial gain with a view to taking unfair advantage of the Complainant's rights in the mark, by confusing Internet users into believing that the Domain Name was being operated by or authorized by the Complainant for legitimate purposes related to the Complainant's activities. The provision of false contact details by the Respondent on registering the Domain Name is further evidence of bad faith.

The association between the Complainant's HERSHEY'S mark and pornographic content also inevitably tarnishes the Complainant's mark.

In the circumstances, the Panel finds that the Domain Name has been registered and is being used in bad faith.

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 <hersheya.com> be transferred to the Complainant.

/Ian Lowe/

Ian Lowe

Sole Panelist

Date: October 14, 2022