

ADMINISTRATIVE PANEL DECISION

Hero Brands, Inc. v. pardism emma
Case No. D2022-4902

1. The Parties

Complainant is Hero Brands, Inc., United States of America (“United States”), represented by Stetina Brunda Garred & Brucker, United States.

Respondent is pardism emma, United States.

2. The Domain Name and Registrar

The disputed domain name <churchcannabiss.com> (the “Disputed Domain Name”) is registered with Web Commerce Communications Limited dba WebNic.cc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 21, 2022. On December 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On December 22, 2022, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and its 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 Respondent of the Complaint, and the proceedings commenced on January 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 2, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on February 6, 2023.

The Center appointed Richard W. Page as the sole panelist in this matter on February 10, 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 offers for sale cannabis vaping pens, cartridges, and batteries, among other products. Complainant is the owner of certain trademarks using CHURCH, including United States Registration No. 5,951,248 dated December 31, 2019, covering vaporizers for medical purposes; atomizers sold empty for medical use; and vapor cartridges sold empty for medical use in Class 010; and United States Registration No. 6,008,842 dated March 10, 2020 for batteries in Class 009 and glass storage jars in Class 021 (collectively the “CHURCH Mark”).

Respondent currently operates a website corresponding to the Disputed Domain Name at the “www.churchcannabiss.com”. This website states “FIND YOUR CHURCH Craft Cannabis Flower & Super Premium Distillate” and features “510 CARTRIDGES” and “BATTERIES”. According to Complainant, “510 CARTRIDGES” refer to vape cartridges having a 510 thread count that screw onto a 510 thread-count battery.

Under the webpage for “batteries”, the website offers for sale a “USC 510 Charger” and “510 Thread Adjustable Battery”. The image of the battery appears to be identical to Complainant’s products, as evidenced by the Specimens related to Complainant’s CHURCH Mark Registrations. Under the webpage for “Apparel”, there are images of various shirts and sweatshirts that feature the CHURCH Mark.

The Disputed Domain Name was registered on November 25, 2022.

5. Parties’ Contentions

A. Complainant

Complainant contends that it has rights in the CHURCH Mark and that the Disputed Domain Name is confusingly similar to the CHURCH Mark, pursuant to paragraph 4(a)(i) of the Policy. Complainant further contends that, based on the sight, sound, and meaning of the Disputed Domain Name, the Disputed Domain Name is sufficiently similar such that there is a likelihood of confusion as to the source of the related goods.

Complainant alleges that Respondent has no rights or legitimate interests in the Disputed Domain Name, pursuant to paragraph 4(a)(ii) of the Policy. Complainant further alleges that Respondent has not been using the Disputed Domain Name in connection with a *bona fide* offering of goods or services prior to the filing of this Complaint. Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name. Respondent intends to eventually mislead or divert Complainant’s customers or otherwise tarnish the CHURCH Mark.

Complainant asserts that the Disputed Domain Name was registered and is being used in bad faith, pursuant to paragraph 4(a)(iii) of the Policy. Complainant further asserts that Respondent registered or acquired the Disputed Domain Name for the purpose of at least marketing for sale vape cartridges and corresponding batteries. Complainant further asserts that Respondent’s website features identical goods as covered by Complainant’s trademark registrations and includes images and artwork that identically reproduce Complainant’s artwork of its highly stylized version of the CHURCH Mark. As such, the Disputed Domain Name was registered and is being used in bad faith, and Respondent’s Disputed Domain Name continues to be registered primarily for the purpose of disrupting the business of Complainant.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable.”

Even though Respondent has failed to file a Response or to contest Complainant’s assertions, the Panel will review the evidence proffered by Complainant to verify that the essential elements of the claims are met. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

Paragraph 4(a) of the Policy directs that Complainant must prove each of the following:

- i) that the Disputed Domain Name registered by Respondent is identical or confusingly similar to the CHURCH Mark in which Complainant has rights; and,
- ii) that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and,
- iii) that the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Complainant contends that it has rights in the CHURCH Mark and that the Disputed Domain Name is confusingly similar to the CHURCH Mark, pursuant to paragraph 4(a)(i) of the Policy.

Section 1.2.1 of the [WIPO Overview 3.0](#) states that registration of the trademark is *prima facie* evidence of Complainant having rights in the CHURCH Mark for purposes of standing to file the present Complaint.

Complainant has set forth the registrations of the CHURCH Mark, which have not been contested by Respondent. Therefore, the Panel finds that for purposes of this proceeding Complainant has enforceable trademark rights in the CHURCH Mark.

The Panel finds that the entirety of the CHURCH Mark is contained in the Disputed Domain Name. Section 1.7 of the [WIPO Overview 3.0](#) says that where a domain name incorporates the entire trademark, it will normally be considered confusingly similar to that trademark. Section 1.8 of the [WIPO Overview 3.0](#) instructs that the addition of other terms (whether descriptive, geographical, pejorative, meaningless or otherwise) does not prevent a finding of confusing similarity. Section 1.11.1 of the [WIPO Overview 3.0](#) instructs that generic Top-Level Domains such as “.com” may be disregarded for purposes of assessing confusing similarity.

The Panel further finds that the addition of the word “cannabiss” and the gTLD “.com” does not prevent a finding of confusing similarity.

Therefore, Complainant has met the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Complainant asserts that Respondent has no rights or legitimate interests in the Disputed Domain Name pursuant to paragraph 4(a)(ii) of the Policy.

Section 2.1 of the [WIPO Overview 3.0](#) states that once Complainant makes a *prima facie* case in respect of the lack of rights or legitimate interests of Respondent, Respondent carries the burden of demonstrating it has rights or legitimate interests in the Disputed Domain Name. Where Respondent fails to do so, Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

Paragraph 4(c) of the Policy allows three nonexclusive methods for the Panel to conclude that Respondent has rights or legitimate interests in the Disputed Domain Name:

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

Complainant alleges that Respondent has not been using the Disputed Domain Name in connection with a *bona fide* offering of goods or services prior to the filing of this Complaint. Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name. Respondent intends to eventually mislead or divert Complainant's customers or otherwise tarnish the CHURCH Mark.

Complainant further alleges that Respondent registered the Disputed Domain Name for the purpose of at least marketing for sale vape cartridges and corresponding batteries. Complainant has further provided evidence showing that the website at the Disputed Domain Name features identical goods as covered by Complainant's trademark registrations and includes images of products bearing the CHURCH Mark. Further, there is no indication in this file that Respondent has been commonly known by the Disputed Domain Name.

Furthermore, the Panel notes that the composition of the Disputed Domain Name, incorporating the Complainant's CHURCH Mark with a misspelling of the word "cannabis" affiliated with the Complainant's business, carries a risk of implied affiliation (see section 2.5.1 of [WIPO Overview 3.0](#)).

The Panel finds that Complainant has made a *prima facie* case and that Respondent has not contested Complainant's allegations.

Therefore, Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Complainant contends that Respondent registered and is using the Disputed Domain Name in bad faith in violation of paragraph 4(a)(iii) of the Policy.

Paragraph 4(b) of the Policy sets forth four nonexclusive criteria for Complainant to show bad faith registration and use of the Disputed Domain Name:

- (i) circumstances indicating that you [Respondent] have registered or you have acquired the Disputed Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Disputed Domain Name registration to Complainant who is the owner of the CHURCH Mark or to a competitor of Complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the Disputed Domain Name; or
- (ii) you [Respondent] have registered the Disputed Domain Name in order to prevent the owner of the CHURCH Mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you [Respondent] have registered the Disputed Domain Name primarily for the purpose of disrupting the business of a competitor; or

- (iv) by using the Disputed Domain Name, you [Respondent] 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 CHURCH Mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product on your website or location.

Complainant contends that Respondent registered or acquired the Disputed Domain Name for the purpose of at least marketing for sale vape cartridges and corresponding batteries. Complainant has further provided evidence showing that Respondent's website features identical goods as covered by Complainant's trademark registrations and includes images of products bearing the CHURCH Mark. Such impersonation of the Complainant is sufficient to establish that the Disputed Domain Name was registered and is being used in bad faith.

The Panel finds that such activities satisfy the necessary elements of paragraph 4(b)(iv) of the Policy.

Therefore, Complainant has met the requirements of paragraph 4(a)(iii).

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, <churchcannabiss.com>, be transferred to Complainant.

/Richard W. Page/

Richard W. Page

Sole Panelist

Date: February 14, 2023