

ADMINISTRATIVE PANEL DECISION

Heaven Hill Distilleries, Inc. v. Chloe Day
Case No. D2023-2453

1. The Parties

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

Respondent is Chloe Day, United States.

2. The Domain Name and Registrar

The disputed domain name <heavenhilldistilling.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 6, 2023. On June 7, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 7, 2023, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on June 9, 2023, 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 June 13, 2023.

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 June 16, 2023. In accordance with the Rules, paragraph 5, the due date for a Response was July 6, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on July 25, 2023.

The Center appointed Georges Nahitchevansky as the sole panelist in this matter on July 31, 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, Heaven Hill Distilleries, Inc., is a family owned and operated producer of distilled spirits in the United States. Complainant currently uses and has used the trade name Heaven Hill since 1935, and it owns and uses the trademark HEAVEN HILL in connection with its goods and services, for which it has obtained a number of trademark registrations. These include registrations for HEAVEN HILL, both as a word mark and as part of logo or stylized mark in, *inter alia*, the United States, the European Union, Japan and Mexico. Of particular relevance to this proceeding, Complainant owns in the United States a registration for HEAVEN HILL (Registration No. 693986 that issued to registration on March 1, 1960), HEAVEN HILL DISTILLERY EST 1935 (Registration No. 5242398 that issued to registration on July 11, 2017), and OLD HEAVEN HILL (Registration No. 355,451 that issued to registration on March 15, 1938). Complainant also owns and uses the domain name <heavenhill.com> for a website concerning Complainant and its brands and products.

Respondent appears to be an individual based in the United States. Respondent registered the disputed domain name on April 28, 2023, and has only used it as a redirect to Complainant's website at <heavenhill.com>. Respondent also appears to have configured the disputed domain name for email use. Currently, the disputed domain name continues to resolve to Complainant's official website at <heavenhill.com>.

5. Parties' Contentions

A. Complainant

Complainant maintains that it has strong rights in the HEAVEN HILL name and mark by virtue of its use of such since 1935, its several trademark registrations incorporating its HEAVEN HILL mark, its ownership and use of the domain name <heavenhill.com> for Complainant's official website, the ownership of multiple other domain names incorporating the HEAVEN HILL mark, and multiple prior UDRP decisions that have confirmed that the "HEAVEN HILL trademark is recognized in the public domain".

Complainant contends that the disputed domain name is essentially identical to Complainant's HEAVEN HILL mark and virtually identical to Complainant's business name, Heaven Hill Distilleries, Inc.

Complainant asserts that Respondent has no rights or legitimate interests in the disputed domain name as Respondent (i) is not using the disputed domain name in connection with a *bona fide* offering of goods or services, but a redirect to Complainant's website, (ii) is not commonly known by the disputed domain name, (iii) has not been authorized by Complainant to use a domain name consisting of the HEAVEN HILL mark, and (iv) has configured the disputed domain name for email use, in part of what may be an "untoward purpose, such as a phishing attack" given Respondent's simultaneous use of the disputed domain name as a redirect to Complainant's website.

Lastly, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith as Respondent has simply modified the suffix in Complainant's well-known name and mark in a likely effort to "confuse the disputed domain name with Complainant's mark and domain name". Complainant further argues that given the fact that the disputed domain name substantially corresponds to Complainant's business name it is obvious that Respondent has targeted Complainant and is not the result of a coincidence. Finally, Complainant contends that Respondent's bad faith is established by virtue of Respondent's use of the disputed domain name as a redirect to Complainant's website and its configuration for email use.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (i) the disputed 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 disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See Section 1.2.1. of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). Complainant has provided evidence that it owns trademark registrations for the HEAVEN HILL mark, and that such issued to registration years before Respondent registered the disputed domain name. Complainant has also provided evidence that it owns uses the trade name Heaven Hill Distilleries, Inc.

With Complainant’s rights the HEAVEN HILL mark established, the remaining question under the first element of the Policy is whether the disputed domain name (typically disregarding the general Top-Level Domain (“gTLD”) such as “.com”) is identical or confusingly similar with Complainant’s mark. See *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#). The threshold for satisfying this first element is low and generally UDRP panels have found that incorporating the entirety of a trademark in a disputed domain name is sufficient to meet this standing requirement.

In the instant proceeding, the disputed domain name is confusingly similar to Complainant’s HEAVEN HILL mark as it incorporates the entirety of the HEAVEN HILL mark with the common word “distilling,” which can be seen as a play on Complainant’s trade name Heaven Hill Distilleries, Inc. The Panel therefore finds that Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in Complainant’s HEAVEN HILL mark and in showing that the disputed domain name is confusingly similar to that trademark.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the complainant must make at least a *prima facie* showing that the respondent possesses no rights or legitimate interests in a disputed domain name. *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once the complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

Here, Respondent has only used the disputed domain name, since registering it on April 28, 2023, as a redirect to Complainant’s official website. Respondent has also configured the disputed domain name for email, as evidenced by MX records for the disputed domain name provided by Complainant. While there is no evidence that Respondent has in fact used the disputed domain name to send or receive actual emails, given that the disputed domain name is set up for email and that Respondent has only used the disputed domain name as a redirect to Complainant’s website, it is highly plausible, as Complainant contends, that Respondent may have registered the disputed domain name for some scheme for Respondent’s profit. Indeed, the fact that Respondent has chosen not appear in this proceeding to provide any explanation for her actions or for registering the disputed domain name that is confusingly similar to Complainant’s HEAVEN HILL mark and Heaven Hill Distilleries, Inc. trade name, makes it more likely than not that Respondent does not have any legitimate interest in the disputed domain name.

To be sure, because the disputed domain name incorporating the entirety of the HEAVEN HILL mark with the word “distilling,” which expressly relates to Complainant’s business and products, it carries a risk of being seen as connected to or affiliated with Complainant. Indeed, a web user seeing the disputed domain name could reasonably believe that it is related to Complainant or its products – particularly as it currently redirects to Complainant’s website. As such, the disputed domain name, in the absence of any credible explanation, essentially impersonates Complainant and cannot constitute a fair use or legitimate interest. See [WIPO Overview 3.0](#) at Section 2.5.

Given that Complainant has established with sufficient evidence that it owns rights in the HEAVEN HILL mark, and given Respondent’s above noted actions, the Panel concludes that Respondent does not have a right or legitimate interest in the disputed domain name and that none of the circumstances of paragraph 4(c) of the Policy are evident in this case.

C. Registered and Used in Bad Faith

In view of Respondent’s actions as noted above, the Panel finds that Respondent has more likely than not registered and used the disputed domain name in bad faith pursuant to paragraph 4(b) of the Policy.

Here, because Respondent has registered the disputed domain name that is based on Complainant’s exact HEAVEN HILL mark and trade name and used such as a redirect to Complainant’s official website and for potential email purposes, it is inconceivable that Respondent was not aware of Complainant or its products and services. As such, it appears more likely than not, particularly in view of Respondent’s failure to appear in this proceeding to explain or justify any of her actions, that Respondent registered the disputed domain name for some purpose that is not legitimate and for the benefit of Respondent.

As an aside, it should be noted that the fact the disputed domain name has been used as a redirect to Complainant’s website does not render its registration and use legitimate. Apart from the risk that such is being done as part of a scheme seeking to further associate the disputed domain name with Complainant, who uses multiple domain names as redirects to its official website, there is no guarantee that Respondent might not suddenly decide in the future to change the use of the disputed domain name or to use it for some other purpose. In all, because the disputed domain name is likely to be associated with Complainant, Respondent essentially holds the equivalent of a loaded gun that Respondent can use at the expense of Complainant at any time.

Accordingly, the Panel finds that Complainant succeeds under this element 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 <heavenhilldistilling.com> be transferred to Complainant.

/Georges Nahitchevansky/

Georges Nahitchevansky

Sole Panelist

Date: August 14, 2023