

ADMINISTRATIVE PANEL DECISION

Hill's Pet Nutrition Inc. v. RussellHaire, WandaRReinoso, and AnnaLRuiz
Case No. D2023-5315

1. The Parties

Complainant is Hill's Pet Nutrition Inc., United States of America, represented by Fross Zelnick Lehrman & Zissu, PC, United States of America (the "United States").

Respondents are RussellHaire, WandaRReinoso and AnnaLRuiz, United States.

2. The Domain Names and Registrars

The Disputed Domain Names <bonmarchehills.com>, <hills-chiengrains.com> and <hillswinkel.com> are registered with OwnRegistrar, Inc. (the "First Registrar").

The Disputed Domain Name <hills-animal.com> is registered with CNOBIN Information Technology Limited (the "Second Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 21, 2023. On December 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On December 23, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Names which differed from the named Respondents (Whois Secure) and contact information in the Complaint. The Center sent an email communication to Complainant on January 8, 2024, 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 January 12, 2024.

The Center sent an email communication to Complainant on January 8, 2024, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrars, requesting Complainant to either file separate complaints for the Disputed Domain Names associated with different underlying registrants or, alternatively, demonstrate that the underlying registrants are in fact the same entity. Complainant filed an amended Complaint on January 12, 2024.

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 Respondents of the Complaint, and the proceedings commenced on January 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 8, 2024. Respondents did not submit any response. Accordingly, the Center notified Respondents’ default on February 9, 2024.

The Center appointed Richard W. Page as the sole panelist in this matter on February 13, 2024. 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

In the late 1930s, Dr. Morris Frank, developed Raritan Ration B, a pet food that was the forerunner of Hill’s Prescription Diet k/d Canine that was developed for dogs with renal failure and insufficiency. In 1948, Dr. Morris contracted with Burton Hill of the Hill Packing Company in Topeka, Kansas, to can the food with a new name, Canine k/d, and licensed Hill to produce his pet food formulae. In the following years, the partnership between Dr. Morris and the Hill Packing company evolved into Hill’s Pet Nutrition, and it continued to grow and add formulae of therapeutic pet food to its Prescription Diet line of products. The line has continued to expand, and today includes more than 50 pet foods formulated for many life stages and special needs in healthy pets. In 1976, the Colgate-Palmolive Company purchased Hill’s Pet Nutrition.

Complainant is the owner of longstanding federal registrations for its HILL’S Mark, including United States Registration Nos. 955,342 registered March 1, 1973 in International Class 31; 1,417,169 registered November 18, 1986 in International Class 5; and 2060554 registered May 13, 1997 in International Class 31.

Complainant also owns multiple trademark registrations of its HILL’S Mark around the world. Complainant, either on its own or through affiliated companies, owns and operates the domains and associated websites for <hillspet.com> and <hillspet.fr>. Complainant conducts all of its email communications through email addresses using the <hillspet.com> domain.

The following Disputed Domain Names were registered between July 24, 2023 and August 8, 2023:

<bonmarchehills.com>,
<hills-chiengrains.com>
<hillswinkel.com>
<hills-animal.com>.

Respondents registered the Disputed Domain Names between July 24, 2023 and August 8, 2023, long after the HILL’S Mark was registered in the United States and in other countries around the world. The Disputed Domain Names all resolve to websites reproducing HILL’S Mark, and purportedly selling Complainant’s goods or counterfeited goods.

5. Parties’ Contentions

A. Complainant

Complainant asserts that the Disputed Domain Names all incorporate the entirety of the HILL’S Mark, merely adding terms such as “winkel,” “animal,” “chiengrains,” and “bonmarche,” plus the “.com” generic Top-Level Domain (the “gTLD”). The Disputed Domain Names do not include the apostrophe found in the HILL’S Mark,

which is irrelevant for purposes of determining confusing similarity since it is impossible to include an apostrophe in a domain name given ICANN limitations.

Complainant further asserts that, at no time, did it ever authorize or permit Respondents' registration of the Disputed Domain Names incorporating the HILL'S Mark and trade names, and that there is no relationship between Complainant and Respondents that would give rise to any license.

Complainant further provides examples of the false contact information in Respondents' websites: for example, the "Nous Contacter" section of each website lists false contact information, including a postal code for Toulouse, France (31500) that is incorrect. The actual postal code for this address in Toulouse is 31000.

Complainant further asserts that Respondents are using the Disputed Domain Names in connection with copycat websites that purport to offer Complainant's HILL'S pet food products. These sites do not include a disclaimer regarding Respondents' relationship (or lack thereof) with Complainant. All of the product listings on the website associated with the Disputed Domain Names use images exclusively copied from Complainant's own website.

Complainant further asserts that Respondents cannot demonstrate or establish any legitimate interest in the Disputed Domain Names. Respondents registered the Disputed Domain Names in 2023, long after Complainant had established its rights in the HILL'S Mark through extensive use around the world.

Complainant further asserts that Respondents are not commonly known by the Disputed Domain Names. The only reason that Respondents could have for registering and using the Disputed Domain Names is that Respondents knew of the HILL'S Mark and wanted to trade on Complainant's renown to misdirect Complainant's customers to Respondents' unofficial websites.

Complainant alleges that it has never sold its HILL'S products directly to Respondents, nor have Respondents ever been authorized to sell HILL'S products, or to use the HILL'S Mark for any purpose. As a result, the use of the HILL'S Mark in the Disputed Domain Names cannot be considered a bona fide or fair use of the HILL'S Mark.

Complainant states that Respondents appear to have registered and be operating at least 41 HILL'S formative domain names, each of which uses the HILL'S Mark without authorization. Such registration and use establish a clear pattern of bad faith use and registration of the Disputed Domain Names.

Complainant further states that it has also reported the website of the Disputed Domain Names to the Internet Service Provider ("ISP") hosting these sites, namely NetMindors. The ISP has refused to disable the websites.

Complainant further states that it is also in the process of filing a criminal complaint with French authorities to report these fraudulent Disputed Domain Names and the related phishing scam directed at consumers.

The websites associated with the Disputed Domain Names are passing themselves off as Complainant's website, purportedly offering Complainant's pet food products and stealing Complainant's images to do so. Respondent's website unquestionably trades on the fame of the HILL'S Mark and as such is a bad faith violation of paragraph 4(b)(iv) of the Policy.

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Names.

B. Respondents

Respondents 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 Respondents have 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. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.3.

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

- i) that the Disputed Domain Names registered by Respondents is identical or confusingly similar to the HILL’S Mark in which Complainant has rights; and,
- ii) that Respondents have no rights or legitimate interests in respect of the Disputed Domain Names; and,
- iii) that the Disputed Domain Names have been registered and are being used in bad faith.

Consolidation: Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. Complainant requests the consolidation of the Complaint against the multiple Disputed Domain Names registrants pursuant to paragraph 10(e) of the Rules.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing Complainant’s request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. [WIPO Overview 3.0](#), section 4.11.2.

Complainant contends that the Disputed Domain Names are under common ownership and control. All of the Disputed Domain Names resolve or previously resolved to virtually identical websites, each of which holds itself out as one of Complainant’s websites. The websites do not appear to use a standard or off-the-shelf template but are intended to create the impression of being Complainant’s actual websites, using the HILL’S Mark in the banner and in the heading and name of the websites, all without authorization and purporting to offer HILL’S branded pet foods. The Disputed Domain Names all contain the same typos (omitting spaces), all list telephone numbers with area codes for regions that are different from the purported mail addresses (e.g., 732 for New Jersey, not south Dakota; 805 is for California, not South Dakota; and 704 is for North Carolina, not Kansas. The email addresses for the Disputed Domain Names are also all operated by the same company and hosted on the same servers.

Complainant further contends that, given the similar inaccuracies in the Whois records of the registrants and the identical nature of the websites and the pattern of using the HILL’S Mark on websites that purport to offer HILL’S branded products, that the Disputed Domain Names are under common ownership and control of an unknown party and that the Panel may exercise its discretion under paragraph 10(e) to consolidate the Disputed Domain Names into a single proceeding. Given this, consolidation would be fair and equitable to all parties.

Respondents did not comment on Complainant’s request.

The Panel notes that Complainant shows common control. As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (Respondents) in a single proceeding.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between Complainant's trademark and the Disputed Domain Names. [WIPO Overview 3.0](#), section 1.7.

[WIPO Overview 3.0](#), section 1.2.1 states that the registration of the HILL'S Mark is prima facie evidence of Complainant having enforceable rights.

Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the HILL'S Mark is reproduced within the Disputed Domain Names. Accordingly, the Disputed Domain Names are confusingly similar to the HILL'S Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, "bonmarche", "chiengrains," "winkel," and "animal," may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the Disputed Domain Names and the HILL'S Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondents may demonstrate rights or legitimate interests in the Disputed Domain Names.

Paragraph 4(c) of the Policy allows three nonexclusive methods for the Panel to conclude that Respondents have rights or a legitimate interest in the Disputed Domain Names:

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

Although the overall burden of proof in UDRP proceedings is on Complainant, panels have recognized that proving Respondents lack rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of Respondents. As such, where Complainant makes out a prima facie case that Respondents lack rights or legitimate interests, the burden of production on this element shifts to Respondents to come forward with relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Names (although the burden of proof always remains on Complainant). If Respondents fail to come forward with such relevant evidence, Complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds Complainant has established a prima facie case that Respondents lack rights or legitimate interests in the Disputed Domain Names. Respondents have not rebutted Complainant's prima facie showing and have not come forward with any relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Names such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity here, claimed phishing together with impersonation/passing off, can never confer rights or legitimate interests on Respondents.

[WIPO Overview 3.0](#), section 2.13.1.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

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 Names:

(i) circumstances indicating that Respondents have registered or you have acquired the Disputed Domain Names primarily for the purpose of selling, renting, or otherwise transferring the Disputed Domain Names registration to Complainant who is the owner of the HILL'S 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 Names; or

(ii) Respondents have registered the Disputed Domain Names in order to prevent Complainant from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) Respondents have registered the Disputed Domain Names primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the Disputed Domain Names, Respondents 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 HILL'S Mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product on your website or location.

In the present case, the Panel notes that Complainant states that Respondents appear to have registered and be operating at least 41 HILL'S formative domain names, each of which uses the HILL'S Mark without authorization. Such registration and use establish a clear pattern of bad faith use and registration of the Disputed Domain Names. [WIPO Overview 3.0](#), section 3.1.2.

Complainant further states that it has also reported the website of the Disputed Domain Names to the ISP hosting these sites, namely NetMinders. The ISP has refused to disable the websites.

Complainant further states that it is also in the process of filing a criminal complaint with French authorities to report these fraudulent Disputed Domain Names and the related phishing scam directed at consumers.

The websites associated with the Disputed Domain Names are passing themselves off as Complainant's website, purportedly offering Complainant's pet food products and stealing Complainant's images to do so. Respondent's website unquestionably trades on the fame of the HILL'S Mark and as such is a bad faith violation of paragraph 4(b)(iv) of the Policy.

The Panel finds that Complainant has met the requirements of paragraph 4(b)(iv) of the Policy by intentionally attempting to attract, for commercial gain, Internet users by creating a likelihood of confusion with the HILL'S Mark.

Panels have held that the use of a domain name for illegal activity here, claimed phishing together with impersonation/passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondents' registration and use of the Disputed Domain Names constitute bad faith under the Policy.

The Panel finds that Complainant has established the third 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 Names <bonmarchehills.com>, <hills-animal.com>, <hills-chiengrains.com>, <hillswinkel.com> be transferred to Complainant.

/Richard W. Page/

Richard W. Page

Sole Panelist

Date: February 22, 2024