

ADMINISTRATIVE PANEL DECISION

Haemonetics Corporation v. Brent Bristow
Case No. D2024-2838

1. The Parties

Complainant is Haemonetics Corporation, United States of America (“United States”), represented by Sunstein LLP, United States.

Respondent is Brent Bristow, United States.

2. The Domain Name and Registrar

The disputed domain name <harmonetics.com> (hereinafter the “Disputed Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 28, 2024. On July 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On July 12, 2024, 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 (Registrant Name Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to Complainant on July 15, 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 July 16, 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 Respondent of the Complaint, and the proceedings commenced on July 18, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 7, 2024. The Response was filed with the Center on August 17, 2024.

The Center appointed Lawrence K. Nodine as the sole panelist in this matter on August 23, 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.

Procedural Order

In his email submitted 10 days after the due date for a response, Respondent wrote:

“Here is my response to the claim my domain is violating the trademark of Haemonetics.com

1. Haemonetics and Harmonetics are not in any way similar.
2. Haemonetics apparently deals with blood transfusion equipment
3. Harmonetics.com was created in order to offer musical instruction regarding the harmonic qualities of the diatonic musical scale, which is the foundation of all popular music.”

To determine whether it was appropriate to consider Respondent’s late response, the Panel conducted independent research which located several online media articles that indicated that Respondent was a musician, producer, and songwriter who had for several year operated a music studio in North Carolina, United States.

The Panel finds that Respondent’s response, though untimely, should be considered. The Panel therefore issued a Procedural Order that included hyperlinks to the articles that the Panel found and invited the parties “to comment on the relevance of the information in these links as they relate to the Second and Third element of the Policy.”

Before responding to the Procedural Order, Complainant sent two email messages to Respondent inviting settlement discussions, but received no response.

Complainant responded to the Procedural Order on the appointed date, but Respondent did not.

Regarding the second element of the Policy, Complainant asserted that, although “the links listed in Procedural Order No 1 suggest that Mr. Bristow is a musician, they do not show his use of ‘harmonic’ or ‘harmonetics,’ either descriptively or as a trademark identifying his music courses or any other music-related goods or services.” Complainant also urged that “[t]he domain has not been used to offer products or services to the public, and Respondent did not present any concrete plans regarding a possible music-related website the domain would host.”

Regarding the third element of the Policy, Complainant asserted that “[i]t is undisputable that the links accessible from the domain name direct the Internet users to the website of companies offering medical services [...]”

4. Factual Background

Complainant, based in Boston, Massachusetts, United States, provides of blood and plasma management services, including collecting blood and plasma from donors and then supplying it to the medical industry.

Since 1971, Complainant has used HAEMONETICS as a trademark (hereinafter the “Mark”) in connection with its goods and services. “HAEMO” is a word prefix that refers to blood, derived from the Greek word “haima.” Complainant owns United States trademark registrations for the Mark, including United States Registration No. 5,232,710 (registered on June 27, 2017) and United States Registration No. 1,057,423 (registered on February 1, 1977).

Complainant owns the domain name <haemonetics.com>, which resolves to a website operated by Complainant.

Complainant is publicly traded on the New York Stock Exchange.

Respondent registered the Disputed Domain Name on May 30, 2024. No active website has been associated with the website, but there is a parked page displaying pay-per-click ("PPC") links to medical goods and services such as pain relief patches, clinical trials of depression medications, and diabetes drugs.

5. Parties' Contentions

A. Complainant

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

Complainant contends that the Disputed Domain Name is a typosquatting version of its Mark, noting that the only difference is that in the Disputed Domain Name, the third letter is an "r" instead of an "e."

Complainant does not deny that Respondent is a musician, but contends that Respondent has no rights or legitimate interest in the Disputed Domain Name because he has taken any concrete steps to use the Disputed Domain Name in association with any website relating to music.

Complainant contends that Respondent was aware of Complainant's rights in the Mark because it is well-known and, also, that Respondent should be charged with constructive notice of Complainant's United States trademark registrations.

Complainant also contends that Respondent posts hyperlinks to third party sites that offer medical goods and services and not to any music related sites. According to Complainant, this indicates bad faith use.

B. Respondent

Respondent denies the allegation that the Disputed Domain Name is similar to the Mark and further denies bad faith, asserting that he bought the Disputed Domain Name "in order to offer musical instruction regarding the harmonic qualities of the diatonic musical scale, which is the foundation of all popular music."

6. Discussion and Findings

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 Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Complainant has shown rights in respect of the Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the Disputed Domain Name.

Accordingly, the Disputed Domain Name is confusingly similar to the Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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 Respondent may demonstrate rights or legitimate interests in a Disputed Domain Name.

Although the overall burden of proof in UDRP proceedings is on Complainant, panels have recognized that proving a respondent lacks 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 Respondent. As such, where a complainant makes out a prima facie case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on Complainant). If Respondent fails 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 Respondent lacks rights or legitimate interests in the Disputed Domain Name.

Respondent has offered no evidence demonstrating that he has taken any concrete steps to prepare a website for his stated purpose of offering a website “to offer musical instruction regarding the harmonic qualities of the diatonic musical scale [...]” Policy paragraph 4(c)(i), which requires a showing that before notice of the dispute Respondent made “demonstrable preparations to use” the Disputed Domain Name for a legitimate purpose. “While such indicia are assessed pragmatically in light of the case circumstances, clear contemporaneous evidence of bona fide pre-complaint preparations is required.” [WIPO Overview 3.0](#) section 2.2.

In addition, the PPC links published on Respondent’s website lead to websites offering medical goods and services. Because these links “compete with or capitalize on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users,” they do not represent a bona fide offering. [WIPO Overview 3.0](#), section 2.9

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

C. Registered and Used in Bad Faith

Complainant has not carried its burden to prove that Respondent registered the Disputed Domain Name in bad faith.

First, Complainant offers no evidence to support its allegation that it is well-known. Consequently, there is no evidentiary basis for finding that Respondent was probably aware of Complainant when he registered the Disputed Domain Name. The Panel rejects Complainant’s contention that a finding of bad faith may be based solely on Respondent’s alleged constructive knowledge under the Lanham Act of Complainant’s United States trademark registrations. United States trademark law does not control in UDRP proceedings, but even if one assumes its relevance, charging Respondent with constructive knowledge is not alone sufficient to support a finding of bad faith. [WIPO Overview 3.0](#), section 3.2.2. *Mi Cocina, Ltd. v. Melinda Garcia*, WIPO Case No. [D2023-4014](#); *FN Funding Inc. v. Nick Mofford, 80 Eighty*, WIPO Case No. [D2023-3537](#).

Second, the Panel finds plausible Respondent's assertion that "[h]armonetics.com was created in order to offer musical instruction regarding the harmonic qualities of the diatonic musical scale, which is the foundation of all popular music." This assertion is corroborated by evidence that Respondent is a musician with some experience as a music teacher. In its response to the Panel's Procedural Order, Complainant did not question Respondent's experience as a musician or refute the musical connotations of the Disputed Domain Name. Instead, Complainant argued that Respondent has not used the Disputed Domain Name with respect to any website related to music. The Panel accepted this argument under the second element of the Policy, but Respondent's background as a musician is nonetheless relevant when evaluating Respondent's intent under the third element of the Policy even if there is no evidence that Respondent made demonstrable use of the Disputed Domain Name as required under the second element.

The Panel also finds that most people are familiar with the word "harmony," but few are likely aware of the of the Greek root "haemo" that is the foundation of Complainant's Mark.¹ Given this, and weighing the probabilities, the Panel finds that it is more likely that Respondent had harmony and harmonics in mind when he registered the Disputed Domain Name.

The Panel acknowledges that the presence of PPC links to medical goods and services supports Complainant's bad faith arguments, but this evidence is not by itself sufficient to satisfy Complainant's burden. Assuming the PPC links are evidence of current bad faith use of the Disputed Domain Name, this is not conclusive as to Respondent's intent when he registered the Disputed Domain Name. It is well-known that registrar algorithms often automatically populate websites with PPC links. But the registrant usually has the option to stop the registrar from doing this. Accordingly, the Respondent is generally responsible for auto-generated PPC links. Evidence that automatically generated hyperlinks lead to websites that compete with Complainant will, along with other evidence, may support a finding of bad faith use. [WIPO Overview 3.0](#), section 3.5.

But that does not conclusively prove bad faith registration. It is plausible that Respondent registered the Disputed Domain Name in good faith without any intention to target Complainant, but then allowed or failed to prevent auto-generation of PPC links that reflect bad faith use. In this case, there is plausible evidence that Respondent acted in good faith when he registered the Disputed Domain Name. This evidence must be weighed in the balance. In the Panel's view, this countervailing evidence weighs more than the inferences to be drawn from the PPC links.

The Panel is also not persuaded that Respondent has engaged in typosquatting. A word is not a "typo" merely because it differs by one letter in the same position from another word.² When a letter is changed in the typical typosquatting case, the result is a mangled misspelled word; the resulting word has no known meaning. See, e.g., *Humana Inc. v. Cayman Trademark Trust*, WIPO Case No. [D2006-0073](#) (<humanna.com> reflects typosquatting); *Sanofi v. Domains By Proxy, LLC / domain admin*, WIPO Case No. [D2013-0368](#) (<sanifi.com> reflects typosquatting)

In contrast, where the difference is an intentional change to spell a different valid word, the registrant is not intending to exploit a mistake. See, e.g., *Forrest Laboratories, Inc. v. Clark Grace*, WIPO Case No. [D2011-1006](#) ("Typosquatting involves the intentional rearrangement or change of one or a few letters in a mark to make a nonsensical but close imitation, deliberately intended to catch a tired or careless typist's search for the mark owner's website. [...] always the variant makes no sense standing on its own."); See also, *eCrush.com, Inc. v. Cox, Davis & Simpsons, LLC, Mr. Ken Cox, Mr. Brian Simpson, Mr. Ron Davis*, WIPO Case No. [D2004-0552](#) (the respondent's <ispinthebottle.com> was not a typo of the complainant's mark ESPINTHEBOTTLE).

¹In the United States "hema" is usually used to indicate blood. In British English, "Haemo" is more commonly used to indicate blood. Compare, e.g., hematology with haematology; hematoma with haematoma; hemorrhage with haemorrhage.

²Words that differ from another word of the same length by only one letter in the same position are not uncommon. Such words are the subject of serious linguistic study. They are known as "orthographic neighbors." See, e.g., x <https://library.fiveable.me/key-terms/psychology-language/orthographic-neighborhood> visited, October 10, 20124.

“Harmony” and “Harmonics” are valid words, not simply examples of “haemo” misspelled. The following syllable -- “netics” -- is often used with dictionary words³ and trademarks⁴ to mean something akin to “the study of” the subject of the preceding syllable. This is how Complainant uses “netics.” Respondent is plausibly creating a similarly structured portmanteau of “harmonic” and “netics” that exploits their respective dictionary and etymological meanings. This is not typosquatting.

The Panel finds that Complainant has not established the third element of the Policy.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Lawrence K. Nodine/

Lawrence K. Nodine

Sole Panelist

Date: October 14, 2024

³ See e.g., Genetics, kinetics, cognetics, phonetics, magnetics, cybernetics.

⁴ See, e.g., KERA NETICS (United States Registration No. 4,139,355); Lite-Netics (United States Registration No. 7,285,884); BIO HUMA NETICS (United States Registration No. 4,616,565); AIRNETICS(United States Registration No. 4,984,099); CRYO-NETIC (United States Registration No. 5,042,350)