

## **ADMINISTRATIVE PANEL DECISION**

JJA v. Domain Admin, TotalDomain Privacy Ltd  
Case No. D2024-2871

### **1. The Parties**

The Complainant is JJA, France, represented by Dennemeyer & Associates S.A., Luxembourg.

The Respondent is Domain Admin, TotalDomain Privacy Ltd, Panama.

### **2. The Domain Name and Registrar**

The disputed domain name <hespéride.com> (<xn--hespride-e1a.com>) is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 15, 2024. On July 15, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 18, 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 (Domain Admin, Privacy Protect, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 23, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on July 25, 2024.

The Center verified that the Complaint together with the amendment to 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 July 25, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 14, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 15, 2024.

The Center appointed Reyes Campello Estebaranz as the sole panelist in this matter on August 21, 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**

The Complainant, founded in 1976, is an international company that operates in the home furnishings and decoration field, and, in particular, in the garden furniture sector (exterior tables and chairs, deckchair dining sets, pergolas, parasols, barbecues, etc.). It is based in France and maintains partnerships and collaborations in various countries, including in China since 1979.

The Complainant operates under the HESPERIDE (or HESPÉRIDE with emphasis in the second letter “e”) mark, and it owns various trademark registrations for this brand, including:

- International Registration No. 1044063, HESPÉRIDE, figurative, registered on January 27, 2010, in Classes 6, 11, 18, 19, and 20, with the following graphic representation,

 Hesperide

- European Union Trade Mark Registration No. 010379196, HESPERIDE, word, registered on April 30, 2012, in Classes 6, 11, 16, 17, 18, 19, 20, 21, and 35.

(Hereinafter collectively referred as the “HESPERIDE mark” or, individually, as the “HESPÉRIDE figurative mark” and the “HESPERIDE word mark” respectively).

The Complainant further owns various domain names corresponding to its HESPERIDE mark, including <hesperide.com> (registered on July 31, 2008), which resolves to its corporate website and online store (in various languages), and <hesperide.fr> (registered on November 25, 2015), which directs to the French section of the same website.

The disputed domain name <hespéride.com> (<xn--hespride-e1a.com>) was registered on April 13, 2016, and it resolves to a parking site displaying various promotional Pay-Per-Click (“PPC”) links, some of them related to the garden furniture sector. This site further informs that the disputed domain name “may be for sale” and includes a link to a platform for obtaining information about its price.

The Respondent registered the disputed domain name as internationalized domain name using Punycode translation.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends:

- the disputed domain name is identical to the HESPERIDE mark, combined to the generic Top-Level-Domain (“gTLD”), “.com”, this trademark is recognizable and prominently visible in the disputed domain name;

- the Respondent has no rights or legitimate interests in respect of the disputed domain name, has not been licensed or otherwise authorized to use the HESPERIDE mark, and is not making a legitimate non-commercial or fair use of the disputed domain name; and
- the disputed domain name was registered and is being used in bad faith.

Since at least 2000, the Complainant's products are sold worldwide through a solid distribution networking, so the Respondent must have had knowledge of the HESPERIDE mark when it registered the disputed domain name. The parking page linked to the disputed domain name contains a number of sponsored links, including links to Complainant's competitors in the same sector. There is no plausible explanation for the Respondent's selection of the disputed domain name other than to misleadingly divert Internet users to its parking page for commercial gain. The Respondent is also offering the disputed domain name for sale, which is another indication confirming bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

The Complainant has made the relevant assertions as required by the Policy and the dispute is properly within the scope of the Policy. The Panel has authority to decide the dispute examining the three elements in paragraph 4(a) of the Policy, taking into consideration all of the relevant evidence, annexed material and allegations, and performing some limited independent research under the general powers of the Panel articulated, inter alia, in paragraph 10 of the Rules.

### **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 the 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.

The 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.

According to section 1.11.1 of the [WIPO Overview 3.0](#), the applicable gTLD in a domain name is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. Similarly, according to section 1.10 of the [WIPO Overview 3.0](#), as design or figurative elements of the relevant mark would be incapable of representation in domain names, these elements are disregarded under the first element confusing similarity test. Thus, the Panel disregards the gTLD ".com" and figurative elements in the Complainant's figurative trademark for the purposes of the confusing similarity test.

The Panel therefore finds the entirety of the Complainant's trademarks is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

In particular, the Panel finds the disputed domain name is identical to the HESPÉRIDE figurative mark, and confusingly similar the HESPERIDE word mark. The disputed domain name was registered using Punycode and is therefore not composed entirely of ASCII English script. Using Punycode, the browser application will "translate" the Punycode text into the non-ASCII characters. In the present case, <xn--hespride-e1a.com> will be displayed as <hespérìde.com> containing the emphasized second letter "é" instead of "e". This difference is almost imperceptible to Internet users and, therefore, makes the disputed domain name identical to the HESPÉRIDE figurative mark and confusingly similar to the HESPERIDE word mark. Panels

have found that the use of Punycode to create a domain name that is visually identical to a trademark does not prevent a finding of identity or confusing similarity; internationalized domain names and their Punycode translations are equivalents (see, e.g., *AB Electrolux v. Mostafa Faheem*, WIPO Case No. [D2017-2233](#); *Inter Ikea Systems B.V. v. Domain Admin, Whois Privacy Corp.*, WIPO Case No. [D2017-2211](#); *WhatsApp Inc. v. Domain Admin, Whois Privacy Corp.*, WIPO Case No. [D2018-1654](#); *Facebook, Inc. v. Registration Private, Domains By Proxy LLC/ Serhii Pronin*, WIPO Case No. [D2020-0172](#); or *Meta Platforms, Inc. v. Domain Admin, Yep Solutions, Inc.*, WIPO Case No. [D2021-4192](#)). [WIPO Overview 3.0](#), section 1.14.

Considering the above, 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 Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the 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 the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Panel notes the disputed domain name is used in connection with a landing page that displays promotional PPC links, and including links to competing third parties’ websites in the same sector where the Complainant’s mark operates (garden furniture). Such use cannot represent a bona fide offering and cannot confer rights or legitimate interests under the Policy. Applying UDRP paragraph 4(c), panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users. [WIPO Overview 3.0](#), section 2.9.

Furthermore, the Panel further finds the composition of the disputed domain name and the use of Punycode translation to exactly reproduce the term used as a distinctive trademark by the Complainant, “hespéride”, with emphasis in the second letter “e”, indicates targeting of the Complainant, and generates confusion with the Complainant, its trademark, and its garden furniture business. The disputed domain name gives the impression of being owned by or referred to the Complainant’s business, as one of its websites and online stores, or as the website of an affiliated company or one of its distributors. [WIPO Overview 3.0](#), section 2.5.1.

Therefore, the Panel finds the second element of the Policy has been established.

## **C. Registered and Used in Bad Faith**

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel finds the HESPERIDE mark is distinctive in connection with home and garden furniture, and, due to its long and extensive international use, it is notorious within this sector. The Panel further notes any search over the Internet for the term “hesperide” or “hespéride”, reveals the Complainant, its trademark, and its business.

Additionally, the Panel finds nothing in the record indicates the Respondent has rights or legitimate interests in respect of the disputed domain name, and the Respondent has not come forward to deny the Complainant’s allegations of bad faith.

The Panel further considers the nature of the disputed domain name, which is identical to the HESPÉRIDE figurative mark and the use of Punycode translation to exactly reproduce this mark, reflects the purposeful composition of the disputed domain name targeting the Complainant and its trademark to generate confusion and create a misleading domain name. [WIPO Overview 3.0](#), sections 3.1.4 and 3.2.1.

The Panel thus finds that the Respondent likely knew of the Complainant and its trademark and deliberately registered the disputed domain name in bad faith.

As regards the use of the disputed domain name, the Panel finds its use in connection with a site displaying promotional PPC links of third competitors, capitalizes on the Complainant’s mark reputation and goodwill, and generates confusion to potentially mislead Internet users; considered a use in bad faith under the Policy, and the Respondent cannot disclaim responsibility for such content. [WIPO Overview 3.0](#), sections 3.1.4 and 3.5.

Accordingly, based on the available record and evidence presented, the Panel finds the Respondent registered and is using the disputed domain name in bad faith to create confusion and mislead Internet users with the intention to generate traffic to the PPC links landing page to which the disputed domain name resolves for a commercial gain. This constitutes bad faith under the paragraph 4(b)(iv) of the Policy.

The Panel, having reviewed the record, therefore, finds the disputed domain name has been registered and is being used in bad faith, and the 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 name <hespéride.com> (<xn--hespride-e1a.com>) be transferred to the Complainant.

*/Reyes Campello Estebanz/*

**Reyes Campello Estebanz**

Sole Panelist

Date: September 2, 2024