

ADMINISTRATIVE PANEL DECISION

Hershey Chocolate & Confectionery LLC v. mepmanager fabsgroup
Case No. D2024-3240

1. The Parties

Complainant is Hershey Chocolate & Confectionery LLC, United States of America (“United States”), represented by Arnold & Porter Kaye Scholer LLP, United States.

Respondent is mepmanager fabsgroup, United States.

2. The Domain Name and Registrar

The disputed domain name <hershreys.com> is registered with Hostinger Operations, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 7, 2024. On August 8, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 9, 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 Complainant on August 13, 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 August 15, 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 August 20, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 9, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on September 16, 2024.

The Center appointed Scott R. Austin as the sole panelist in this matter on September 20, 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

Complainant states in its Complaint and provides evidence in the respective Annexes sufficient to support the following:

Complainant is a major manufacturer and seller of candy, chocolate and confectionery products Identified using the trademarks HERSEY and HERSEY'S (the “HERSEY Marks”) since 1894. The HERSEY Marks have been widely advertised and promoted in television, print, online and other advertising. Complainant and its licensees have achieved billions of dollars of sales under these marks throughout the United States and the world.

Complainant owns numerous trademark registrations in the United States and other countries for the HERSEY Marks, including:

- United States Trademark Registration No. 54,041, *Hershey's* registered on June 19, 1906, for chocolate, cocoa, sweet chocolate, milk chocolate, chocolate coatings, chocolate liquors, and chocolate powder in International Class 30, claiming a first use in commerce date of January 1, 1894;
- United States Trademark Registration No. 863,592, HERSEY'S, registered on January 14, 1969, for a range of chocolate and chocolate chip products in International Classes 1, 5, 29, 30, 31, and 32, claiming a first use in commerce date of January 1, 1894; and
- United States Trademark Registration No. 1,455,684, HERSEY, registered on September 1, 1987, for a range of services in International Classes 35, 37, 40, 41, and 42, claiming first use in commerce dates ranging from 1907 to 1974.

Complainant also shows it incorporates the HERSEY'S Mark into its official registered domain name <hersheys.com>, registered and used to promote its products through its official website accessed at “www.hersheys.com” (the “Official HERSEY'S Mark Website”).

Respondent registered the disputed domain name on June 17, 2024, and it appears “warehoused” and inactive.

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: that the disputed domain name is confusingly similar to Complainant's trademark; that Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The onus is on Complainant to make out its case and it is apparent from the terms of the Policy that Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to cancel a domain name. As the proceedings are administrative, the standard of proof under the Policy is often expressed as the “balance of the probabilities” or “preponderance of the evidence” standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.2.

Thus, for Complainant to succeed it must prove within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

1. The disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
2. Respondent has no rights or legitimate interests in respect of the disputed domain name; and
3. The disputed domain name has been registered and is being used in bad faith.

The Panel finds that Complainant has met its burden in all three elements of the Policy and will deal with each of these elements in more detail below.

A. Identical or Confusingly Similar

Ownership of a nationally registered trademark constitutes *prima facie* evidence that the complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Complainant has demonstrated its rights because it has shown that it is the holder of numerous valid and subsisting trademark registrations for its HERSEY Mark. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#). Prior UDRP panels have also recognized Complainant’s well-established rights in its HERSEY Marks and found them to be famous. See, e.g., *Hershey Chocolate & Confectionery LLC v. 程玉玲 (yu ling cheng)*, WIPO Case No. [D2022-3374](#) and *Hershey Foods Corp. v. DRP Services (Hersheychocolateworld-Com-Dom)*, WIPO Case No. [D2003-0841](#).

With Complainant’s rights in the HERSEY Mark established, the remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant’s HERSEY Mark. It is well accepted that the first element of the Policy functions primarily as a standing requirement and that the threshold test for confusing similarity involves a “reasoned but relatively straightforward comparison between the complainant’s trademark and the disputed domain name”. [WIPO Overview 3.0](#), section 1.7.

Prior UDRP panels have also held “in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing”. [WIPO Overview 3.0](#), Section 1.7; see also, *L’Oréal, Lancôme Parfums et Beauté & Cie v. Jack Yang*, WIPO Case No. [D2011-1627](#); see also, *Wal-Mart Stores, Inc. v. MacLeod d/b/a/ For Sale*, WIPO Case No. [D2000-0662](#).

A side-by-side comparison between the disputed domain name and Complainant's Mark shows the disputed domain name is almost identical to the HERSEY'S Mark. Complainant's HERSEY'S Mark is incorporated in its entirety except the insertion of the additional letter "r" after the second 'h' in the mark. Complainant's registered HERSEY'S Mark is incorporated into and remains recognizable in the disputed domain name, followed only by the Top-Level Domain ("TLD") ".com". Prior UDRP panels have found the TLD, being viewed as a standard registration requirement, may typically be disregarded under the paragraph 4(a)(i) analysis. See, [WIPO Overview 3.0](#), section 1.11.1; see also *L'Oréal v. Tina Smith*, WIPO Case No. [D2013-0820](#).

Complainant contends that the disputed domain name must be considered confusingly similar to Complainant's Mark because the added "r" reconfiguration noted above is a purposeful misspelling of Complainant's HERSEY'S Mark which Mark remains recognizable within the disputed domain name. Prior panels have held that a deliberate misspelling of a trademark registered as a domain name, which is intended to confuse Internet users, must be confusingly similar by design. See [WIPO Overview 3.0](#), section 1.9; See also *Allstate Insurance Company v. Rakshita Mercantile Private Limited*, WIPO Case No. [D2011-0280](#); *Humana Inc. v. Cayman Trademark Trust*, WIPO Case No. [D2006-0073](#).

Based on the above, this Panel finds that the addition of the second letter "r" in Complainant's registered HERSEY'S Mark does not prevent a finding of confusing similarity between the disputed domain name and Complainant's HERSEY'S Mark.

Complainant's HERSEY'S Mark is recognizable in the disputed domain name and for that reason the Panel finds the disputed domain name confusingly similar to the HERSEY Mark in which Complainant has rights. Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under the second element of the Policy, a complainant is first required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. If a complainant makes that showing, the burden of production on this element shifts to the respondent to come forward with relevant evidence of such rights or legitimate interests in the domain name. If the respondent fails to come forward with such evidence, a complainant is generally deemed to have satisfied the second element.

[WIPO Overview 3.0](#), section 2.1. See also, *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#).

Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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.

First, it is clear from the record submitted that Respondent is not and has never been an authorized representative or licensee of Complainant nor is Respondent authorized by Complainant to register or use the HERSEY Mark in any manner in a domain name or otherwise. Prior UDRP panels have found the fact that a respondent is not authorized to register or use a complainant's mark, "on its own, can be sufficient to prove the second criterion [of the Policy]". *Six Continents Hotels, Inc. v. IQ Management Corporation*, WIPO Case No. [D2004-0272](#); see also *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003 (finding no rights or legitimate interests where domain name incorporated complainant's registered mark and respondent was not a licensee of complainant).

Complainant has also shown that Respondent is not commonly known by the disputed domain name. The Registrar disclosed the underlying registrant as, "mepmanager fabsgroup", which Complainant amended its Complaint to name as Respondent. Respondent bears no resemblance to the disputed domain name whatsoever. These facts combined with the longstanding fame of the HERSEY Marks and the lack of evidence in the record to suggest otherwise allows this Panel to find that Respondent is not commonly known by the disputed domain name or any variation thereof pursuant to Policy paragraph 4(c)(ii). See *Six*

Continents Hotels, Inc. v. Trasporto di Networ and Pro Intel, WIPO Case No. [D2004-0246](#) (“given Complainant’s established use of its ... marks, it is unlikely that the Respondents are commonly known by any of these marks”).

It is generally regarded as *prima facie* evidence of no rights or legitimate interests if a complainant shows that the disputed domain name is identical or confusingly similar to a complainant’s trademark, that the respondent is not commonly known by the disputed domain name, and that a complainant has not authorized the respondent to use its mark (or an expression which is confusingly similar to its mark), whether in the disputed domain name or otherwise. See *Roust Trading Limited v. AMG LLC*, WIPO Case No. [D2007-1857](#).

Most importantly, Complainant contends Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services, but “warehousing” the disputed domain name because the disputed domain name resolves to an inactive website and appears to be passively held. Respondent, therefore, is not making a legitimate noncommercial or fair use of the disputed domain name nor using it in connection with a bona fide offering of goods or services to confer a right or legitimate interest because there is no evidence the disputed domain name is being used at all. UDRP panels have repeatedly held that warehousing a domain name that is confusingly similar to a well-known mark is not a legitimate use. See, e.g., *Société nationale des télécommunications: Tunisie Telecom v. Ismael Leviste*, WIPO Case No. [D2009-1529](#) and *Teachers Insurance & Annuity Ass’n of America v. Wreaks Commc’ns Grp.*, WIPO Case No. [D2006-0483](#); and *Valero Energy Corporation and Valero Marketing and Supply Company v. Valero Energy*, WIPO Case No. [D2017-0075](#).

These facts establish Complainant’s *prima facie* showing. Respondent has not provided any basis upon which that showing may be overcome.

The Panel finds, therefore, that Respondent does not have rights or legitimate interests in the disputed domain name and Complainant has successfully met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Complainant first contends that Respondent registered the disputed domain name in bad faith because Respondent has created a domain name that is confusingly similar to Complainant’s globally well-known HERSEY Marks, as found in section 6A above. Prior UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names incorporating the mark reconfigured with an intentional misspelling of the complainant’s mark) to a widely known or famous trademark by an unaffiliated entity can by itself create a presumption of bad faith. See, [WIPO Overview 3.0](#), section 3.1.4.

As noted in Section 6A above, prior UDRP panels have recognized the worldwide fame of the HERSEY Marks. See *Hershey Chocolate & Confectionery LLC v. 程玉玲 (yu ling cheng), supra* and *Hershey Foods Corp. v. DRP Services (Hersheychocolateworld-Com-Dom), supra*.

Given the record shows that Complainant’s well-known HERSEY Mark is protected by trademark registrations around the world, the oldest of which was registered over 100 years prior to Respondent’s registration of the disputed domain name, the Panel finds it is implausible to believe that Respondent did not have actual knowledge of Complainant’s well-known HERSEY’S Mark when it registered the confusingly similar disputed domain name.

Prior UDRP panels have held that a respondent’s actual knowledge of a complainant’s mark may serve as a basis for finding bad faith registration. See *OSRAM GmbH v. Azarenko Vladimir Alexeevich, Azarenko Group Ltd*, WIPO Case No. [D2016-1384](#) (finding bad faith where “Respondent must have been aware of the Complainant and its said trademark when it registered the disputed domain name” and “the Panel cannot conceive of any use that the Respondent could make of the disputed domain name that would not interfere with the Complainant’s long-established trademark rights”). Accordingly, the Panel finds that Respondent

had actual knowledge of the HERSEY Mark when it registered the disputed domain name, and such a showing is sufficient to establish bad faith registration of the disputed domain name.

Further, as discussed in detail in section 6B, Respondent is passively holding the disputed domain name based on either non-use or linking to an inactive website. Prior UDRP panels have found under the doctrine of passive holding that the word bad faith "use" in the context of paragraph 4(a)(iii) does not require a positive act on the part of the Respondent – instead, passively holding a domain name can constitute a factor in finding bad faith registration and use pursuant to Policy paragraph 4(a)(iii). [WIPO Overview 3.0](#), Section 3.3. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)); see also *Alitalia-Linee Aeree Italiane S.p.A v. Colour Digital*, WIPO Case No. [D2000-1260](#).

Accordingly, the Panel finds that the disputed domain name has been registered and is being used in bad faith. Complainant has met its burden under paragraph 4(a)(iii) 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 <hersheys.com> be transferred to Complainant.

/Scott R. Austin/

Scott R. Austin

Sole Panelist

Date: October 4, 2024