

ADMINISTRATIVE PANEL DECISION

Herbalife International, Inc. v. Dinh Thi Kim Duyen
Case No. D2024-4247

1. The Parties

The Complainant is Herbalife International, Inc., United States of America (“United States”), represented by SafeBrands, France.

The Respondent is Dinh Thi Kim Duyen, Viet Nam.

2. The Domain Name and Registrar

The disputed domain name <congty-herbalife.com> (the “Disputed Domain Name”) is registered with P.A. Viet Nam Company Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 15, 2024. On October 15, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On October 16, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On October 18, 2024, the Center informed the parties in Vietnamese and English, that the language of the registration agreement for the Disputed Domain Name is Vietnamese. On October 22, 2024, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

The Center verified that 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 October 29, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 18, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 19, 2024.

On November 21, 2024, the Center received a communication from the Respondent regarding possible settlement. Following the Complainant's request, the proceedings were suspended on December 11, 2024, but then reinstated on December 24, 2024. On December 25, 2024, the Respondent sent an informal email to the Center.

The Center appointed Pham Nghiem Xuan Bac as the sole panelist in this matter on December 27, 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, a company incorporated in the United States, has been engaged in the manufacture and sale of dietary supplements, nutritional supplements, and personal care products under the HERBALIFE trademarks. According to the Complainant, it operates in more than 90 countries worldwide, achieving USD 5.1 billion net sales in 2023.

The Complainant's HERBALIFE trademarks have been registered for various goods and services in a variety of countries, notably in classes 3, 5, 30, 32 for dietary supplements, nutritional supplements, and personal care products. These registrations include but not limited to, United States Registration No. 1254211, registered on October 18, 1983; United States Registration No. 1969346, registered on April 23, 1996; Vietnamese Registration No. 12123, registered on June 8, 1994; and Vietnamese Registration No. 17232, registered on July 10, 1995, where the Respondent resides.

In addition, the Complainant is the registrant of a number of domain names featuring the trademarks HERBALIFE, notably the domain name <herbalife.com> registered on February 23, 1998.

The Disputed Domain Name was registered on October 12, 2015. As of the date of the Complaint, the Disputed Domain Name resolved to an active website displaying the Complainant's HERBALIFE trademarks and purporting to sell dietary, nutritional supplements and personal care products under the HERBALIFE trademarks alongside others. As of the date of this Decision, the Disputed Domain Name currently resolves to a different website, which appears to be an online platform providing lottery results in Viet Nam.

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, as follows:

(i) The Disputed Domain Name is identical or confusingly similar to the HERBALIFE trademarks, in which the Complainant has rights

First, the Complainant claims its rights in and to the HERBALIFE trademarks which are registered and particularly well-known in Viet Nam where the Respondent resides.

Second, the Complainant contends that the Disputed Domain Name is confusingly similar to the HERBALIFE trademarks, because it entirely incorporates such trademarks, which is the most distinctive element in the Disputed Domain Name. The addition of the generic term "congty" (meaning "company" in Vietnamese), does not prevent a finding of confusing similarity.

Further, the Complainant argues that the addition of the generic Top-Level Domain (“gTLD”) “.com” does not serve as a distinguishing feature under the Policy.

(ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name

First, the Complainant submits that the Respondent has no prior rights, as trademarks or corporate/trade name, in the Complainant’s HERBALIFE trademarks and that the Respondent is not commonly known by the name “Herbalife”. The Respondent is not affiliated with/related to, nor licensed/authorized by, the Complainant in any way to use the Complainant’s HERBALIFE trademarks or to sell “Herbalife” products.

Second, the Respondent is using the Disputed Domain Name in an unauthorized manner. Specifically, the Disputed Domain Name resolves to a Vietnamese website that reproduces the Complainant’s trademark, logo, copyrighted photos, in order to sell heavily discounted goods supposedly coming from the Complainant. There is nothing at the website to accurately disclose the relationship, if any, between the Respondent and the Complainant.

Also, the Complainant sent several emails to the Respondent and the Registrar. However, the Respondent has never replied or provided the Complainant with any evidence of its use of, or demonstrable preparations to use, the Disputed Domain Name in connection with a bona fide offering of goods or services before any notice of the dispute.

Third, given the long-standing use and reputation of the Complainant’s HERBALIFE trademarks, the Complainant asserts that the Respondent has intent to, for commercial gain, mislead Internet users into believing that the website under the Disputed Domain Name is associated with the Complainant, and to divert Internet users looking for the Complainant’s products to the Respondent’s website. Thus, the Respondent’s use of the Disputed Domain Name cannot be considered a bona fide offering of goods or services nor a legitimate noncommercial or fair use.

(iii) The Disputed Domain Name was registered and is being used in bad faith

First, considering the Complainant’s extremely high reputation, the nature of the Disputed Domain Name and the use of the website thereunder in selling products supposedly coming from the Complainant, the Complainant contends that the Respondent could not have ignored the existence of the Complainant’s HERBALIFE trademarks at the time of registration of the Disputed Domain Name. This indicates the Respondent’s bad faith registration.

Second, the Complainant argues that the Disputed Domain Name resolves to an unauthorized and misleading website offering for sale of products purportedly originating from the Complainant at discounted price. This conduct, by which the Respondent sought or realized commercial gain through creating a likelihood of confusion with the Complainant’s HERBALIFE trademarks as to the source, sponsorship, or affiliation of the website or the products offered thereon, indicates the Respondent’s bad faith.

Finally, the Complainant submits that despite its efforts to resolve the matter amicably, the Respondent did not collaborate and remained silent. This lack of response, despite being given the opportunity to provide a denial or explanation, reinforces the inference of bad faith registration and use of the Disputed Domain Name.

With the said arguments, the Complainant requests that the Disputed Domain Name be transferred to the Complainant.

B. Respondent

The Respondent did not formally reply to the Complainant’s contentions. However, during the proceedings, the Respondent sent three communication emails in Vietnamese, as follows:

- On November 21, 2024, the Respondent submitted that it did not want any disputes to occur. Thus, it asked the Registrar to cancel the Disputed Domain Name on October 31, 2024, and ceased using the Disputed Domain Name as from November 2, 2024.
- On December 18, 2024, in an email to the Complainant, the Respondent stated that it was willing to settle the dispute amicably and asked the Complainant to work with the Registrar to resolve the dispute promptly.
- On December 25, 2024, following the Center's notification of the reinstatement of the proceedings, the Respondent vaguely expressed its agreement to an amicable settlement as proposed by the Complainant. It explained that a combination of time zone differences and reliance on a personal email account had resulted in a delayed response. Upon becoming aware of the communication emails, the Respondent contacted the Registrar to pursue an amicable resolution as proposed by the Complainant.

6. Discussion and Findings

Language of the Proceeding

The language of the Registration Agreement for the Disputed Domain Name is Vietnamese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, as follows:

- The Disputed Domain Name incorporates a distinctive and well-known Latin trademark (HERBALIFE) and therefore, could not be aimed specifically to Vietnamese speakers;
- The Complainant is a national and resident of the United States. Thus, requiring it to conduct the proceedings in Vietnamese would impose an undue burden including additional expense and delay due to the need for translation of the Complaint and supporting Annexes;
- The website under the Disputed Domain Name contains substantial content in English and particularly those relating to support and assistance, and products names. This demonstrates that the Respondent understands English.

Despite sending several email communications in Vietnamese, the Respondent did not comment on the Complainant's request for the language of the proceeding be English.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

The Respondent's Failure to Respond

The Respondent's failure to file an official Response does not automatically result in a decision in favor of the Complainant (see, e.g., *Tradewind Media, LLC d/b/a Intopic Media v. Jayson Hahn*, WIPO Case No. [D2010-1413](#), and *M. Corentin Benoit Thiercelin v. CyberDeal, Inc.*, WIPO Case No. [D2010-0941](#)). However, the Panel may draw appropriate inferences from the Respondent's default.

Delay in bringing the Complaint

The Panel finds that the Disputed Domain Name was registered on October 12, 2015, but the Complaint was not filed with the Center until October 15, 2024. In considering this delay of nine years in challenging the registration of the Disputed Domain Name, the Panel is of the same view as UDRP decisions mentioned in section 4.17, [WIPO Overview 3.0](#) that “panels have widely recognized that mere delay between the registration of a domain name and the filing of a complaint neither bars a complainant from filing such case, nor from potentially prevailing on the merits”. However, in specific cases, panels have noted that certain delays in filing a UDRP complaint may make it more difficult for a complainant to establish its case on the merits.

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 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.

The Panel finds that the Complainant has evidenced that it has rights in and to the trademarks HERBALIFE, which were registered in a number of countries, well before the registration of the Disputed Domain Name.

The entirety of the mark is reproduced 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.

Although the addition of the other term “congty” (meaning “company” in Vietnamese) and the hyphen symbol “-” may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the Disputed Domain Name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

In addition, the Panel finds that the addition of the gTLD “.com” to the Disputed Domain Name is disregarded as it is a technical requirement. [WIPO Overview 3.0](#), section 1.11.1.

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.

Paragraph 4(c) of the Policy lists circumstances, in particular but without limitation, which, if found by the Panel to be proved, demonstrate the Respondent's rights or legitimate interests in the Disputed Domain Name for the purposes of paragraph 4(a)(ii) of the Policy, including:

“(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

Regarding paragraph 4(c)(i) of the Policy, the Panel finds, in light of the Complainant's asserted facts, that no license, permission or authorization in any kind to use the Complainant's trademarks HERBALIFE has been granted to the Respondent. There is no evidence available that the Respondent holds any registered or unregistered trademark rights in any jurisdiction related to “herbalife”. Thus, the Panel finds that the Respondent has no rights in the trademarks HERBALIFE.

A reseller or distributor may be making a bona fide offering of goods or services and thus have rights or legitimate interests in a domain name if its use meets certain requirements, which are described in the decision *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) (“Oki Data”), including:

- the respondent must actually be offering the goods or services at issue;

- the respondent must use the site to sell only the trademarked goods or services (otherwise, there is the possibility that the respondent is using the trademark in a domain name to bait consumers and then switch them to other goods);

- the site itself must accurately and prominently disclose the respondent's relationship with the trademark owner; and

- the respondent must not try to “corner the market” in domain names that reflect the trademark, thus depriving the trademark owner of the ability to reflect its own mark in a domain name.

In this particular case, as evidenced in Annex 9 of the Complaint, the Disputed Domain Name used to resolve to a website displaying the Complainant's HERBALIFE trademarks and offering discounted products under that trademark alongside others. Further, the Panel conducted an independent search on “www.web.archive.org” and found that the Disputed Domain Name, at least on September 5, 2024, resolved to such a website. On this website, the Panel finds that the Respondent did not place any statement or disclaimer disclosing accurately and prominently its relationship (or lack thereof) with the Complainant. In addition, such website further contains the Complainant's HERBALIFE trademarks, logo and information. These may mislead consumers into believing in a connection or association between the Respondent and the Complainant, where such connection or association does not exist in reality.

In addition, the Panel finds that, the Respondent also advertised and offered for sales the nutritional products under other brands, besides the HERBALIFE-branded products.

With such a view, the Panel finds that the use of the Disputed Domain Name, wholly incorporating the Complainant's HERBALIFE trademark, does not meet the Oki Data criteria and thus, does not constitute a bona fide use within paragraph 4(c)(i) of the Policy.

Regarding paragraphs 4(c)(ii) and 4(c)(iii) of the Policy, the Panel finds that there is no evidence that would suggest that the Respondent, as an individual, business, or other organization, has been commonly known by the Disputed Domain Name, or that the Respondent is making a legitimate noncommercial or fair use of the Disputed Domain Name. In fact, as it appears following the Complainant's assertions and evidence with regard to the Respondent's registration of the Disputed Domain Name, the Respondent had full knowledge of the HERBALIFE trademarks and had an intention to gain profit by riding on the goodwill and reputation of the Complainant.

Based on the foregoing, 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, including:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

In the present case, the Panel finds that the Complainant has put forth evidence that the Respondent has registered and used the Disputed Domain Name in bad faith. The Respondent did not formally reply to the Complainant's contentions and, therefore, did not refute the Complainant's contentions.

The Panel has considered the Complainant's assertions and evidence relating to the Respondent's registration and use of the Disputed Domain Name. In this regard, the Panel finds that the Complainant's HERBALIFE trademarks have been registered and put in use for a number of years, gained considerable reputation in the field of supplement and personal care products in Viet Nam (among other countries), where the Respondent resides. The Complainant's registration of the HERBALIFE trademarks well predates the registration of the Disputed Domain Name.

The Disputed Domain Name comprises the HERBALIFE trademarks in their entirety, adding the non-distinctive term “congty” (meaning “company” in Vietnamese) and the hyphen symbol. Given the extensive use of the HERBALIFE trademarks for dietary supplements and nutritional supplements by the Complainant, which occurs in numerous countries including in Viet Nam, where the Respondent resides, it is very unlikely that the Respondent registered the Disputed Domain Name in a fortuity. Also, in consideration of the content of the website under the Disputed Domain Name (displaying the Complainant's HERBALIFE trademarks and offering discounted products under that trademark), the Panel is of the view that the Respondent obviously knew of the Complainant and its HERBALIFE trademarks when it registered the Disputed Domain Name. Thus, the Panel considers the registration of the Disputed Domain Name is an attempt by the Respondent as to take advantage of the Complainant's reputation and goodwill in its HERBALIFE trademarks.

It is evidenced by the Complainant that the website under the Disputed Domain Name used to purportedly offer for sale the HERBALIFE-branded products. In addition to the adoption of the Complainant's trademarks HERBALIFE as a uniquely distinctive part in the Disputed Domain Name, the Respondent used the Complainant's HERBALIFE trademarks, logo and information on the website thereunder.

The Panel takes the view that any Internet users seeking to purchase the Complainant's HERBALIFE products would likely mistakenly believe that the Respondent is either connected to or associated with the Complainant, while no such connection exists in fact. The Panel therefore finds that by using the Disputed Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of its website on its website, which is indicative of bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

On the date of this Decision, the Panel accesses the Disputed Domain Name and finds that it resolves to a different website, an online platform providing lottery results in Viet Nam. However, it does not change the Panel's finding of bad faith of the Respondent.

Based on the foregoing, the Panel finds that 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 <congty-herbalife.com> be transferred to the Complainant.

/Pham Nghiem Xuan Bac/

Pham Nghiem Xuan Bac

Sole Panelist

Date: January 10, 2025