ARBITRATION
AND
MEDIATION CENTER

WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

ADMINISTRATIVE PANEL DECISION
Headout Inc. v. N.S
Case No. DAI2024-0018

1. The Parties

The Complainant is Headout Inc., United States of America ("United States"), represented by Indus Law, India.

The Respondent is N.S., India.

2. The Domain Name and Registrar

The disputed domain name <headout.ai> (the "Disputed Domain Name") is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 20, 2024. On February 20, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On February 20, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 21, 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 amended Complaint on February 26, 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 the Respondent of the Complaint, and the proceedings commenced on February 27, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 18, 2024. The Response was filed with the Center on March 2, 2024.

The Center appointed Nick J. Gardner as the sole panelist in this matter on March 12, 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 is a company based in the United States. Since 2015 the Complainant has offered curated travel-related services under the mark HEADOUT. It is a substantial business – its revenue in the financial year 2021-22 was USD 14.8 million. It has in total served over 20 million customers. It has an extensive presence on the Internet and in social media.

The Complainant owns numerous trademark registrations either for HEADOUT or which include the word HEADOUT together with a stylized design of an airship. These include, among others, Indian registration No. 5458259 dated May 23, 2022 for the word HEADOUT. The word trademarks are referred to as the "HEADOUT trademark" in this decision. In addition, the Complainant owns the registration for a number of domain names incorporating the word "headout", including <headout.com>, which resolves to the Complainant's principal website.

The Disputed Domain Name was registered on April 27, 2023. It resolves to a website (the "Respondent's Website") the functionality of which is discussed below.

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 as follows: "It is apparent that the Respondent has registered the Disputed Domain Name with the modus operandi to deceive the Internet users and consumers for making unlawful gains. It is submitted that the Respondent's mala fide is writ large from the fact that the website hosted under the Disputed Domain Name is offering travel related services, curating an itinerary for users, which is identical to the Complainant's online marketplace for travelers which curates specialized travel experiences for its customers. The Respondent has attempted to replicate the Complainant's well-known business under the trade mark HEADOUT. This would leave no doubt in the mind of the consumers that the website hosted through the Disputed Domain Name belongs to the Complainant."

B. Respondent

The Respondent filed an informal email with the Center on March 2, 2024 which read as follows:

"I am writing to respond to the UDRP complaint filed by Headout Inc. regarding the domain name headout.ai. As the registrant, I wish to clarify my position and the circumstances surrounding my registration and use of this domain.

Purpose and Use of Domain:

My primary intention behind creating headout.ai has been to offer free travel advice. The application suggests itineraries based on user input, such as location, travel time, and type of travel, without any monetization strategy. This service operates at a personal cost, utilizing OpenAI's API to generate content.

Domain Name Selection:

The domain name was selected after a thorough search for a name that encapsulates the essence of the service – helping users 'head out' on their travels. The decision was made based on availability and relevance, with no knowledge of Headout Inc. or intention to infringe on any trademarks.

Awareness of Headout Inc. and Lack of Competition:

I became aware of Headout Inc. only after registering the domain and have no intention of competing with their business. My application does not use their logo or any branding that could cause confusion among consumers.

Willingness to Adapt:

While I am committed to retaining the domain due to its non-commercial, good faith use, I am open to modifying the application's name to 'Headout AI' wherever it is used in the user interface to further differentiate it from Headout Inc., should it be required.

In conclusion, my use of headout.ai is driven by a genuine desire to provide a free service to the travel community, without any intention of infringing on Headout Inc.'s rights or competing with their business. I respectfully request the Panel to recognize my legitimate interest and good faith in this matter.

I affirm that the information provided here is complete and accurate to the best of my knowledge and that this response is not presented for any improper purpose."

The Panel will exercise its discretion to treat this email as the Response.

6. Discussion and Findings

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

(i) the Disputed Domain Name is identical with or confusingly similar to a trademark or service mark in which the Complainant has rights;

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

(iii) the Disputed Domain Name has been registered and is being used in bad faith.

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 rights in the HEADOUT trademark. The Panel finds the Disputed Domain Name is identical to this trademark. It is well established that the Top-Level Domain ("TLD"), in this case ".ai", does not affect the Disputed Domain Name for the purpose of determining whether it is identical or confusingly similar. See, for example, *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. D2000-0429.

Accordingly, the Panel finds that the Disputed Domain Name is identical with or confusingly similar to the Complainant's trademark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

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. Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a domain name:

(i) before any notice to the respondent of the dispute, 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) the respondent has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or

(iii) the respondent is 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.

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.

The Respondent in effect says that paragraph 4(c)(iii) applies in that he is offering a free travel advisory service to consumers at his own expense. Consideration of this issue involves looking at the detail of the Respondent's Website and how it operates. The Panel notes that the Complaint is substantially exaggerated and misleading in this regard. It is drafted on the basis that the Respondent's Website substantially mimics the Complainant's own website and offers for sale precisely the same type of products and services as those provided by the Complainant and that innocent customers will have been duped into dealing with the Respondent believing they were dealing with the Complainant. The nature of the Respondent's Website does not support these allegations. The landing page comprises an aerial photograph of a tropical beach with a wave breaking on it. At the top is a header with the word "HEADOUT" on it. There is then a rectangular area with four boxes. The first is a search box containing text "Where would you like to go to?". As a user starts typing in this box suggested destinations corresponding to the entered text are listed for selection. The three remaining boxes offer drop down choices of "month", "mood" and "activities". There is then what appears to be a button marked "Let's Go". The Complainant's evidence includes screen shots showing the Complainant selected Spain as a destination and options of January, Relaxed, and Any. These appear to have returned results which comprise three pages of a generalised itinerary in English for a two page visit to Spain. The Panel has visited the Respondent's Website and was unable to make this functionality work. Nothing happened when the "let's go" button was clicked. It may be the Respondent's Website is still a work in progress or that its functionality is rather rudimentary and intermittent – see further below. The provided itinerary has no sign of any commercial activity in terms of booking services or advertising. It is simply a generalized guide suggesting places to visit and things to do during a visit to Spain. It appears from what the Respondent says that this text is generated "on the fly" by an artificial intelligence application. There is no other material on the Respondent's Website and no identification of who the Respondent is.

The Respondent says he independently arrived at the Disputed Domain Name. It is true that the combination of the words "head" and "out" involves ordinary English words which naturally has a travel related connotation. That is after all why the Complainant chose its name. The question for the Panel is whether the Respondent independently arrived at this name for a bona fide project involving using AI to

generate travel related information. Alternatively, is the Respondent's account untrue and his website simply a pretextual justification for conduct that seeks to take advantage of the Complainant?

The Panel considers it is at least possible that the Respondent could have independently chosen those words. The Respondent says "The domain name was selected after a thorough search for a name that encapsulates the essence of the service – helping users 'head out' on their travels. The decision was made based on availability and relevance, with no knowledge of Headout Inc. or intention to infringe on any trademarks". It would have been helpful if the Respondent had provided details of the searches he carried out. The Panel has however endeavored to understand the likely situation using its general powers (see WIPO Overview 3.0 at section 3.8). The Panel has carried out a Google search from an IP address in India, using a VPN. The search was carried out with a newly installed Firefox browser. The results returned overwhelmingly reference the Complainant and its business.

It therefore seems to the Panel that the Respondent, purporting to act in the same travel industry as the Complainant, would more likely than not have been aware of the Complainant and its business when he chose the Disputed Domain Name particularly as he says he carried out "thorough searches". Apart from any Google or similar searches he would likely have carried out it also seems more likely than not that in selecting the Disputed Domain Name he would have become aware that the Complainant owned <headout.com>. The Complainant also has trademarks in India and the evidence provided by the Complainant as to its international reputation includes evidence that reputation subsists in India.

Looking at the evidence as a whole the Panel on the balance of probabilities does not accept the explanation offered by the Respondent. The Panel is conscious that proceedings under the UDRP are of a limited and restricted nature, do not involve oral hearings, discovery, or cross examination, and hence are only applicable to clear cut cases, and it is not usually appropriate to decide disputed questions of fact or matters of truth or falsehood. That does not however mean the Panel cannot reach a conclusion as to the veracity of a case that is being advanced where the evidence that is provided is in the form of conclusory statements that are inherently not credible, and which are not supported by relevant corroborative or third party evidence. The Panel considers this to be such a case.

Accordingly, the Panel finds that the Respondent has failed to produce any credible evidence to rebut the inference raised by the Complainant and establish any rights or legitimate interests in the Disputed Domain Name. Accordingly, the Panel finds that paragraph 4(a) of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

In the present circumstances, the evidence as to the extent of the reputation the Complainant enjoys in the HEADOUT trademark, and the fact that the Disputed Domain Name is identical to the HEADOUT trademark, and is being used for activity directly relevant to the Complainant's area of activity leads the Panel to conclude the registration and use were in bad faith.

The Panel concludes that the Respondent chose to register a name comprising the Complainant's trademark for some form of activity which uses an AI application to generate travel related responses to user inputs. The evidence before the Panel does not provide sufficient material for the Panel to reach a conclusion on exactly what the Respondent's intention was in so doing. Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

(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 circumstances the Panel cannot clearly determine which, if any, of the above factors may apply. It seems to the Panel that the Disputed Domain Name is intended to take some form of advantage of the Complainant's fame and reputation in the travel field. It also seems likely that the Respondent's Website is intended to provide a pretextual justification for the choice of the Disputed Domain Name given its fairly rudimentary nature and the fact it does not seem to work consistently. However, even if the Respondent's precise motive is unclear the Panel notes that in any event the above list is non-exhaustive and takes the view that the acquisition of the Disputed Domain Name with knowledge of the Complainants' trademark is itself evidence of bad faith – see The *Channel Tunnel Group Ltd. v. John Powell*, WIPO Case No. D2000-0038.

This is particularly so given that the Response does not provide a clear intention of what the purpose of the Respondent's Website is or what the Respondent's objectives are and hence has not presented a clear explanation of any case of good faith that he might have. The Panel infers that none exists.

Accordingly, the Panel finds that the Disputed Domain Name has been registered and is being used in bad faith. Accordingly the third condition of paragraph 4(a) of the Policy has been fulfilled

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 <headout.ai> be transferred to the Complainant.

/Nick J. Gardner/
Nick J. Gardner
Sole Panelist
Date: April 8, 2024