

ADMINISTRATIVE PANEL DECISION

Hyundai Motor Company v. Privacy service provided by Withheld for Privacy ehf / Ricardo Vera

Case No. D2022-2348

1. The Parties

The Complainant is Hyundai Motor Company, Republic of Korea, represented by Goodrich, Riquelme & Asociados, Mexico.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Ricardo Vera, Mexico.

2. The Domain Name and Registrar

The disputed domain name <hyundai-seminuevo.com> (the “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 June 28, 2022. On June 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On June 29, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on June 30, 2022, 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 4, 2022.

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 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 28, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 1, 2022.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on August 4, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a large manufacturer of automobiles that are sold around the world. The Complainant was founded in 1967 and has won several international awards. The total sales of the Complainant in 2021 surpassed 90 billion USD.

The Complainant holds trademark registrations in several jurisdictions for HYUNDAI, including in Mexico where the Respondent appears to be located, e.g. Mexican trademark registration number 439,025, registered August 6, 1993.

The Domain Name was register on October 6, 2021, and resolves to a webpage in Spanish that appears to be offering pre-owned Hyundai cars in the Mexican market. The webpage makes use of the Hyundai trademark, and the webpage claims states in Spanish that “Todos Nuestros Vehículos Seminuevos Certificados Cuentan con 1 año de Garantía y Envío Gratis a Toda la República Llama Ahora y Obtén Grandes Descuentos”.

5. Parties’ Contentions

A. Complainant

The Complainant argues that the Domain Name is confusingly similar to the Complainant’s trademark. The Domain Name reproduces the name of the trademark HYUNDAI. The fact that the Domain Name also incorporates “seminuevo”, does not avoid confusion among consumers.

The Complainant asserts that the Respondent is not authorized to use the Complainant’s trademark. The Respondent has not made any use of, or demonstrable preparations to use, the Domain Name in connection with a *bona fide* offering of goods or services. The Respondent’s use of the Domain Name does not represent a *bona fide* offering. There is no connection or relationship between the Respondent and the trademark HYUNDAI, so cannot be any legitimate right in favor of the domain name holder.

The Complainant argues that the Respondent had full knowledge of the Complainant and its trademark when the Respondent registered the Domain Name. The Respondent has registered and used the Domain Name to attract in an illegitimate manner the attention of Internet users by making them believe that there is a relationship with HYUNDAI, or worse, that it is the Complainant itself that offers the pre-owned cars.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has established that it has rights in the trademark HYUNDAI. The test for confusing similarity involves a comparison between the trademark and the Domain Name. The Domain Name incorporates the Complainant’s trademark, with the addition of “seminuevo”. “Seminuevo” in Spanish means pre-owned in English. The addition does not prevent a finding of confusing similarity between the Domain Name and the trademark.

For the purpose of assessing under paragraph 4(a)(i) of the Policy, the Panel may ignore the generic Top Level-Domain (“gTLD”), see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.11.1.

The Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

As stated in [WIPO Overview 3.0](#), section 2.1, “while 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 often impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element”.

The Complainant has made unrebutted assertions that it has not granted any authorization to the Respondent to register a domain name containing the Complainant’s trademark or otherwise make use of the Complainant’s mark. The Complainant has also asserted that there is no connection or relationship between the Respondent and the trademark HYUNDAI. There is no evidence that the Respondent has registered the Domain Name as a trademark or acquired unregistered trademark rights. The Respondent has used the Domain Name for a webpage in Spanish that appears to be offering pre-owned Hyundai cars in the Mexican market. Whereas such use is not illegitimate per se, specific requirements must be met, and they are not met here. The Respondent’s webpage makes unauthorized use of the HYUNDAI trademark and appears intended to give the impression that the website is connected and/or authorized by the Complainant. The webpage does not accurately and prominently disclose the Respondent’s relationship with the trademark holder, see [WIPO Overview 3.0](#), section 2.8.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name in accordance with paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Based on the fame of the Complainant’s trademark, the composition of the Domain Name and the Respondent’s use of the Domain Name, it is evident that the Respondent was aware of the Complainant and its trademark when the Respondent registered the Domain Name.

The Respondent appears to have used the Domain Name to attract for commercial or other gain, users to its webpage, by creating a likelihood of confusion with the Complainant’s trademark. As described above, the Respondent has no right or legitimate interest in the Domain Name. The Respondent has not responded to the Complainant’s contentions, which is further indication of bad faith.

For the reasons set out above, the Panel concludes that the Domain Name was registered and is being used in bad faith, within the meaning of 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 Domain Name, <hyundai-seminuevo.com>, be transferred to the Complainant.

/Mathias Lilleengen/

Mathias Lilleengen

Sole Panelist

Date: August 15, 2022