

ADMINISTRATIVE PANEL DECISION

Hairtamin LLC v. Mehdi Moradi

Case No. D2022-4451

1. The Parties

Complainant is Hairtamin LLC, United States of America (“United States”), represented by Conkle, Kremer & Engel, PLC, United States.

Respondent is Mehdi Moradi, Iran (Islamic Republic of).

2. The Domain Name and Registrar

The disputed domain name <hairtaminofficial.com> is registered with 1API GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 22, 2022. On November 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 22, 2022, 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 and contact information in the Complaint. The Center sent an email communication to Complainant on November 23, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on November 30, 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 Respondent of the Complaint, and the proceedings commenced on November 30, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 20, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on December 23, 2022.

The Center appointed Gabriel F. Leonardos as the sole panelist in this matter on January 10, 2023. 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 is Hairtamin LLC, a Californian company that manufactures and sells nutritional supplements and vitamins dedicated mainly to hair care. Complainant's business runs under the mark HAIRTAMIN.

Complainant owns two trademark registrations in the United States for the trademark HAIRTAMIN, those being:

Registration No.	Trademark	Jurisdiction	International Class	Date of Registration
5,121,190	HAIRTAMIN	United States	5	January 10, 2017
5,227,406	HAIRTAMIN	United States	35	June 20, 2017

The disputed domain name was registered on June 12, 2022, and resolves to a webpage with a reproduction of Complainant's official webpage in Persian, in which Complainant's trademark HAIRTAMIN is reproduced.

5. Parties' Contentions

A. Complainant

Complainant pleads that the disputed domain name is confusingly similar to the registered trademark HAIRTAMIN, since it fully incorporates Complainant's trademark HAIRTAMIN.

Complainant affirms that the disputed domain name uses the trademark HAIRTAMIN in its entirety with the addition of the term "official" – which would not avoid a confusingly similarity between the disputed domain name and Complainant, and lead consumers to confusion as they may believe that the disputed domain name is a Complainant's official source.

Therefore, according to Complainant, the disputed domain name is confusingly similar with Complainant's trademark HAIRTAMIN, fulfilling paragraph 4(a)(i) of the Policy and paragraphs 3(b)(viii) and 3(b)(ix)(1) of the Rules.

In addition, Complainant states that Respondent would not have any rights or legitimate interests in respect of the disputed domain name, nor is Respondent commonly known by the disputed domain name. Further, Respondent has not been authorized, or licensed to use Complainant's trademark HAIRTAMIN as a domain name nor is Respondent associated with Complainant.

Complainant observes that Respondent does not make a legitimate noncommercial fair use of the disputed domain name, as it would be used to resell Complainant's products unauthorizedly and suggest a non-existent affiliation with Complainant's business. Complainant contends that the only apparent use of the disputed domain name is to fraudulently represent to consumers that Respondent is the "official" presence for Complainant. In this respect, Complainant claims that the user interface for the website located at the disputed domain name mimics the layout, color scheme, and product selection of Complainant's website,

located at <hairtamin.com> - albeit in Persian. Complainant also contends that the website located at the disputed domain name uses the same graphics, photos disclaimers, and promotional materials as Complainant's true "official" website.

This way, Complainant states that no legitimate use of the disputed domain name could be reasonably claimed by Respondent, thus paragraph 4(a)(ii) of the Policy and paragraph 3(b)(ix)(2) of the Rules have been fulfilled.

Finally, Complainant states that Respondent (i) aims to create a likelihood of confusion by using Complainant's trademark HAIRTAMIN; (ii) uses the disputed domain name for commercial gain by reselling Complainant's products in an unauthorized manner; and (iii) has intentionally chosen the trademark HAIRTAMIN to divert Complainant's authentic costumers into the disputed domain name to obtain profit.

Thus, according to Complainant, the requirements for the identification of a bad faith registration and use of the domain name have been fulfilled, pursuant to paragraph 4(b)(iv) of the Policy.

Accordingly, Complainant requests transfer of the disputed domain name to Complainant.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

To succeed in a UDRP complaint, Complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied, as following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) 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.

The burden of proving these elements is upon Complainant.

Respondent had 20 days to submit a response in accordance with paragraph 5(a) of the Rules and failed to do so. Paragraph 5(f) of the Rules establishes that if a respondent does not respond to the complaint, in the absence of exceptional circumstances, the panel's decision shall be based upon the Complaint.

A. Identical or Confusingly Similar

Complainant has duly proven that it owns prior registered trademark rights for HAIRTAMIN, and that the disputed domain name is constituted by the trademark HAIRTAMIN in its entirety with the sole addition of the term "official".

The addition of the term "official" does not prevent a finding of confusing similarity with Complainant's trademark HAIRTAMIN – since the trademark HAIRTAMIN is fully integrated, and recognizable, in the disputed domain name.

Thus, the Panel finds that the disputed domain name is confusingly similar to Complainant's trademark HAIRTAMIN, and so the requirement of the first element of paragraph 4(a) of the Policy is satisfied.

B. Rights or Legitimate Interests

The consensus view of UDRP panels on the burden of proof under paragraph 4(a)(ii) of the Policy is summarized in section 2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") as follows: "[w]hile 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."

In this case, noting the facts and contentions listed above, the Panel finds that Complainant has made out a *prima facie* case showing that Respondent lacks rights or legitimate interests in the disputed domain name, so the burden of production shifts to Respondent. As Respondent has not replied to Complainant's contentions, the Panel has considered Complainant's un rebutted *prima facie* case to be sufficient to demonstrate that Respondent has no rights or legitimate interests in the disputed domain name.

It should be noted that Respondent's lack of response (in the broader context of the case), according to the above-mentioned guidelines from [WIPO Overview 3.0](#), section 2.1, suggests that Respondent has no rights or legitimate interests in the disputed domain name that it could put forward.

Furthermore, Respondent has not used the disputed domain name in the context of a *bona fide* that could demonstrate legitimate interests, since the evidence shows that the confusingly similar disputed domain name resolves to a website in which Complainant's products are allegedly sold by Respondent unauthorizably and which reproduces Complainant's official webpage in Persian (as duly proven on Annex 9 to the Complaint). Moreover, the Panel notes that the disputed domain name is composed of Complainant's trademark together with the word "official" which suggests a non-existent affiliation with Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

Therefore, the Panel finds that the requirement of the second element of paragraph 4(a) of the Policy is also satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists a number of circumstances that, without limitation, are deemed evidence of registration and use of a domain name in bad faith.

Respondent has registered the disputed domain name that fully incorporates Complainant's trademark HAIRTAMIN, plus the addition of the term "official", which does not prevent a confusing similarity but rather suggests an official affiliation with Complainant's business even though such affiliation does not exist.

The Panel finds that it was duly demonstrated that Respondent was likely aware of Complainant's rights to the trademark HAIRTAMIN at the time of the registration – as Respondent uses the referred trademark in the content of the website to resell Complainant's products unauthorizably, as will be discussed further below, proving that Respondent was more likely than not aware of Complainant's products and business at the time of registration.

In addition, the use of the disputed domain name in the present circumstances allows a finding of bad faith registration and use, since Respondent's website offers competing services in Persian reproducing Complainant's official webpage under a domain name that wholly incorporates Complainant's trademark with the word "official" in an apparent attempt to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the trademark of Complainant.

The Panel finds that the circumstance of the present case allows a finding of bad faith in the registration and use of the disputed domain name, considering that Respondent tries to obtain commercial gain by using the inherently misleading disputed domain name to resolve to a webpage with a reproduction of Complainant's official webpage in Persian.

Moreover, the Panel finds it relevant that Respondent has not provided any evidence of good faith registration or use, or otherwise participated in this dispute. Complainant has put forward serious claims regarding the apparent bad faith use of the disputed domain name that the Panel would expect any legitimate party would seek to refute.

In light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith. Therefore, the requirement of the third element of paragraph 4(a) of the Policy is satisfied.

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, <hairtaminofficial.com>, be transferred to Complainant.

/Gabriel F. Leonardos/

Gabriel F. Leonardos

Sole Panelist

Date: January 24, 2023