

## **ADMINISTRATIVE PANEL DECISION**

Huel Limited v. Jatinder Ruprah

Case No. D2023-1445

### **1. The Parties**

The Complainant is Huel Limited, United Kingdom, represented by Demys Limited, United Kingdom.

The Respondent is Jatinder Ruprah, United Kingdom

### **2. The Domain Names and Registrar**

The disputed domain names <huelshaker.com> and <huelshakers.com> are registered with NameCheap, Inc. (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 4, 2023. On April 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On April 4, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 5, 2023, 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 April 6, 2023. The Respondent sent an informal email communication on April 11, 2023.

The Center verified that 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 April 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 2, 2023. On May 3, 2023, the Respondent requested a two week extension of the Response due date. On May 4, 2023, the Center invited the Complainant to comment on the Respondent's extension request. On May 5, 2023, the Complainant sent an email stating that they do

not oppose the Respondent's request. Accordingly, the Center notified on May 9, 2023, that the Response due date was extended to May 21, 2023. On May 22, 2023, the Center received communications from the Parties. Accordingly, the Center sent a possible settlement email on May 22, 2023. On May 30, 2023, the Complainant requested for a suspension of the proceedings. On May 31, 2023, the Center notified the Parties of the suspension of the proceedings. On July 4, 2023, the Complainant requested for the proceedings to be resumed. Accordingly, the Center notified the reinstitution of proceedings on July 4, 2023.

The Center appointed Dr. Clive N.A. Trotman as the sole panelist in this matter on July 11, 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**

The Complainant manufactures and sells a variety of specially designed food supplement products intended to provide the consumer with a balance of healthy constituents. The word "Huel" in the Complainant's name and trademark was created from the words "human" and "fuel". The Complainant holds registered trademarks for HUEL as follows:

HUEL, United Kingdom Intellectual Property Office, registered November 6, 2015, registration number 3121200, in classes 5, 29, and 30;

HUEL, European Union Trade Mark, registered March 7, 2016, registration number 014830591, in classes 5, 29, and 30;

HUEL, United States of America Patent and Trademark Office, principal register, registered December 27, 2016, registration number 5108277, in class 5.

The Complainant also owns and uses the website "www.huel.com", and is active on social media, where it has some hundreds of thousands of followers.

One of the Complainant's promoted products is the Huel Shaker, a recently redesigned device in which the Complainant's various products may be mixed together.

The disputed domain names were registered on February 05, 2023 and have resolved to parking pages displaying a variety of pay-per-click advertising links. The disputed domain names have been configured for potential use as email addresses.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant has produced copies of registration documents in respect of the trademarks listed in section 4 above.

The Complainant contends that the disputed domain names are identical or confusingly similar to a trademark in which the Complainant has rights. The disputed domain names incorporate the Complainant's trademark in its entirety, followed by the additional words either "shaker" or "shakers". The Complainant says its trademark is dominant in the disputed domain names and the additional words "shaker" or "shakers" do not create any distinction from the trademark but will increase the potential for confusion because the Complainant is a well-known producer of protein shakers.

The Complainant says that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

In seeking to establish a *prima facie* case in terms of paragraph 4(a)(ii) of the Policy, the Complainant says it has found no evidence that the Respondent is commonly known by the Complainant's trademark or by either of the disputed domain names, or has ever traded under any such names, but is in fact Jatinder Ruprah. The Respondent has never received any permission to use the Complainant's trademark. The Complainant says the Respondent does not use the disputed domain names in connection with a *bona fide* offering of goods or services, since they display the Complainant's trademark in order to attract visitors to websites with pay-per-click links that refer visitors to other advertisers. Furthermore, the disputed domain names are not used for any legitimate noncommercial or fair purpose, which might include for example referential use, commentary, criticism, praise or parody, but are in fact used for the commercial purpose of referral to advertisers.

The Complainant says there is no conceivable use to which the disputed domain names could be put that would confer any legitimate interest upon the Respondent.

The Complainant contends that the disputed domain names were registered and are being used in bad faith. The disputed domain names incorporate the Complainant's trademark and many Internet users would reasonably expect them to resolve to websites associated with the Complainant. In fact they resolve to websites of the Respondent that offer visitors pay-per-click links to third party advertisers, some of which are advertising in fields related to the Complainant's business.

The Complainant says that even if another entity is responsible for the choice of and placement of the links on the Respondent's websites, the Respondent cannot disclaim responsibility for them. Thus the disputed domain names are likely to cause Internet users to be confused, at least initially, into being led to believe they may be visiting a website associated with the Complainant, such deception being for the commercial benefit of the Respondent.

The Complainant also contends as evidence of bad faith that the disputed domains have been specifically configured by means of Mail Exchange (MX) and Sender Policy Framework (SPF) records for the potential to be used by the Respondent as email addresses that would appear to represent the Complainant, although there is no evidence they have as yet been so used. In particular, the SPF records may decrease the likelihood of emails sent by the Respondent from being treated as spam.

The Complainant has cited previous decisions under the Policy that it considers to support its case.

The Complainant requests the transfer of the disputed domain names.

## **B. Respondent**

The Respondent did not submit any formal response in reply to the Complainant's contentions. The Respondent did however reply to the Center, copied to the Complainant, the day after the deadline for submission of a Response, asking for an extension of time of two weeks, which was not opposed by the Complainant.

On May 22, 2023, the Respondent emailed the Center and the Complainant with an offer to transfer the disputed domain names "in exchange for a settlement fee as outlined in the UDRP process", and further on, offered to "take immediate action to initiate the formal UDRP complaint process and work cooperatively with the selected mediation service provider".

## 6. Discussion and Findings

Paragraph 4(a) of the Policy states that the Respondent is required to submit to a mandatory administrative proceeding in the event that the Complainant asserts to the applicable dispute-resolution provider, in compliance with the Rules, that:

“(i) your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

(ii) you have no rights or legitimate interests in respect of the domain name; and

(iii) your domain name has been registered and is being used in bad faith”.

The Complainant has made the relevant assertions as required by the Policy. The dispute is properly within the scope of the Policy and the Panel has jurisdiction to decide the dispute.

### A. Identical or Confusingly Similar

The Panel is satisfied by the evidence produced that the Complainant has rights in the registered trademark HUEL.

The disputed domain names are <huelshaker.com> and <huelshakers.com>, each of which may be read as the Complainant’s trademark followed by either “shaker” or “shakers”. On the basis that the disputed domain names prominently features the entirety of the Complainant’s registered trademark, each is found to be confusingly similar to the trademark. The suffixed words “shaker” or “shakers” do not prevent a finding of confusing similarity, and the generic Top-Level Domain “.com” may be disregarded in the determination of confusing similarity.

The Panel finds for the Complainant under paragraph 4(a)(i) of the Policy.

### B. Rights or Legitimate Interests

The Complainant has stated a *prima facie* case, after due enquiry, to the effect that the Respondent has no rights or legitimate interests in respect of the disputed domain names, and says it is for the Respondent to establish otherwise.

Paragraph 4(c) of the Policy provides for the Respondent to contest the Complainant’s *prima facie* case under paragraph 4(a)(ii) of the Policy and to establish rights or legitimate interests in a disputed domain name by demonstrating, without limitation:

“(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”.

The Respondent has not contested the Complainant’s *prima facie* case under paragraph 4(c) of the Policy or otherwise. The disputed domain names were registered by the Respondent at least seven years after the Complainant first registered the trademark HUEL. There is no evidence that the use of the disputed domain names could qualify as *bona fide* because they use their confusing similarity to the Complainant’s trademark in order to attract Internet visitors to pay-per-click advertising websites. There is no evidence the disputed

domain names are or have been used to reflect any name by which the Respondent may have been commonly known. The use of the disputed domain names is commercial, being for pay-per-click advertising purposes, and cannot be considered a legitimate noncommercial or fair use without intent for commercial gain.

The Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain names and finds for the Complainant under paragraph 4(a)(ii) of the Policy.

### **C. Registered and Used in Bad Faith**

The Complainant must prove under paragraph 4(a)(iii) of the Policy that each disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy lists four alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

“(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 website or location or of a product or service on your website or location”.

The provisions of paragraph 4(b) of the Policy are without limitation and bad faith may be found alternatively by the Panel.

According to the evidence, the Complainant's product the Huel Shaker is a “Powdered food shaker/mixer”, a dishwasher-safe container prominently displaying the Complainant's logo, intended for mixing the consumer's selection of the Complainant's products. The Huel Shaker was designed in collaboration with DCA Design International, was awarded the “iF Product Design Award” in 2021, and features on the websites both of the Complainant and of DCA Design International.

The Complainant has produced evidence of the usage of the disputed domain names, which resolve to websites that contain pay-per-click links. The NameCheap website to which the disputed domain name <huelshaker.com> resolves, under a heading “huelshaker.com”, presents a list of 10 titles that appear to be link categories since they are headed “Related searches” and are each followed by “>” arrows. The link categories include, for example, “Keto Gummy Bears”, “White Shaker Kitchen Cabinets”, “White Shaker Cabinets” and “Shaker Kitchen Cabinets”. (The word “shaker”, apart from describing a mixing device, has an unrelated meaning of essentially simple, in the context of furniture and household items, derived from the informally named “Shaker” faith. The links to cabinet suppliers are apparently an aberration on the part of the link selection algorithm that has picked up on the word “shaker” in the disputed domain name).

When the Complainant selected the link “Keto Gummy Bears” it was provided with four links to purveyors of gummies, each marked as being an “Ad”, three of which had summaries that alluded to dietary preferences or health such as “Fat Burner Gummies” and “Plant Based Ingredients”. These claims at least partially impinge on the sphere of dietary preferences and health foods in which the Complainant does business

under its registered trademark. The links displayed on the website to which the disputed domain name <huelshakers.com> resolved also included “Keto Gummy Bears”.

On the totality of the evidence the Respondent has registered the disputed domain names, each confusingly similar to the Complainant’s trademark, without any claim of right to do so, and has deployed them such that Internet visitors to the corresponding websites will be shown commercial links to other businesses having no relevance to the Complainant and in some instances being to some degree in competition with the Complainant. At least a proportion of Internet visitors pursuing either of the disputed domain names are likely to have been attracted by the presence of the Complainant’s trademark, and confused, if only initially, into the reasonable expectation that it would take them to a website owned or endorsed by the Complainant. It may be concluded on the balance of probabilities that the links provided through the disputed domain name websites have been placed according to the pay-per-click model, in which advertisers pay commission in return for the referral of visitors to them, and the website owner, *i.e.*, the Respondent, may receive a portion of this commission. In any case the recipients of the commission need not include the Respondent in the terms of paragraph 4(b)(iv) of the Policy.

Whilst previous decisions under the Policy are not precedential in status, nevertheless it is widely accepted that respondents are responsible for advertisements and links placed on their website by a third-party provider.

The Panel finds, on the evidence and on the balance of probabilities, that the disputed domain names were registered and are being used in bad faith by the Respondent under paragraph 4(b)(iv) of the Policy.

The Complainant has produced copies from a DNS lookup website (“www.dnschecker.org”) showing that both disputed domain names have been configured with MX and SPF records. The MX configuration would allow emails to be sent from addresses in the form “[name]@[disputed domain name]”, thus portraying the Complainant’s trademark and carrying a risk of being erroneously believed by the recipient to have emanated from the Complainant. The SPF configuration may be used as a device to reduce the probability of an email being identified as spam by the email systems. Although there is no evidence the disputed domain names have been used for the purpose of sending misleading emails, there can be no plausible reason why the Respondent should have so configured their email capabilities. The Panel finds the Respondent’s institution of email capabilities in connection with the disputed domain names to be an aggravating factor in the determination of bad faith in this case.

Accordingly the Panel finds the disputed domain names to have been registered and used in bad faith in the terms 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 disputed domain names, <huelshaker.com> and <huelshakers.com>, be transferred to the Complainant.

*/Dr. Clive N.A. Trotman/*

**Dr. Clive N.A. Trotman**

Sole Panelist

Date: July 25, 2023