

ADMINISTRATIVE PANEL DECISION

The Hand Group LLC v. Rua Sara
Case No. D2023-2577

1. The Parties

The Complainant is The Hand Group LLC, United States of America ("United States"), represented by Smith, Gambrell & Russell, LLP, United States.

The Respondent is Rua Sara, Portugal.

2. The Domain Name and Registrar

The disputed domain name <thedopestshop.org> (the "Disputed Domain Name") is registered with Nicenic International Group Co., Limited (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 14, 2023. On June 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On July 10, 2023, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 11, 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 July 11, 2023.

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 July 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 3, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 7, 2023.

The Center appointed Nick J. Gardner as the sole panelist in this matter on August 15, 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.

On August 30, 2023, the Panel issued a procedural order seeking further information as to unregistered trademark rights which the Complainant appeared to be relying on. On September 1, 2023 the Complainant by email provided certain further information (see below). The Respondent did not comment on the procedural order.

4. Factual Background

The Complainant is a corporate entity established in Utah, United States. It has traded since 2021. It sells chocolate bars and gummies containing or derived from hemp, vapes and oils and smoking articles, and liquid HHCP syrups. Its principal website (the "Complainant's Website") is linked to the domain name <thedopestshop.com>. It applied for a United States trademark for the words THE DOPEST, Serial No. 97103108 on November 1, 2021. That trademark has not yet been granted.

The Disputed Domain Name was registered on February 23, 2023. At the time of this decision the Disputed Domain Name resolves by redirection to a website at the domain name <thedopestshops.com> (the "Respondent's Current Website") which in large measure replicates elements from the Complainant's Website. In particular it prominently displays a logo which is a stylised form of the words "The Dopest" which is identical to the logo that the Complainant uses (the "Complainant's Logo"). Filed evidence shows that previously the Disputed Domain Name has resolved directly to a website (the "Respondent's Previous Website") which again in large measure copies the Complainant's website and which also uses the Complainant's Logo. Both the Respondent's Current Website and the Respondent's Previous Website offer for sale a range of cannabis related products. Most if not all of these are branded as THE DOPEST and bear the Complainant's Logo. The Respondent's Current Website also provides details of a retail store in Cincinnati, Ohio, United States, where the Respondent offers its products for sale.

5. Parties' Contentions

A. Complainant

The Complainant's contentions can be summarized as follows.

The Disputed Domain Name is identical or confusingly similar to the mark THE DOPEST, in which the Complainant claims to have trademark rights (see discussion below).

The Respondent has no rights or legitimate interests in the Disputed Domain Name.

The Disputed Domain Name was registered and is being used in bad faith. The Respondent's First Website is "slavish copy and knock-off of Complainant's website". The Complainant says that use of the Disputed Domain Name by the Respondent is likely to attract for commercial gain, Internet users to the Respondent's website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product on the Respondent's website or location. It also says there is also a risk that people would fall for fraudulent emails from scammers pretending to be from the Complainant so that the Disputed Domain Name is likely to have been registered in contemplation of an attempt to take advantage of the reputation of the Complainant's mark. It then further goes on to say that the Disputed Domain Name is parked and relies on various authorities in this regard – see further the discussion below.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Matters

The Panel notes that no communication has been received from the Respondent. However, given the Complaint and Written Notice were sent to the relevant addresses disclosed by the Registrar, then the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to "employ reasonably available means calculated to achieve actual notice". Accordingly, the Panel considers it is able to proceed to determine this Complaint and to draw inferences from the Respondent's failure to file any Response. While the Respondent's failure to file a Response does not automatically result in a decision in favor of the Complainant, the Panel may draw appropriate inferences from the Respondent's default (see, e.g., *Verner Panton Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#)).

6.2 Substantive Matters

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

- (1) the Disputed Domain Name is identical with or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (2) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (3) the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant relies upon its pending application for a registered trademark for the words "The Dopest" but that is not normally sufficient for this element – see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.1.4.

In response to the Panel's procedural order (above) the Complainant stated as follows. The Complainant has used its mark THE DOPEST since December 17, 2021. It has generated over USD 20,000,000 in revenue since the above date and has spent a little over USD 2,500,000 for advertising its THE DOPEST business since the start of the business. It sells products on its website at "www.thedopestshop.com" and spends millions of dollars on Instagram and YouTube influencers. No corroborating documentation was provided as to these matters.

So far as a claim to unregistered trademark rights is concerned see [WIPO Overview 3.0](#), section 1.3 as follows.

"1.3 What does a complainant need to show to successfully assert unregistered or common law trademark rights?

To establish unregistered or common law trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant's goods and/or services.

Relevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) includes a range of factors such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys.”

Whilst the evidence provided by the Complainant (see above) is not particularly comprehensive, and is not contested by the Respondent, the Panel is persuaded that the Complainant does have at least limited unregistered trademark rights for the purposes of the Policy – in particular because the Respondent clearly thought it worthwhile to adopt the Complainant’s THEDOPEST identifier to attract custom to its own website. As the Panel noted in *NEOVIA, Hi-Nutrients International Ltd. v. WhoisGuard Protected, WhoisGuard, Inc. / Deniz Hus* WIPO Case No. [D2019-0600](#): “The Respondent did not provide arguments to the contrary; rather, in the Panel’s view, the Respondent cannot dispute that, given it deliberately targeted the source identifier in an apparent fraud attempt. Such targeting of the Complainants is sufficient to establish limited trademark rights in the HI-NUTRIENTS trademark for the purposes of the Policy.” See also *Greenspring Associates, Inc. v. Lisa Knowles, Victoria capital pty* WIPO Case No. [D2019-0265](#): “To that extent, Complainant has in fact used the domain name <gspring.com> as a source identifier for its services. One person who cannot dispute that fact is Respondent, who (as is discussed below) deliberately targeted that source identifier (<gspring.com>) to attempt to perpetrate a fraud via confusion. The Domain Name differs from the GSPRING mark only to the extent that the Domain Name replaces the ‘i’ with an ‘l’. The visual similarity between the ‘i’ and the ‘l’ – especially when the font is small – is obvious.”

Accordingly, the Panel is satisfied on the evidence as filed that the Complainant has shown it has unregistered trademark rights in the marks THE DOPEST and/or THEDOPEST for the purposes of the Policy given its use as a source identifier.

It is well established that the addition of a descriptive term (such as here “shop”) to a disputed domain name does not prevent a finding of confusing similarity ([WIPO Overview 3.0](#), section 1.8).

It is also well established that the generic Top-Level Domain (“gTLD”), in this case “.org”, 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 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 any of which is sufficient to demonstrate that the Respondent has rights or legitimate interests in the disputed 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.

None of these apply in the present circumstances. The composition of the Disputed domain Name carries a risk of implied affiliation with the Complainant. The Complainant has not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use the marks THE DOPEST or THEDOPEST. The Complainant had clearly chosen the marks THE DOPEST and/or THEDOPEST as a source identifier prior to the Respondent’s registration of the Disputed Domain Name.

The Complainant has therefore established a *prima facie* case that the Respondent has no rights or legitimate interests in the Disputed Domain Name and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name (see, for example, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

The Panel finds that the Respondent has failed to produce any evidence to establish its rights or legitimate interests in the Disputed Domain Name. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name and the second condition of paragraph 4(a) of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

In the present circumstances, the use by the Respondent of the Disputed Domain Name to offer for sale a range of cannabis related products, and the lack of any explanation from the Respondent as to why it registered the Disputed Domain Name leads the Panel to conclude the registration and use was in bad faith.

Under the Policy paragraph 4(b)(iv) evidence of registration and use in bad faith is established where “by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online 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”.

In the present case, that is exactly what the Respondent has done. The Panel infers it selected the Disputed Domain Name because it was confusingly similar to the Complainants trademark and domain name <thedopepestshop.com>, and used it to attract Internet users to the Respondent’s website by creating a likelihood of confusion. In the circumstances the Panel concludes that paragraph 4(b)(iv) applies.

Further the Panel notes that the Respondent has not filed a Response and hence has not availed itself of the opportunity to present any case of good faith that it might have. The Panel infers that none exists.

The Panel makes no finding about the likelihood of the Disputed Domain Name being used in connection with fraudulent emails. There is no evidence of that being the case. However, in view of the Panel’s other findings (above) this does not matter.

Accordingly, the Panel finds that the Disputed Domain Name has been registered and is being used in bad faith and 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 <thedopepestshop.org> be transferred to the Complainant.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: September 13, 2023