

ADMINISTRATIVE PANEL DECISION

The Hershey Salty Snacks Company / Dot's Pretzels, LLC v.
Dot's Pretzels Accounts Receivable, dotspertzels.com
Case No. D2023-4385

1. The Parties

The Complainant is The Hershey Salty Snacks Company / Dot's Pretzels, LLC, United States of America ("United States"), represented by Arnold & Porter Kaye Scholer LLP, United States.

The Respondent is Dot's Pretzels Accounts Receivable, dotspertzels.com, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <dotspertzels.com> is registered with Squarespace Domains II LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 23, 2023. On October 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 25, 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 (CONTACT PRIVACY INC. CUSTOMER 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 26, 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 October 31, 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 November 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 27, 2023.

The Center appointed Theda König Horowicz as the sole panelist in this matter on January 10, 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 The Hershey Salty Snacks Company, formerly known as Dot's Pretzels LLC, and doing business as Dot's Pretzels ("Complainant" or "Dot's Pretzels"), is a wholly owned subsidiary of The Hershey Company, a leading confectionery and snack company that sells its products throughout the United States.

The Complainant sells pretzels and snack products under the DOT'S brand.

The Complainant is the owner of several trademark registrations in the United States for the mark DOT'S, including:

- United States Registrations for DOT'S No 7,157,974 of September 5, 2023 and 7,094,528 of June 27, 2023;
- United States Registration for DOT'S HOMESTYLE PRETZELS No 6,578,866 of December 7, 2021.

The Complainant also owns the domain name <dotspretzels.com> which it uses for a website to provide information about its DOT'S products, and for email addresses that it uses for business purposes.

The disputed domain name was registered on August 30, 2023. The case file does not show if the disputed domain name is active. However, it is established that the disputed domain name generates email addresses "[...].@dotspertzels.com" which were used to send emails with the following content:

"We trust this message finds you well. We would like to bring to your attention a crucial change in our bank account information.

Kindly note that our old bank account details are no longer in use due to a recent update in our financial systems. We kindly request your cooperation in this matter to avoid any payment discrepancies.

We kindly urge you to withhold any further payments intended for us that might be routed to the old account. It is imperative that you suspend any transactions to the previous account to prevent any inconvenience.

Rest assured, we are in the process of finalizing the new bank account details, and we will promptly provide you with the updated information. We appreciate your understanding and patience during this transitional period.

Once the new details are established, we will notify you immediately so that you can update your records accordingly. We apologize for any inconvenience this change may cause and appreciate your cooperation in ensuring a smooth transition."

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 that it owns several trademark registrations in the United States for the DOT'S, DOT'S HOMESTYLE PRETZELS, and DOT'S HOMESTYLE SNACKS marks. These marks have been widely advertised and promoted, and products bearing these marks have been widely distributed throughout the United States and have become well-known throughout the United States. The Complainant further alleges that the disputed domain name <dotspertzels.com> merely transposes the letters "r" and "e" in "pretzels", creating the term "pertzels" which results in a virtually identical spelling or easily overlooked misspelling or mistyping of "pretzels". It is therefore confusingly similar to Complainant's own domain name "dotspretzels.com", and is also clearly similar to Complainant's DOT'S marks thus creating a confusion in the public's mind.

Furthermore, the Complainant contends that the Respondent is not affiliated in any way with the Complainant and was never authorized by the Complainant to register or use the disputed domain name at issue or the DOT'S marks. Consequently, the Respondent has no right or legitimate interest in the disputed domain name. Upon information and belief of the Complainant, the Respondent is not commonly known by the name "dotspertzels" or any variation thereof. In this frame, the Complainant underlines that the Respondent plainly has registered the disputed domain name for use in a fraudulent scheme designed to trick the public into believing that the name—which has been used for fraudulent emails sent from addresses designed to impersonate Dot's Pretzels employees—is a legitimate Dot's Pretzels domain name. The Complainant refers in this regard to the fact that the Respondent has intentionally registered the disputed domain name explicitly for the purpose of misleading users and making an illegitimate and fraudulent impression that it is Dot's Pretzels or is authorized by Dot's Pretzels. Indeed, the disputed domain name creates a likelihood of confusion by suggesting to Dot's Pretzels' business partners and others that email addresses using the disputed domain name relate to Dot's Pretzels' activities and services.

The Complainant finally contends that the Respondent's lack of rights or legitimate interest in the use of the disputed domain name renders the issue of bad faith registration unnecessary to even be considered. This said, the Complainant contends that given the widespread recognition of the DOT'S marks, it is inconceivable that the Respondent might have registered a domain name similar to or incorporating the mark without knowing of it. Furthermore, numerous UDRP panels have held that the registration and use of a domain name in connection with a fraudulent scheme, such as phishing, constitutes bad faith under the Policy, especially those schemes where the domain name is used in an email address to mislead others into making fraudulent payments. Further, it is well established that typosquatting in and of itself may constitute bad faith registration and use as a form of "brand hijacking". Finally, the registration and use of the disputed domain name creates a form of initial interest confusion, which attracts Internet users to the disputed domain name based on the use of the confusingly similar term "dot's pertzels".

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable.

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following:

- (i) that the domain name registered by the respondent is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) that the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) that the domain name has been registered and is being used in bad faith.

Paragraph 4(a) of the Policy states that the burden of proving that all these elements are present lies with the Complainant. At the same time, in accordance with paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules, or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

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 shown to have trademark rights over the trademarks DOT'S and DOT'S HOMESTYLE PRETZELS. The Complainant has thus shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark DOT'S is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Additionally, the Panel finds that the mark DOT'S HOMESTYLE PRETZELS is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. The misspelling of the word "pretzel" in the disputed domain name which uses the term "pertz" does not change the finding of confusing similarity. [WIPO Overview 3.0](#), section 1.9.

The Panel finds the first element of the Policy has been established.

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.

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.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The case file also shows that the disputed domain name generates email addresses which were used to send phishing expedition emails. Panels have held that the use of a domain name for illegal activity such as phishing can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Complainant's DOT'S mark has been widely used and promoted in the United States, for a type of food products which is available to a large public. Furthermore, the disputed domain name reproduces the DOT'S mark in entirety in the disputed domain name with the addition of the term "pertzels" which has most likely been intentionally misspelled by the Respondent but which nevertheless refers to the type of food "pretzels" which are commercialized under the brand DOT'S by the Complainant. Given the circumstances, it is inconceivable to the Panel that the Respondent registered the disputed domain name without prior knowledge of the Complainant's trademarks and business.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Furthermore, the case file shows that the disputed domain name generates email addresses "[...]@dotsperzels.com" which were used for phishing expeditions, which does constitute a bad faith use of the disputed domain name. [WIPO Overview 3.0](#), section 3.4.

In addition, the Panel notes that the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, along with the Respondent's concealing its identity, are additional factors of bad faith use. [WIPO Overview 3.0](#), section 3.3.

The Panel finds that the Complainant has established the third element 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 name <dotspertzels.com> be transferred to the Complainant.

/Theda König Horowicz/

Theda König Horowicz

Sole Panelist

Date: February 5, 2024