

ADMINISTRATIVE PANEL DECISION

Hershey Chocolate & Confectionery LLC v. 叶伟龙 (ye wei long), 深圳市极速领域网络科技有限公司 (shen zhen shi ji su ling yu wang luo ke ji you xian gong si)

Case No. D2024-1924

1. The Parties

The Complainant is Hershey Chocolate & Confectionery LLC, United States of America (“United States”), represented by Arnold & Porter Kaye Scholer LLP, United States.

The Respondent is 叶伟龙 (ye wei long), (深圳市极速领域网络科技有限公司 (shen zhen shi ji su ling yu wang luo ke ji you xian gong si), China.

2. The Domain Name and Registrar

The disputed domain name <hersheydic.com> is registered with Chengdu West Dimension Digital Technology Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on May 7, 2024. On May 8, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 9, 2024, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 10, 2024 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 in English on May 13, 2024.

On May 10, 2024 the Center informed the parties in Chinese and English, that the language of the registration agreement for the disputed domain name is Chinese. On May 13, 2024, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission on the language of the proceeding.

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”).

On May 11, 2024, the Respondent sent an email communication in Chinese to the Center enquiring about the procedures of responding to the Complaint. On May 13, 2024, the Center replied to the Respondent in both Chinese and English that the Respondent could file response within twenty calendar days from the Center's notification that an administrative proceeding has been commenced. In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 21, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 10, 2024. The Respondent did not submit any formal response nor any communication since May 11, 2024. Accordingly, on June 11, 2024, the Center informed the parties that it would proceed to panel appointment.

The Center appointed Rachel Tan as the sole panelist in this matter on June 18, 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 is a company incorporated in Delaware, the United States. It is a manufacturer and seller of chocolate, confectionary products and snacks which bear the HERSHEY and HERSHEY'S marks (and variants on such marks) with sales worldwide. The Complainant has used the HERSHEY'S mark on candy, chocolate and related products since 1894. Through extensive use and promotion, the Complainant and its licensees have achieved substantial sales yearly under the HERSHEY and HERSHEY'S marks in both the United States and overseas.

The Complainant and its affiliated companies are the owner of the HERSHEY and the HERSHEY's marks in different jurisdictions. For example, United States Registration No. 54041 for HERSHEY'S registered on June 19, 1906 in Class 30; United States Registration No. 1455684 for HERSHEY registered on September 1, 1987 in Classes 35, 37, 40, 41, and 42; and Chinese Registration No. 8981453 for HERSHEY registered on April 21, 2012 in Class 30.

Separately, the Complainant is the owner of the domain name <hersheys.com>, registered on March 8, 1999, and has used it to communicate with the public about the Complainant's products.

The disputed domain name was registered on March 12, 2024. Based on the evidence submitted by the Complainant, the disputed domain name previously resolved to a website in English which is allegedly used as a counterfeit website posing as a genuine website belonging to the Complainant. In particular, it was alleged to offer the Complainant's HERSHEY products for sale and prominently display the Complainant's HERSHEY'S and HERSHEY marks together with other company information about the Complainant. At the time of this Decision, the disputed domain name does not resolve to any active website.

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 the disputed domain name is identical or confusingly similar to the Complainant's HERSHEY and HERSHEY'S marks. The Complainant's HERSHEY mark is incorporated in the disputed domain name in its entirety. The additional letters "dic" does not prevent a finding of confusing similarity.

The Complainant further alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not authorized by the Complainant to register or use the disputed domain name nor is he affiliated to the Complainant in any way. There is also no evidence that the Respondent is known by the disputed domain name. Moreover, the Complainant submitted evidence and alleged that the disputed domain name was previously operated as a website to impersonate the Complainant to sell counterfeit HERSHEY products. Accordingly, the Respondent is not using the disputed domain name with a bona fide offering of goods or services nor is he making a legitimate noncommercial or fair use of the disputed domain name.

Finally, the Complainant argues that the disputed domain name was registered and used in bad faith. Through extensive use and promotion, the Complainant has established well-known status in its HERSHEY and HERSHEY'S marks. Given the well-known status of the Complainant's HERSHEY and HERSHEY'S marks, the Respondent could not credibly argue that it did not have knowledge of the Complainant at the time of registering the disputed domain name. In addition, the Respondent used the disputed domain name to impersonate the Complainant. The use of the disputed domain name demonstrated that the Complainant intended to take advantage of the reputation of the Complainant's trademarks to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's marks.

B. Respondent

Although the Respondent sent an email communication to the Center on May 11, 2024 enquiring the procedures of filing response, no further communications have been filed by the Respondent since May 11, 2024.

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

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. Despite the Center's verification that the language of Registration Agreement is Chinese, the Complainant nevertheless filed the amended Complaint and requested that the language of the proceeding be English as it located the English version of the Registration Agreement from the Registrar's website.

The Respondent did not submit any comment on the Complainant's submission on the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

The relevant elements in this case are: (i) the disputed domain name is comprised of Latin characters; (ii) the disputed domain name previously resolved to a website that is in English which suggests that the Respondent is at the very least competent in English; (iii) the currency displayed on the website at the time of Complaint was "USD" instead of Chinese currency; (iv) the Complainant is based in the United States and

requiring the Complainant to translate the Complaint in Chinese would lead to delay and cause the Complainant to incur translation expenses; (v) the lack of response of the Respondent to comment on the language of the proceeding even though the Center sent the notification of the Complaint in English and Chinese, and indicated that the Response may be submitted in Chinese or English.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2 Substantive Issues

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 3.0](#), section 1.7.

The Complainant has 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 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.

Although the addition of other letters here, i.e. "dic" may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Lastly, it is permissible for the Panel to ignore the generic Top-Level Domain ("gTLD"), in this case ".com", under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1.

Based on the available records, 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 Respondent has not provided evidence of a legitimate or noncommercial use of the disputed domain name or reasons to justify the choice of the disputed domain name that is confusingly similar to the Complainant's well-known HERSHEY and HERSHEY'S marks. There is also no indication to show that the

Respondent is commonly known by the disputed domain name or otherwise has rights or legitimate interests in it. Moreover, the Complainant has not granted the Respondent any license or authorization to use the Complainant's HERSHEY and HERSHEY'S marks or register the disputed domain name.

At the time of this Decision, the disputed domain name does not resolve to an active website. Based on the undisputed submission and evidence provided by the Complainant, the disputed domain name previously resolved to a website which allegedly offered the Complainant's HERSHEY products for sale and attempted to impersonate the Complainant with misleading company information. The website did not accurately and prominently disclose a lack of a relationship between the Complainant and the Respondent. Therefore, the facts do not support a claim of a bona fide offering of goods or services under the "Oki Data test". See *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

Based on the available record, 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 well-known status of the Complainant's HERSHEY and HERSHEY'S marks has been recognized in *Hershey Chocolate & Confectionery LLC v. 程玉玲 (yu ling cheng)*, WIPO Case No. [D2022-3374](#); *Hershey Chocolate & Confectionery LLC v. Cab*, WIPO Case No. [D2022-3098](#) and *Hershey Foods Corp. v. Amcore & Company For sale domains \$250 or best offer*, WIPO Case No. [D2003-0838](#). The disputed domain name was registered almost 100 years after the first use and registration of the Complainant's HERSHEY and HERSHEY'S marks. Search results using the key words "HERSHEY" or "HERSHEY'S" on search engines direct Internet users to the Complainant and its business, which indicates that an exclusive connection between the HERSHEY and HERSHEY'S marks and the Complainant has been established. The Panel notes that the disputed domain name previously resolved to a website that displayed the Complainant's marks and company information about the Complainant. As such, the Respondent clearly knew of the Complainant's marks when registering the disputed domain name. [WIPO Overview 3.0](#), section 3.2.2.

Furthermore, the Panel considers the mere registration of a domain name that is confusingly similar to a well-known trademark by an unaffiliated person can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4, and section 3.2.1.

The Panel notes that the disputed domain name previously resolved to a website purportedly offering for sale products on which the Complainant's HERSHEY and HERSHEY'S marks prominently appear. The lack of a disclaimer that the Respondent is not affiliated with the Complainant is noticeably absent. The Panel is satisfied that the Respondent intentionally created a likelihood of confusion with the Complainant's HERSHEY and HERSHEY'S marks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. This demonstrates bad faith registration and use of the disputed domain name, as provided in paragraph 4(b)(iv) of the Policy.

The Panel notes that the disputed domain name currently resolves to an inactive website. The current inactive use of the disputed domain name in this case would not prevent a finding of bad faith under the doctrine of passive holding. In its determination, the Panel considers the degree of reputation of the Complainant's HERSHEY and HERSHEY'S marks, the Respondent's failure to respond in the face of the Complainant's bad faith allegations, as well as the implausibility of any good faith use that the disputed domain name may be put. [WIPO Overview 3.0](#), section 3.3.

Given all the circumstances of the case, the Panel finds that the Respondent must have known of the Complainant before registering the disputed domain name, and considering the Respondent's lack of rights or legitimate interests, and by registering and using the disputed domain name as discussed above as well as continuing to hold the disputed domain name, the Panel is led to conclude that the disputed domain name was registered and is being used in bad faith.

Based on the available records, 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 <hersheydic.com> be transferred to the Complainant.

/Rachel Tan/

Rachel Tan

Sole Panelist

Date: July 1, 2024