

ADMINISTRATIVE PANEL DECISION

Hershey Chocolate & Confectionery LLC v. Domain Admin,
TotalDomain Privacy Ltd
Case No. D2024-4516

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 Domain Admin, TotalDomain Privacy Ltd, Panama.

2. The Domain Name and Registrar

The disputed domain name <myhrhersheys.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 1, 2024. On November 4, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 5, 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 (Domain Admin, Privacy Protect, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 5, 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 amendment to the Complaint.

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 the Respondent of the Complaint, and the proceedings commenced on November 11, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 1, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 2, 2024.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on December 6, 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

It results from the Complainants undisputed allegations that Complainant is a major manufacturer and seller of chocolate and confectionery products which are commercialized under the trademark HERSHEY and HERSHEY'S since 1894.

The Complaint is based amongst others on the following United States Trademark Registration:

- HERSHEY'S, No. 54,041, registered on June 19, 1906 (with first use in commerce since January 1, 1894) for chocolate, cocoa etc.

Complainant further uses the domain name the subdomain "MYHR" under its <hersheys.com> domain, i.e. <myhr.hersheys.com>, to communicate with its employees and prospective employees.

The disputed domain name has been created on October 5, 2015.

Furthermore, the undisputed evidence provided by the Complainant proves that the disputed domain name resolves to a parking page displaying Pay-Per-Click ("PPC") links in the area for which the Complainant uses its own domain name MYHR.HERSHEYS.COM, i.e. "Employee Payroll Services", "HR Payroll Services", "Employee Benefits". Additionally, said web page offers to sell the disputed domain name, without, however indicating the selling price. Finally, the disputed domain name has a MX record which enable it to be used for email address purposes.

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:

- (1) The disputed domain name wholly incorporates the Complainant's registered trademark and merely adds the generic terms "my" and "hr" (which is a common abbreviation for "human resources") before "hersheys". In doing so, the disputed domain name corresponds to the Complainant's own subdomain/domain name combination <myhr.hersheys.com>, which the Complainant uses to communicate with its employees;
- (2) The Respondent has only used the disputed domain name to resolve to a webpage that contains a number of pay-per-click links and offers to sell the disputed domain name. It is therefore apparent to the Complainant that the Respondent has intentionally registered the disputed domain name for the purpose of making an illegitimate or unfair use of the Complainant's marks by posing as a legitimate Complainant's domain name, and to engage in opportunistic cybersquatting;
- (3) The Respondent's actions are intentional, willful and in bad faith, and were committed with full knowledge of the ownership by the Complainant of the HERSHEY'S trademark and the Complainant's exclusive rights to use and license that mark.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”. Paragraph 4(a) of the Policy requires a complainant to prove each of the following three elements in order to obtain an order that the disputed domain name be transferred or cancelled:

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

The Panel will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

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 rights in respect of trademark HERSHEY's for the purposes of the Policy, [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds that the mark 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.

In addition, it is the view of this Panel that the simple omission of the apostrophe from the trademark HERSHEY'S in the disputed domain name (e.g., “hersheys”) is a technical requirement and can – as such – not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark HERSHEY'S since the disputed domain name contains all further letters of the relevant mark and is sufficiently recognizable within the disputed domain name.

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.

Moreover, the Panel notes that the disputed domain name consists essentially of an existing domain name including the Complainant's trademark, so that this Panel finds it most likely that employing a slight modification in this way signals an intention on the part of the Respondent to confuse Internet users seeking or expecting the Complainant.

Furthermore, it results from the undisputed evidence before the Panel that the disputed domain name resolved to a parking website comprising PPC links that compete with or capitalize on the reputation and goodwill of the Complainant's trademark or otherwise mislead Internet users (i.e., a parking page displaying PPC links in the area for which the Complainant uses its own domain name <myhr.hersheys.com>, i.e. "Employee Payroll Services", "HR Payroll Services", "Employee Benefits"). Prior UDRP panels have found that the use of a domain name to host a parked page comprising PPC links does not represent bona fide offering of goods or services, where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users (see [WIPO Overview 3.0](#) at section 2.9, with further references). This Panel shares this view. Such use can neither be considered as bona fide offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Finally, the Panel notes that there is no evidence in the record or Whois information showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

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.

One of these circumstances is that the Respondent by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its 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 its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

In the present case, the Panel notes that it results from the Complainant's documented allegations that the disputed domain name resolved to a parking page displaying PPC links in the area for which the Complainant uses its own domain name <myhr.hersheys.com>, i.e. "Employee Payroll Services", "HR Payroll Services", "Employee Benefits". For the Panel, it is therefore evident that the Respondent positively knew the Complainant's mark. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain name included the Complainant's trademark when it registered the disputed domain name.

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. In this regard, the further circumstances surrounding the disputed domain name's registration and use

confirm the findings that the Respondent has registered and is using the disputed domain name in bad faith:

- (i) the nature of the disputed domain name (i.e., containing Complainant's trademark);
- (ii) the content of the website to which the disputed domain name directed (i.e., a parking page displaying PPC links in the area for which the Complainant uses its own domain name <myhr.hersheys.com>);
- (iii) a clear absence of rights or legitimate interests coupled with no response for the Respondent's choice of the disputed domain name;
- (iv) the offering for sale of the disputed domain name. It is true that no price is indicated, however, the experience shows that in almost all cases, the asked price will likely be in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name (cf. paragraph 4(b)(i) of the Policy);
- (v) the disputed domain name has been connected to active MX records so that it can be actively used for emailing purposes;
- (vi) the Respondent using a privacy service to hide its identity; and
- (vii) the fact that the details disclosed for the Respondent by the Registrar are incomplete, noting the courier's inability to deliver the Center's Written Notice;

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 <myhrhersheys.com> be transferred to the Complainant.

/Tobias Malte Müller/

Tobias Malte Müller

Sole Panelist

Date: December 20, 2024