

ADMINISTRATIVE PANEL DECISION

Herbalife International, Inc. v. Domain Privacy, Domain Name Privacy Inc.
Case No. D2024-5030

1. The Parties

The Complainant is Herbalife International, Inc., United States of America ("United States"), represented by SafeBrands, France.

The Respondent is Domain Privacy, Domain Name Privacy Inc., Cyprus.

2. The Domain Name and Registrar

The disputed domain name <congtyherbalife.com> (the "Disputed Domain Name") is registered with DomainCraze LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 5, 2024. On December 6, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On the same day, 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, NameBrightPrivacy.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 9, 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 on December 13, 2024.

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 December 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 5, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 6, 2025.

The Center appointed Mariia Koval as the sole panelist in this matter on January 9, 2025. 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, founded in 1980, is an American multinational corporation specializing in nutrition, including dietary and nutritional supplements as well as personal care products. The Complainant has become the first active and lifestyle nutrition brand in the world with annual net sales in 2023 of USD 5,1 billion. The Complainant's products are exclusively distributed through its accredited local distributors network in more than 90 countries.

The Complainant is the owner of a number of HERBALIFE trademark registrations (the "HERBALIFE Trademark") throughout the world, among which are:

- United States Trademark Registration No. 1254211, registered on October 18, 1983, in respect of goods in classes 3 and 5;
- United Kingdom Trademark Registration No. UK00001189898, registered on February 4, 1983, in respect of goods in class 5;
- United States Trademark Registration No. 1969346, registered on April 23, 1996, in respect of goods and services in classes 9, 18, 21, 25, 32, and 42.

The Complainant has built up a considerable online presence and is operating the domain name <herbalife.com>. The Complainant also operates various social media platforms, particularly Facebook, Instagram, LinkedIn, and YouTube, where the HERBALIFE Trademark is extensively used and promoted.

The Disputed Domain Name was registered on October 19, 2024. As of the date of this Decision, when accessed by the Panel, the Disputed Domain Name automatically redirects to the website "www.ruopors.co.in" where after completing a robot verification, users are automatically redirected to the website "abor.co.in," where a notification appears stating, "Your PC is infected with 5 viruses!" what is then followed by an automatic redirection to the website "www.avira.com", which offers antivirus software for sale. Also, in accordance with evidence presented by the Complainant (Annex 9 to the Complaint), the Disputed Domain Name previously resolved to a parking page with pay-per-click (PPC) links. Moreover, the Disputed Domain Name is proposed for sale on the platform Sedo at USD 2,880 (Annex 10 to the Complaint).

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 confusingly similar to the Complainant's HERBALIFE Trademark since the Disputed Domain Name reproduces the Complainant's HERBALIFE Trademark in its entirety with the addition of the word "congty" (that means "company" in Vietnamese) that does not prevent the existence of a likelihood of confusion between the Disputed Domain Name and the HERBALIFE Trademark.

The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name in view of the following:

- the Respondent did not obtain any authorization from the Complainant to use its HERBALIFE Trademark;
- the Respondent uses the Disputed Domain Name for redirection to a parking page with PPC links;
- the Respondent's use of the Disputed Domain Name can be considered neither as a bona fide offering of goods or services nor as a legitimate noncommercial or fair use;
- the Disputed Domain Name is proposed for sale on the platform Sedo at USD 2,880, that confirms that the Respondent registered the Disputed Domain Name with the purpose of taking undue advantage of the Complainant's reputation.

The Complainant further asserts that the Respondent has registered and is using the Disputed Domain Name in bad faith. Taking into account the use of the Complainant's HERBALIFE Trademark for over 40 years, the nature of the Disputed Domain Name which includes the Vietnamese term "congty" in reference to the Complainant's company, the "extremely high" repute of the Complainant throughout the world, the Respondent could, by no mean, have ignored the existence of the HERBALIFE Trademark registration confusingly similar to the Disputed Domain Name at the time of registration" of the Disputed Domain Name.

The Disputed Domain Name is used to redirect to parking page with PPC links that redirect consumers to other websites. The purpose of this PPC website is to attract Internet users for profit, based on their confusion with the Complainant's HERBALIFE Trademark. It is clear from that fact that the Respondent is profiting from the goodwill associated with the Complainant's HERBALIFE Trademark by accruing click-through fees.

Furthermore, since the Disputed Domain Name is proposed for sale on the platform Sedo, it only confirms the Respondent's desire to obtain maximum benefit from the Complainant's HERBALIFE Trademark and its use. The Respondent registered the Disputed Domain Name in order to take benefit from the Complainant's HERBALIFE Trademark reputation for commercial gains by, in particular, selling the Disputed Domain Name for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the Disputed Domain Name.

The Complainant further point out that the Respondent has registered the Disputed Domain Name with proxy service. The Respondent employs a proxy service merely to avoid being notified of a UDRP proceeding filed against it.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, a complainant to succeed must satisfy the panel that:

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

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 a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Disputed Domain Name completely reproduces the Complainant's HERBALIFE Trademark in combination with the word "congty" and the generic Top-Level Domain (gTLD) ".com". According to the [WIPO Overview 3.0](#), section 1.8, where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. Here, the addition of the word "congty" (which means "company" in Vietnamese), to the HERBALIFE Trademark does not prevent a finding of confusing similarity.

According to the [WIPO Overview 3.0](#), section 1.11, the applicable gTLD in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.

Accordingly, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's HERBALIFE Trademark pursuant to paragraph 4(a)(i) of the Policy.

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.

There is no evidence that the Complainant has licensed or otherwise permitted the Respondent to use its HERBALIFE Trademark or to register the Disputed Domain Name which is confusingly similar to the HERBALIFE Trademark. There is also no evidence that the Respondent is commonly known by the Disputed Domain Name.

The Panel is of opinion that there is no evidence that the Respondent is using the Disputed Domain Name to offer bona fide goods or services or making a legitimate noncommercial or fair use. On the contrary, as at the date of this Decision, when accessed by the Panel, the Disputed Domain Name automatically redirects to another website where after completing a robot verification, users are automatically redirected to the next website," where a notification appears stating, "Your PC is infected with 5 viruses!" what is then followed by an automatic redirection to the third website which offers antivirus software for sale. Also, according to the evidence presented by the Complainant (Annex 9 to the Complaint) at the time of filing of the Complaint the Disputed Domain Name previously resolved to a parking page with PPC links. At the same time the Disputed Domain Name is proposed for sale at USD 2,880 (Annex 10 to the Complaint) on the platform Sedo. Thus, the Panel concludes that the above-described use of the Disputed Domain Name cannot be

considered as a bona fide offering of goods or services or a legitimate noncommercial or fair use without intent for commercial gain.

Moreover, in accordance with the [WIPO Overview 3.0](#), section 2.5.1, where a domain name consists of a trademark plus an additional term (at the second- or top-level), UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. The fact that the Respondent has incorporated the Complainant's HERBALIFE Trademark in its entirety in the Disputed Domain Name with the addition of the word "congty", which means "company" in the Vietnamese language, to the Complainant's HERBALIFE Trademark in the Disputed Domain Name, is further evidence, that the Respondent was well aware of the Complainant's HERBALIFE Trademark and business at the time of registration of the Disputed Domain Name and has done so for the only purpose of creating an impression that the Disputed Domain Name is connected with the Complainant's HERBALIFE Trademark.

In light of the above, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name. Therefore, the second element of the paragraph 4(a) of the Policy has been met by the Complainant.

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 Respondent registered and is using the Disputed Domain Name in bad faith in view of the following. The Complainant obtained the registrations of the HERBALIFE Trademark more than 40 years earlier than the Respondent registered the Disputed Domain Name in 2024. Taking into account all circumstances of this case and worldwide fame of the Complainant's HERBALIFE Trademark, the Panel finds that the Respondent was well aware of the Complainant's business and its HERBALIFE Trademark when registering the confusingly similar Disputed Domain Name that completely incorporates the Complainant's HERBALIFE Trademark and company name, with the addition of the non-distinctive word "congty". The Panel considers it is in bad faith that the Respondent, more likely than not, deliberately chose the Disputed Domain Name to create a likelihood of confusion with the Complainant's HERBALIFE Trademark, so as to create a false association or affiliation with the Complainant.

At the date of this Decision, when accessed by the Panel, the Disputed Domain Name redirects one after another to different websites the last of which proposes antivirus software to purchase. The Complainant provided also the evidence that the Disputed Domain Name previously resolved to a parking page with PPC links; and is currently proposed for sale for valuable consideration likely in excess of the Respondent's costs related to the Disputed Domain Name. Such use of the Disputed Domain Name obviously cannot constitute a good faith.

According to section 3.1.4 of the [WIPO Overview 3.0](#), UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. The Panel is of the opinion that it is highly likely that the Respondent, having registered and used the Disputed Domain Name, which is confusingly similar to the Complainant's well-known HERBALIFE Trademark, intended to disrupt the Complainant's business and confuse Internet users seeking or expecting the Complainant's website. In view of the absence of any evidence to the contrary and the fact that the Respondent did not file any response to claim otherwise, the Panel concludes that the Respondent has registered and is using the Disputed Domain Name in bad faith.

In accordance with section 3.6 of the [WIPO Overview 3.0](#) there are recognized legitimate uses of privacy and proxy registration services; the circumstances in which such services are used, including whether the respondent is operating a commercial and trademark-abusive website, can however impact a panel's assessment of bad faith. The Panel considers that, taking into account all circumstances of this case, the Respondent's use of privacy service also constitutes further evidence of bad faith registration and use of the Disputed Domain Name.

In light of the above, the Panel finds the third element of the Policy has been established.

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 <congyherbalife.com> be transferred to the Complainant.

/Mariia Koval/

Mariia Koval

Sole Panelist

Date: January 23, 2025