ADMINISTRATIVE PANEL DECISION

HiSmile IP Pty Ltd v. Evgenii Astarov
Case No. D2026-2531

1. The Parties

The Complainant is HiSmile IP Pty Ltd, Australia, internally represented.

The Respondent is Evgenii Astarov, Ukraine, represented by Mark Musiienko, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <hismile.com> is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 11, 2026. On June 11, 2026, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 12, 2026, 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 (The RDAP server redacted the value, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 12, 2026, 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 June 15, 2026.

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 proceeding commenced on June 18, 2026. In accordance with the Rules, paragraph 5, the due date for Response was July 8, 2026. The Response was filed with the Center on July 7, 2026.

The Respondent sent emails to the Center on June 13, 2026, and June 16, 2026. The Complainant submitted an unsolicited supplemental filing on July 14, 2026.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on July 24, 2026. 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 14, 2026, the Decision due date was extended to August 21, 2026.

4. Factual Background

According to the Complaint, the Complainant is an Australian proprietary limited company, which owns and licenses the HISMILE trademark and the "Hismile" brand of teeth-whitening and oral-care products. The Complainant states that its products are sold internationally and that its brand enjoys substantial reputation and goodwill. On this last point, the Complainant produces copies of its social media presence on the following platforms:

- Verified TikTok account (@hismile) showing some 5,000,000 followers and 107,500,000 likes;

- Verified Facebook page (Hismile) showing some 1,800,000 followers; and

- Instagram account (@hismileteeth) showing a follower count of 1,700,000 followers.

The Complainant's images from the said platforms are dated June 11, 2026. In addition, the Complainant shows that its official website uses the domain name <hismileteeth.com>, which the Panel notes was registered on November 4, 2014, although the Complainant does not produce any details of the extent to which the said site is used or visited by Internet users. The Complainant also produces a copy of a LinkedIn platform post by a person named Alex Tomic, who is apparently associated with the Complainant, stating that the "Hismile" flavored toothpaste range has achieved the Australian Dental Association's seal of approval. The entry appears to be one year old.

The Complainant owns a variety of registered trademarks for the HISMILE mark, the earliest of which is Australian Registered Trade Mark Number 1678190 for the word mark HISMILE, registered on March 2, 2015. Additionally, the Complainant states that its registered trademark portfolio covers Canada, Iceland, Lao People's Democratic Republic, Malaysia, New Zealand, Norway, Switzerland, and the United Kingdom.

The Complainant also maintains three International registered trademarks, namely:

- International Registered Trademark Number 1454916 for the word mark HISMILE, registered on November 1, 2018 in Classes 3 and 21, the designation status for which shows that a statement of grant of protection has been issued by the European Union and the United Kingdom;

- International Registered Trademark Number 1771621 for the word mark HISMILE, registered on November 10, 2023 in Classes 3, and 21, the designation status for which shows that a statement of grant of protection has been issued by Albania, Bahrain, Belarus, Benelux, Bosnia and Herzegovina, Georgia, Iceland, Indonesia, Japan, Liechtenstein, Malaysia, Mexico, Monaco, Montenegro, Morocco, New Zealand, North Macedonia, Norway, Pakistan, Philippines, Russian Federation, San Marino, Serbia, Singapore, Switzerland, Türkiye, Ukraine (where the Respondent is based, the statement of grant of protection in this case being dated September 16, 2024), United Arab Emirates, and Viet Nam; and

- International Registered Trademark Number 1847675 for the word mark HISMILE, registered on February 14, 2025, in Classes 3, and 21, the designation status for which shows that a statement of grant of protection has been issued by Egypt, European Union, Lao People's Democratic Republic, Republic of Moldova, United Arab Emirates, and the United Kingdom, while a decision is awaited in respect of Chile and Qatar.

The Panel adds in passing that it has noted that the Complainant is not the only owner of registered trademarks consisting of or including the term HISMILE. See, for example, Brazilian Registered Trademark Number 931356245, registered on April 8, 2025, and Japanese Registered Trademark Number 4304092, registered on August 13, 1999 (each for oral care), Chinese Registered Trademark Number 4444681, registered on August 21, 2008 (education services), Chinese Registered Trademark Number 8289120, registered May 14, 2011 (various electronic equipment), and Japanese Registered Trademark Number 6404350, registered June 18, 2021 (various electronic equipment). The Panel also notes, as mentioned later in this Decision, that the previous owner of the disputed domain name was a dental practice in Hawaii which appears to have allowed the disputed domain name to expire due to a change in trading arrangements.

The disputed domain name was originally registered on April 27, 2011. A publicly available record from the Registrar, produced by the Complainant (Complainant's Annex 5), indicates that the disputed domain name was the subject of an auction which ended on June 4, 2026, at which it was sold at the bid price of USD 12,201 following 77 bids from 14 bidders.[1] The Respondent states in a declaration that it was the successful bidder in said auction.

According to the Complainant's screenshots dated June 11, 2026, the disputed domain name initially pointed to a pay-per-click ("PPC") parking page operated through a commercial domain name monetization service displaying sponsored links. The Complainant shows that some of these links related to dental implants and teeth whitening solutions, and that the latter linked to products in competition with those of the Complainant. The website associated with the disputed domain name no longer appears to resolve as of the date of this Decision.

The Respondent appears to be a private individual with an address in Ukraine. The Respondent's position as outlined in its formal declaration is that it acquired the disputed domain name for a planned digital / crypto / community token project. The Respondent produces a Brandbook in respect of its proposed use of "HISMILE" which is largely a set of instructions regarding how this name might be represented visually if deployed as a brand, including logo, typefaces and weights, and icons. The only part of this document which directly addresses the Respondent's alleged proposed use is the statement "HISMILE is a community token with real mechanics. Liquidity locked. Burned forever. Untouchable. No surprises – just smiles and growth", and the strapline, "JOIN THE SMILE".

The Respondent produces two screenshots of its account with the Registrar, by which the Respondent claims to show its "portfolio of brandable digital / crypto / wallet / coin / Web3-related domain names". The first page shows some 11 domain names, such as <coinprofit.ai>, <coinscatcher.com>, and <coinsweb3.com>. This page shows that the Respondent has filtered its portfolio by the word "coin" and is displaying only page two of three pages. The other two pages have not been produced. The second and final screenshot of the portfolio produced by the Respondent shows that it has been filtered by the word "wallet", revealing four domain names, namely <aurawallet.com>, <octawallet.com>, <swapwallet.com>, and <walletup.com>. The Respondent did not produce the remainder of its domain name list, although it is evident from the screenshot of its dashboard that it has 118 domain names expiring or expired.

The Respondent produces a copy of an unsigned email bearing to have been issued by the Registrar's Legal and Compliance Team dated June 25, 2026, in which it is stated that the parking page displayed on the website associated with the disputed domain name was the Registrar's default parking page, adding that such page is automatically activated as part of the Registrar's standard provisioning process. The unnamed author of the email notes that such page is displayed unless the owner of a domain name deliberately disables it, and that the Respondent had no control over the advertising links, received no advertising revenue, and did not manually configure it. The author also states that the advertising links vary dynamically based on automated factors (such as visitor geography or browser data) without any action or control by its customer.

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[1] Although June 4, 2026, is given as the close date of the auction on the relevant page, as reproduced in the Complainant's Annex 5, elsewhere in the case papers the date of June 5, 2026, is given. The Panel presumes that this results from the Registrar's provisioning of the disputed domain name shortly after the auction, and in any event, nothing turns upon this discrepancy.

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 to its HISMILE word mark.

The Complainant contends that its HISMILE mark has been registered in Australia since March 2015 and has been used in commerce since at least early 2015 in connection with teeth-whitening kits, strips, gels, toothpaste, and related oral-care products, and claims that it is well-known in that field.

The Complainant contends that it has not licensed, authorized, or otherwise permitted the Respondent to use its HISMILE mark or to register any domain name incorporating it and asserts that the Respondent is not commonly known by the name HISMILE.

The Complainant further contends that the Respondent is not making any bona fide offering of goods or services by way of the disputed domain name, as this resolves to a PPC parking page displaying sponsored links to businesses and products which directly compete with the Complainant. Using a domain name identical to the Complainant's mark to host PPC links that trade on the mark's value and divert users to competing teeth-whitening products is not a bona fide use and confers no rights or legitimate interests. Such use generates revenue and diverts Internet users seeking the Complainant and is therefore neither a legitimate noncommercial nor a fair use.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. In particular, it notes that the Respondent's registration of the disputed domain name post-dates the Complainant's acquisition of its trademark rights. The Complainant further contends that HISMILE is a distinctive, well-known mark associated with the Complainant's oral-care brand, that the Respondent acquired, through a competitive expired-domain name auction, a domain name identical to that mark and, given the distinctiveness and reputation of the HISMILE mark and the use to which the disputed domain name has since been put, it can be inferred that the Respondent acquired the disputed domain name with knowledge of, and in order to target, the Complainant's mark.

The Complainant further contends that the disputed domain name is being used in bad faith as it is used to host sponsored advertising links for products that directly compete with the Complainant's HISMILE teeth-whitening and oral-care goods. By using the disputed domain name in this way, the Respondent has intentionally attempted to attract, for commercial gain, Internet users searching for the Complainant to the said parking page, creating a likelihood of confusion with the HISMILE mark as to source, sponsorship, affiliation, or endorsement, and further diverting those users to competitors. Monetizing a domain name identical to the Complainant's mark through such industry-specific PPC advertising is a paradigm example of bad-faith use. The Complainant asserts that the Respondent is responsible for this content even where the links are automatically generated by the parking service.

B. Respondent

The Respondent contends that the Complainant has not satisfied all of the elements required under the Policy for a transfer of the disputed domain name.

The Respondent does not dispute, for the purposes of this proceeding, that the Complainant owns certain trademark registrations for HISMILE and that the disputed domain name is identical or confusingly similar to that mark for standing purposes only.

The Respondent contends that the Complainant has failed to prove that the Respondent lacks rights or legitimate interests in the disputed domain name. In particular, the Respondent asserts that it acquired the disputed domain name because of its independent positive and brandable meaning and for a contemplated international digital / crypto / community token project unrelated to the Complainant's oral-care business. It maintains that the disputed domain name had independent market value as a premium aged ".com" domain name. The auction page showed multiple domain-value indicators, including the age of the disputed domain name, multiple registered extensions, a third-party appraisal, search volume, domain name rating, referring domain names and backlinks. The Respondent contends that these factors are consistent with the Respondent's legitimate acquisition of a premium aged brandable ".com" domain name and are not evidence that the Respondent acquired the disputed domain name because of the Complainant or with intent to target the Complainant.

The Respondent contends that the expression "Hi Smile" is not limited to the Complainant's oral-care products. It is a positive phrase capable of use in many fields. In the context of the Respondent's contemplated project, it conveys enjoyment, emotional reaction, entertainment value, community and user engagement.

Further, the Respondent contends that its intended use of the disputed domain name is consistent with its broader practice of acquiring brandable domain names for contemplated digital, crypto, token, wallet and Web3-related projects, and it asserts that it maintains a domain name portfolio with the Registrar containing a number of domain names with clear digital / crypto / wallet / coin-related meanings.

The Respondent maintains that its preparations to use the disputed domain name are evidenced by its HISMILE 2026 Brandbook, which presents a distinct digital token identity and contains no oral-care, teeth-whitening, toothpaste or dental references. The Respondent further contends that the default parking page does not eliminate the Respondent's legitimate interest, particularly where the Registrar confirmed that the Respondent did not control the dynamically generated advertising content and did not receive financial benefit from it.

The Respondent further contends that the Complainant has failed to prove bad faith registration and bad faith use. In particular, it notes that there is no evidence that the Respondent acquired the disputed domain name because of the Complainant, sought to sell it to the Complainant, used it to impersonate the Complainant, copied the Complainant's website, sold competing goods, engaged in phishing, or conducted a pattern of abusive trademark registrations.

The Respondent contends that the default parking page does not establish intentional targeting or commercial gain by the Respondent. In particular, it notes that the Registrar confirmed that the parking page displayed at the disputed domain name after its transfer was the Registrar's default parking page, automatically activated as part of its standard domain name provisioning process and displayed unless deliberately disabled by the domain name owner. It further notes that the Respondent did not receive and was not entitled to receive any PPC revenue, advertising revenue, commissions or financial benefits from the default parking service.

The Respondent contends that the Complainant has failed to show that the Respondent acquired the disputed domain name with the Complainant specifically in mind and with intent to target the Complainant's mark. In particular, the Respondent contends that its broader domain name portfolio supports the absence of targeting. The portfolio includes multiple domain names with digital, crypto, wallet, coin and Web3-related meanings, which the Respondent asserts is consistent with its explanation that the disputed domain name was acquired for a contemplated digital / crypto / community token project, and not for the purpose of targeting the Complainant's oral-care mark.

The Respondent further contends that the Complainant relies on its trademark registrations, social media accounts and the temporary parking page, but asserts that none of these proves that the Respondent had actual knowledge of the Complainant or acquired the disputed domain name because of the Complainant. Rather, it contends that the disputed domain name was attractive for independent reasons, namely that it is a short, positive, brandable ".com" domain name, originally created in 2011, with objective domain name value indicators and significant market interest at auction.

The Respondent contends that the Complainant relies on screenshots of its social media accounts to suggest that the HISMILE mark is so well-known that the Respondent must have known of it when acquiring the disputed domain name. The Respondent contends that social media presence and follower counts do not, by themselves, establish actual public recognition, consumer awareness, or the Respondent's knowledge. The Respondent asserts that the Complainant's social media evidence shows a material discrepancy between headline follower/subscriber counts and the visible engagement with recent content. The Respondent therefore contends that such materials may show that the Complainant conducts online marketing activities but that they do not prove that the HISMILE mark was so famous or universally known that the Respondent's knowledge can be presumed.

The Respondent notes that, in any event, the Respondent's contemplated project is unrelated to oral care and directed toward a different digital / crypto / community token field and that the Complainant's social media evidence concerning oral-care marketing does not prove targeting by the Respondent.

In summary, the Respondent contends that the Complainant's allegation of bad faith registration is based on inference rather than evidence. Such inference is not justified where the disputed domain name has independent value, where the Respondent's intended project is unrelated to the Complainant's oral-care business, and where the Registrar itself confirmed that the only use relied upon by Complainant was a default automatic parking page outside the Respondent's control.

The Respondent notes further that the Complainant's bad faith use argument is based almost entirely on the temporary parking page, however, the parking page was the Registrar's default parking page. The Respondent did not manually enable, select, configure or customize it, the Respondent had zero control over the dynamically generated advertising links and received no financial benefit.

The Respondent therefore contends that the Complainant has not proved intentional conduct by the Respondent. It has not proved commercial gain by the Respondent, nor has it proved that the Respondent selected the links or controlled the parking page content. It has not proved that the Respondent attempted to impersonate the Complainant or to divert the Complainant's customers. Accordingly, the Respondent asserts that the Complainant has failed to prove bad faith use.

C. Complainant's Supplemental Filing

The Complainant seeks to address specific new evidence and factual assertions introduced for the first time in the Response, which it states that it could not reasonably have anticipated when the Complaint was filed, notably the Respondent's Brandbook, the Registrar correspondence, the Respondent's declaration, and screenshots of the Respondent's domain name portfolio.

The Complainant argues that the Respondent's community token project is not a bona fide use of, or demonstrable preparation to use, the disputed domain name, and is pretextual. The Complainant contends that the Brandbook consists of generic promotional language of a kind freely generated for any token concept, which does not evidence a genuine, developed project, adding that a genuine venture generates a substantial and specific documentary and technical record, which is not present here. The Complainant asserts that such a venture would ordinarily be accompanied by a defined token supply and tokenomics, an identified blockchain and a deployed or draft smart-contract address, a technical whitepaper, a roadmap, and a development team. Additionally, an international token would require compliance with multiple national rules and regulations, including in Ukraine, where the Respondent is based. This would involve notification to competent authorities and various publications that would leave a concrete trail, of which the Respondent has not produced anything. The Respondent's declaration is self-serving. The Brandbook bears the year "2026" but there is no evidence that it was prepared before the Complaint was received or before the disputed domain name was acquired. The deck refers to the concatenated term "Hismile" identical to the Complainant's mark rather than referencing the two words "Hi Smile", to which the Respondent claimed to have been attracted. The Respondent did not develop the disputed domain name or point it to any project page but left it on the PPC parking page featuring links in the Complainant's field.

The Complainant contends that despite the fact that the Registrar correspondence asserts that the Respondent had no control over the PPC page, it is settled practice under the Policy to hold a registrant responsible for the content appearing on its domain name. The Registrar correspondence does not displace this principle, and they also lack evidential weight as they are unsworn, general statements of the Registrar's practice rather than a sworn account of the disputed domain name. The correspondence confirms that the Respondent had the ability to disable the said page and did not do so. The fact that commercial gain might not be made by the Respondent is immaterial as it need not accrue to the registrant, and gain to the operator of the monetization service suffices. PPC pages targeted to the trademark value of a term themselves evidence bad faith.

The Complainant asserts that the Respondent's portfolio shows it to be a sophisticated, high-volume domain investor, noting that this runs to many pages and includes a dedicated "Expiring / Expired" watch-list. Panels hold such professional acquirers to a heightened standard whereby they are expected to take reasonable steps to avoid registering names that correspond to the trademarks of others, and a failure to conduct obvious searches supports a finding of bad faith on the basis of willful blindness. HISMILE is a coined and distinctive term used by the Complainant since 2015, with protection in numerous jurisdictions and a substantial online presence, whereby the most cursory trademark or search engine query would have returned the Complainant immediately. The Respondent either made such inquiry and proceeded regardless or deliberately did not, whereby in either case the requirement of targeting is made out. The registration of a domain name that is identical to a widely-known mark by a party with no relationship to it can itself create a presumption of bad faith, and the identity of such mark with the disputed domain name here carries an inherent risk of implied affiliation that the "brandable" characterization cannot dispel.

The Complainant contends that the domain name value indicators shown at auction (age, search volume, domain rating, referring domains and backlinks) do not prove an independent, non-trademark value, but rather are a function of the Complainant's decade of use of, and investment in, the HISMILE mark and the traffic it generates, whereby the price that the Respondent paid reflects trademark-derived value, including type-in and search traffic from consumers looking for the Complainant. This supports targeting on the Respondent's part.

6. Discussion and Findings

6.1 Preliminary Matter: Complainant's Supplemental Filing

Paragraph 12 of the Rules expressly provides that it is for the panel to request, in its sole discretion, any further statements or documents from the parties it may deem necessary to decide the case. Unsolicited supplemental filings are generally discouraged, unless specifically requested by the panel. WIPO Overview of WIPO Panel Views on Select UDRP Questions ("WIPO Overview 3.1"), section 4.6.

Panels have sole discretion, under paragraphs 10 and 12 of the Rules, whether to accept an unsolicited supplemental filing from either party, bearing in mind the need for procedural efficiency, and the obligation to treat each party with equality and ensure that each party has a fair opportunity to present its case. The party submitting a supplemental filing would normally need to show its relevance to the case and explain why it was unable to provide that information in the complaint or response (for example, owing to some exceptional circumstance).

As noted in the procedural history section above, the Complainant filed a supplemental filing on July 14, 2026. The Panel is content to admit this as it contained a reply to aspects of the Response that could not have been anticipated when the Complaint was filed. The Panel would ordinarily have provided the Respondent with an opportunity to answer the supplemental filing, but determined that this would have given rise to avoidable delay (bearing in mind the Panel's obligation to ensure that the administrative proceeding takes place with due expedition in accordance with section 10(c) of the Rules) and was in any event unnecessary given the Panel's decision, discussed below which reaches the conclusion that, taking it at its highest, the Complainant's supplemental filing does not affect the outcome. Consequently, a sur-reply from the Respondent was unnecessary.

6.2 Substantive Issues

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) the disputed domain name has been 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 3.1, section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. WIPO Overview 3.1, section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. WIPO Overview 3.1, section 1.7.

The applicable TLD in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such may be disregarded under the first element confusing similarity test. WIPO Overview 3.1, section 1.11.1.

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

B. Rights or Legitimate Interests

On this element of the Policy, the Complainant principally focuses on the fact that the disputed domain name is identical to the Complainant's mark and is being used to host PPC links that trade on the mark's value and divert users to products competing with those of the Complainant. The Panel finds these contentions to be made out on the evidence before it. Use of a domain name identical to the Complainant's mark for this purpose would not confer rights or legitimate interests upon the Respondent. WIPO Overview 3.1, section 2.9.

The Respondent however asserts, both in the Response and the accompanying declaration, that it acquired the disputed domain name for a contemplated international digital / crypto / community token project unrelated to the Complainant's oral-care business. The Respondent does not set out any credentials that it might possess in the field of cryptocurrency, any other basis for its plan to enter into that market, or any steps that it may have taken to establish a token in the present context or previously. Its declaration is silent on this topic, beyond asserting that there is a "planned HISMILE project" that "reflects the concept of a community token and digital platform identity". Furthermore, the record is notably limited from the perspective of the Respondent's demonstration of the existence of this alleged project.

The principal evidence put forward by Respondent in support of its position is the "HISMILE 2026 Brandbook". This short (10 page, mostly graphical) document has no date (beyond stating the year 2026), no versioning, and no provenance. It is not clear who prepared it, when, or for whom. There is no evidence of any actual implementation of the graphically depicted brand. No corroborating documentation of any kind regarding proposed use has been presented. Consequently, the Panel is not satisfied that the "Brandbook" on its own amounts to the kind of "clear contemporaneous (and ideally, dated) evidence of bona fide pre-complaint preparations" that are typically required in terms of Policy jurisprudence. WIPO Overview 3.1, section 2.2.

What the Brandbook does show is a somewhat early-stage graphical conception for a cryptocurrency brand that could yet be implemented. On this topic, the Panel cannot fully align itself with the Complainant's argument that the fact that the Brandbook contains a concatenated version of the two words in which the Respondent professes an interest necessarily means that the Respondent is referencing the Complainant's trademark. It is not uncommon in the Panel's experience for brand names to consist of concatenated words, not least because in the case of a project that is likely to have a heavy online presence, such as a cryptocurrency venture, the corresponding domain name will be a crucial component, and spaces are not permitted in domain names.

The Respondent supplements the "Brandbook" by a list of what it says are cryptocurrency-related domain names that it has already acquired. It does so in the context of claiming that the intended use of the disputed domain name is consistent with its broader practice of acquiring brandable domain names for contemplated digital, crypto, token, wallet and Web3-related projects. The Respondent asserts that it maintains a portfolio with the Registrar containing a number of domain names with these related meanings. The list provided is a filtered version of the Respondent's (evidently somewhat larger) portfolio of domain names. The filtered list shows some 11 domain names containing the word "coin" and four containing the word "wallet". Although it appears to be a selective list of the Respondent's portfolio, it nevertheless does show the registration of domain names related to cryptocurrency projects which could provide some support for the Respondent's contention (WIPO Overview 3.1, section 2.2, paragraph (iv), "bona fide registration and use of related domain names").

The domain names that the Respondent lists appear to the Panel to be descriptive of cryptocurrency activities, but the disputed domain name does not fit this pattern, and, in that sense at least, is not necessarily "related". The Respondent does not, however, specifically assert that the disputed domain name matches the pattern of the others, only that it is intended as the core of the claimed cryptocurrency venture. Accordingly, a scenario where the Respondent might have planned to acquire a domain name featuring a distinctive name for its crypto token, as reflected in the disputed domain name, and then to use the descriptive cryptocurrency-related domain names in its portfolio to generate traffic to the core branded domain name (the disputed domain name) is not entirely beyond the bounds of probability.

Furthermore, the Panel cannot overlook the fact that WIPO Overview 3.1, section 2.2, acknowledges that because business plans and operations can take time to develop, panels have not necessarily required evidence of use or intended use to be available immediately after registration of a domain name, although the passage of time may be relevant in assessing whether purported demonstrable preparations are bona fide or pretextual. Here, the Complaint was filed one week after the disputed domain name had been acquired by the Respondent. Assuming that the Respondent only determined that the disputed domain name would be suitable for its alleged crypto token project at the point where bidding began, the Respondent would have had very little time to prepare any materials demonstrable of preparations to use the disputed domain name in connection with this purpose that might have pre-dated notification to it of the dispute. The Complainant's criticisms of the material presented by the Respondent, and of the Response in general, must be tempered by that fact. Any more recent preparations, if put forward by the Respondent in the Response, would necessarily be ex post facto, but in any event the period between the launching of the Complaint and the due date for the Response was only a matter of some three weeks. This means that the Respondent had very little time to produce much in support of its position.

The Complainant indicates that the potential size of the Respondent's domain name portfolio suggests that it is a domain name investor that should be held to a different standard from the ordinary registrant or participator in domain name auctions. This might have been relevant to the issues before the Panel had there been evidence that the Respondent was actually engaged in that business, but there is no evidence on this record that the Respondent is acquiring allegedly "brandable term" domain names for resale, or that the disputed domain name was necessarily acquired for such purpose. Having a large portfolio of domain names is not evidence that one is a domain name investor (in the sense at least of holding those domain names with a view to realizing an investment at some time in the future by reselling them at a profit). The Respondent maintains that the disputed domain name is intended for a crypto token project, and it shows (at least, in the short time available) that it has an interest in descriptive crypto domain names and has a plan for the disputed domain name that would not cut across the Complainant's trademark rights insofar as unrelated to dental products. No evidence has been placed before the Panel that the listed domain names, or any other domain names of the Respondent, are being offered for sale.

Weighing the evidence in the balance, the Panel finds this issue to be something of a close call. On the one hand, the Respondent's material regarding its alleged use of the disputed domain name is extremely limited and could be pretextual. On the other hand, it must be acknowledged that the very short period between the date of acquisition of the disputed domain name and the date of the Complaint means that the Respondent had very little time to prepare for any use of the disputed domain name. The Respondent may be a domain name investor, but it may not be. The evidence, even that of it holding what may be a substantial portfolio of domain names, does not tip the balance in either direction without something more.

Given that its finding in the third element assessment below is determinative of the dispute, the Panel need not reach a definitive conclusion on this topic.

C. Registered and Used in Bad Faith

The appropriate date for the assessment of registration in bad faith in this case is the date of acquisition of the disputed domain name by the Respondent. WIPO Overview 3.1, section 3.9.

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 3.1, section 3.2.1.

In the present case, the Panel notes that the Respondent acquired the disputed domain name at auction and that it was immediately placed on a PPC parking page featuring links targeting the Complainant's trademark and pointing to the Complainant's competitors. This is the main focus of the Complainant's case on this topic. In *Haemonetics Corporation v. Brent Bristow*, WIPO Case No. D2024-2838, the panel had this to say on the subject of such targeted links:

> "The Panel acknowledges that the presence of PPC links to medical goods and services supports Complainant's bad faith arguments, but this evidence is not by itself sufficient to satisfy Complainant's burden. Assuming the PPC links are evidence of current bad faith use of the Disputed Domain Name, this is not conclusive as to Respondent's intent when he registered the Disputed Domain Name. It is well-known that registrar algorithms often automatically populate websites with PPC links. But the registrant usually has the option to stop the registrar from doing this. Accordingly, the Respondent is generally responsible for auto generated PPC links. Evidence that automatically generated hyperlinks lead to websites that compete with Complainant [will], along with other evidence, may support a finding of bad faith use. WIPO Overview 3.0, section 3.5.[2]
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> But that does not conclusively prove bad faith registration. It is plausible that Respondent registered the Disputed Domain Name in good faith without any intention to target Complainant, but then allowed or failed to prevent auto-generation of PPC links that reflect bad faith use."

[2] The present Panel notes in passing that the wording in the current WIPO Overview 3.1, section 3.5 is not materially different. The Panel also notes that it has marked the word "will" in the passage with square brackets, as this appears to be a typographical error.

In the present case, the present Panel adopts and follows the same reasoning. It is evidently the case that the disputed domain name was used in bad faith for at least the period between the acquisition of the disputed domain name and the date when the PPC content was removed (the Panel presumes this took place at some point between the notification of the Complaint to the Respondent and the date of this Decision). Given the shortness of time over which this occurred, it is difficult to infer that this was actually the Respondent's deliberate intent when it registered the disputed domain name. Rather, it appears to have been inadvertent, of very short duration, and corrected swiftly once brought to the Respondent's attention. For the Complainant's position on registration in bad faith to be made out, in the particular circumstances of this case, there needs to be other evidence of targeting than merely the existence of the automated PPC.

Beyond the PPC itself, the Complainant asserts that the Respondent must have known of the Complainant because "hismile" is not a dictionary word, but a coined, distinctive term used by the Complainant since 2015. One immediate issue that the Panel sees with this is that a third party, the previous registrant of the disputed domain name, evidently also coined the same term without reference to the Complainant. Had the Parties researched the previous ownership of the disputed domain name, as did the Panel, they would have noted that the term had previously been used for a Hawaii, United States-based dental practice, and that it had apparently been abandoned due to changes in the business. Equally, had the Respondent researched the trademark position with regard to the HISMILE mark, which the Panel also did when checking various of the Complainant's registered trademarks, it would have noted that there are other trademark registrations in this term (both in the name of the Complainant and various third parties) across a variety of use classes in a variety of jurisdictions. In these circumstances, the existence of a variety of third party uses tends to undermine the proposition that "HISMILE" is so uniquely associated with the Complainant that the Respondent's awareness of that fact should automatically be inferred.[3]

The Complainant asserts that the Respondent must have been aware of the Complainant's social media presence, which shows a substantial following. However, such a following does not automatically translate into an awareness on the part of non-followers on the platform(s) concerned. Not every person participates in social media, and even if the Respondent does so, there is no evidence suggesting that it must necessarily have engaged with or otherwise become aware of the Complainant's brand activities on the platforms where it is active. Crucially, despite its assertions, the Complainant produces no evidence that its social media presence necessarily translates into a mainstream media presence, or, for example, substantial search engine rankings which the Respondent might have seen if it had made the kinds of Internet searches the Complainant asserts that it should have made before acquiring the disputed domain name. The Complainant discusses no other means, such as relevant advertising or marketing activities, or any notoriety of its HISMILE mark based upon, for example, brand awareness surveys, that would suggest that its existence would more probably than not have come to the attention of the Respondent at the material time.

It is not unusual for a complainant seeking to prove a respondent's awareness to produce a search in a popular search engine such as Google, with personalization disabled, with the search conducted from the place where a respondent is based, often time-limited to the period leading up to the acquisition date of the particular domain name of interest.[4] The Complainant does not do this in the present case, and indeed does not produce any illustrative searches at all. The Panel is left with the Complainant's social media follower count and an announcement on a business focused platform of a specifically Australian endorsement of the Complainant's brand. This does not allow the Panel to say with any degree of accuracy what the Respondent might have seen even if it had searched for the term "hismile". Furthermore, the existence of other HISMILE trademarks as noted by the Panel could have given rise to something of a mixed picture in search returns.

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[3] The Panel conducted limited independent research into matters of public record concerning both Internet Archive "Wayback Machine" entries relating to the previous registration and use of the disputed domain name, and, as indicated in the factual background section above, a general search for registered trademarks featuring the HISMILE mark on the basis that it considered such information useful to assessing the case merits, in particular, to flesh out the factual background concerning the disputed domain name, which dates back to 2011. On this topic, see WIPO Overview 3.1, section 4.8.

[4] Such a search may for convenience employ servers in the country concerned, for example, via a virtual private network using an in-country IP address, in the event that the party conducting the search is based elsewhere.

The Complainant does possess an extensive international portfolio of registered trademarks, which includes a registered trademark in Ukraine, where the Respondent is based. A search in the Respondent's local trademark registry would undoubtedly have disclosed its existence to the Respondent. Crucially, though, on the Respondent's account, it was looking for a core brand for its crypto token business, unrelated to the Complainant's line of business. If that account is accepted, the existence of the Complainant's trademarks, even had it identified those, would not necessarily have given the Respondent any good reason not to proceed with its auction bids.

In any event, the foundation for the Complainant's argument that the Respondent should have made such searches, or any of them in particular, is the Complainant's claim that the Respondent is a professional domain name investor who should be held to a heightened standard, should take reasonable steps to avoid registering names that correspond to the trademarks of others, and should conduct obvious searches or "a cursory trademark or search engine inquiry". The problem with the Complainant's contentions on this topic is that there is no evidence that the Respondent is such a domain name investor or should otherwise be held to such heightened standard. The Complainant bases this aspect of its case entirely on the fact that the Respondent holds a large number of domain names (asserting that its portfolio runs to many pages and features an "Expiring / Expired" watch-list). To this might be added the fact that the Respondent asserts that the disputed domain name contains a "brandable" term, an argument often made by professional domain name investors. However, in the Panel's view, the fact that the Respondent holds a portfolio of domain names and references the "brandable" value of the disputed domain name, do not on their own make the Respondent a professional domain name investor to whom the "willful blindness" doctrine is most typically applied (see WIPO Overview 3.1, section 3.2.3).

A crucial feature of the present case is that there is no evidence that the Respondent is engaged in acquiring domain names as products in and of themselves, typically for resale at a profit, or that the disputed domain name or any of the Respondent's other domain names have been offered for sale, in an attempt to realize any such investment. Typically, in the Panel's experience, a professional domain name investor will place a newly acquired domain name on the various secondary marketplaces immediately at the point of registration or acquisition, in order to maximize its exposure to potential buyers. Cybersquatters will often directly target a particular rights holder via either a direct approach or through posts on social media. Neither of these things happened here.

Assuming, in the absence of a demonstrated cybersquatting motivation, that the Respondent did indeed acquire the disputed domain name for a crypto project, that it is not a professional domain name investor, and/or did not acquire the disputed domain name as an investment proposition targeting (or willfully blind to) the Complainant's rights, and that the Respondent has no intention to sell the disputed domain name to the Complainant or anyone else, then the Complainant's case on this topic must fail. As the Respondent's crypto project scenario is neither wholly implausible or improbable on the evidence before the Panel, bearing in mind the limited time that the Respondent has had to be able to show preparations towards that end, the Panel has reached the conclusion that the Respondent must be given the benefit of the doubt at this particular point in time.

While the circumstances on this topic also represent something of a close call, given the substance of the Complainant's trademark portfolio and its considerable follower count on social media, the Panel has reached the conclusion that the Complainant has not proved that the disputed domain name was registered with the Complainant in mind and with intent to target it, whether on the basis of willful blindness or otherwise. The Panel considers it sufficiently plausible that the disputed domain name was acquired for a crypto token project that would not cut across the Complainant's trademark rights, and that the Respondent's case cannot be rejected despite the limited evidence of intended or actual use of the disputed domain name. A key consideration in this particular case is the fact that there has been very little elapsed time between the acquisition of the disputed domain name and the present date, and that the Respondent has thus had limited time to show whether or not it really does plan to use the disputed domain name, in conjunction with the Brandbook, for the purpose it describes.

In conclusion, the Panel accepts the possibility that the PPC content was the product of a default parking page provided by the Registrar and was displayed for a limited period immediately following registration of the disputed domain name. While responsibility for content appearing on a website associated with a domain name remains with the registrant, even where such content is generated by a third party (WIPO Overview 3.1, section 3.5), the Panel does not find that the temporary appearance of the PPC links in the present circumstances is sufficient to establish targeting of the Complainant or its mark. The Panel does not find that a duty to search for existing trademarks, and/or their owners, should be imposed upon the Respondent in the circumstances of this particular case so as to alter the result of the findings, and also notes that the assertion that the Respondent is a professional domain name investor and should be held to such standard has not been demonstrated to its satisfaction.

The Panel's assessment is necessarily confined to the record as it presently stands. Should the disputed domain name subsequently be used for further targeted PPC advertising, or should the disputed domain name be offered for sale as opposed to being used for the Respondent's alleged project, or should other evidence emerge pointing to an intent on the Respondent's part to target the Complainant, such developments could potentially support a refiled complaint, subject to the principles summarized in WIPO Overview 3.1, section 4.18.

The Complainant has failed to demonstrate to the Panel's satisfaction that the disputed domain name was registered and used in bad faith. The evidence in the case file as presented does not indicate that the Respondent's aim in registering the disputed domain name was to profit from or exploit the Complainant's trademark.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Andrew D. S. Lothian/
Andrew D. S. Lothian
Sole Panelist
Date: August 21, 2026