

ADMINISTRATIVE PANEL DECISION

Weta Group Limited v. 兢 袁
Case No. DIO2022-0048

1. The Parties

The Complainant is Weta Group Limited, Seychelles, represented by Beijing JunHe LLP, China.

The Respondent is 兢 袁, China.

2. The Domain Name and Registrar

The disputed domain name <happymod.io> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 13, 2022. On October 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 17, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on October 18, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on October 20, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .IO Domain Name Dispute Resolution Policy (the “Policy”), the Rules for .IO Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .IO 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 October 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 16, 2022. The Respondent sent an informal email communication on November 3, 2022. The Center informed the Parties of its commencement of Panel appointment process on November 17, 2022.

The Center appointed Antony Gold as the sole panelist in this matter on November 21, 2022. 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 corporation formed under the laws of the Republic of Seychelles. It owns and operates a website at the domain name <happymod.com>, which provides facilities whereby Internet users can download modified versions of Android application packages (“APKs”). It presently has available for download more than 300,000 modified APKs and also provides an interactive community for users of its facilities. The first posting to the Complainant’s HAPPYMOD YouTube channel was made in June 2017. The channel has now received over 277,000 views and various videos were posted by YouTube users to the account throughout 2018 and 2019. The domain name <happymod.com> was registered by or on behalf of the Complainant in November 2017 and, since 2017, it has also provided a mobile HAPPYMOD app through which APKs can be downloaded. Screenshots from the Internet archive known as the Wayback Machine establish that the Complainant was using its website at “www.happymod.com” for the purpose of enabling Internet users to download modified APKs and make use of related services by, at least, August 2018. The Complainant established a HAPPYMOD Twitter account in March 2018, which has been used for promoting the Complainant’s goods and services. A tweet, dated April 12, 2018, promotes “HappyMod: 100% working mods!” and includes a link to the Complainant’s website.

The Complainant’s has filed two trade mark applications for HAPPYMOD, including United States of America (“United States”) Service Mark application number 97445880, in classes 9, 38, 41, and 42. This application was filed on June 7, 2022, and claims a first use in commerce date of November 27, 2017.

The disputed domain name was registered on November 18, 2020. Following registration by the Respondent, the website initially resolved to a parked page at which it was offered for sale. It now resolves to a website, which provides identical services to those of the Complainant. The Respondent’s website makes use of the Complainant’s HAPPYMOD marks and the same figurative facial device which is used by the Complainant on its website. It also uses a similar layout and green colour scheme and features the claim “100% working mods”, which the Complainant has previously used, as well as the claim; “The only official URL for HappyMod is ‘https://happymod.io/’.”

5. Parties’ Contentions

A. Complainant

The Complainant says that the disputed domain name is identical or confusingly similar to a trade mark or service mark in which it has rights. The Complainant’s HAPPYMOD trade mark is included in its entirety in the disputed domain name. The addition of the country code Top-Level Domain (“ccTLD”) “.io” does not remove the likelihood of confusion between the Complainant’s mark and the disputed domain name. Internet users are likely to assume that, as the disputed domain name contains the Complainant’s mark and that it is owned by or associated with the Complainant, especially when they see that the look and feel of the Respondent’s website is confusingly similar to that of the Complainant.

The Complainant says also that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has no connection with the Respondent and has not authorized its use and registration of the disputed domain name. Following the Respondent’s registration of the disputed domain name, it initially resolved to a parked webpage. The only active use the Respondent has subsequently made of it has been to resolve to a website which uses the Complainant’s trade marks and is confusingly similar to it. Such use is detrimental to the Complainant and does not comprise a noncommercial or fair use of the disputed domain name.

Lastly, the Complainant says that the disputed domain name was registered and is being used in bad faith. Having regard to the repute of the Complainant’s HAPPYMOD marks as at the date of registration of the disputed domain name and the fact that the Respondent’s website is almost identical to that of the Complainant, it is safe to conclude that the Respondent registered the disputed domain name when it knew of the existence of the Complainant’s HAPPYMOD platform and that such registration was accordingly in

bad faith. The Respondent is using its website to promote goods/services identical to those of the Complainant to relevant consumers. Where a respondent's website is used to promote goods which compete directly with those of a complainant, this is frequently considered evidence of bad faith use. Moreover, the Respondent's assertion on its website that "The only official URL for HappyMod is 'https://happymod.io'" is intentionally misleading consumers and establishes that the Respondent has acted with opportunistic bad faith.

B. Respondent

The Respondent did not file a formal Response. However, on November 3, 2022, it sent an email to the Center stating; "We have registered the trademark, see the link below for details". The link is to a United States Service Mark application for HAPPYMOD, filed on March 11, 2022, by a Hong Kong-based company with no obvious connection to the Respondent.

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that the Complainant proves each of the following three elements in order to succeed in its Complaint: (i) the disputed domain name is identical or confusingly similar to a trade mark 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 or is being used in bad faith.

A. Identical or Confusingly Similar

Whilst the Complainant has provided evidence of its trade mark applications for HAPPYMOD, applications (as opposed to granted marks) do not in themselves establish trade mark rights for the purpose of the first element of the Policy. However, the Complainant additionally claims unregistered trade mark rights which, it says, pre-date the date of registration of the disputed domain name in November 2020.

Section 1.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)¹") explains that; "To establish unregistered or common law trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant's goods and/or services. Relevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) includes a range of factors such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys".

The history of the Complainant's development of its HAPPYMOD-branded services is set out in the Factual Background section above, from which it is evident that the Complainant started use of its HAPPYMOD trading style in or around 2017 and that it was then extensively promoted on both YouTube and Twitter. Its website at the domain name <happymod.com> has been active since at least August 2018. In the light of the Complainant's evidence of use and promotion of its HAPPYMOD trading style, the Panel accepts that as at the date of registration of the disputed domain name in November 2020, the term HAPPYMOD had become a distinctive identifier in respect of the Complainant's provision of download services for modified APKs. The Respondent's registration and subsequent use of the disputed domain name in order to mimic the Complainant's services, considered further below, in itself, provides further affirmation of the repute of the Complainant's mark as at the date of registration of the disputed domain name.

¹ Given the similarities between the ioDRP and the Uniform Domain Name Resolution Policy ("UDRP"), the Panel finds it appropriate to refer to UDRP jurisprudence, including reference to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

For the purpose of considering whether the disputed domain name is identical or confusingly similar to the Complainant's mark, the ccTLD ".io" is disregarded as this is a technical requirement of registration. The disputed domain name contains the entirety of the Complainant's trade mark without any additional elements and is accordingly identical to the Complainant's mark.

The Panel therefore finds that the disputed domain name is identical to a trade mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides, without limitation examples of circumstances whereby a respondent might demonstrate that it has rights or legitimate interests in a domain name. In summary, these are if a respondent has used or prepared to use the domain name in connection with a *bona fide* offering of goods and services, if a respondent has been commonly known by the domain name, or if a respondent has made a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark in issue.

It is unclear exactly what purpose the Respondent believed would be served by its email to the Center dated November 3, 2022, asserting that; "We have registered the trademark, see the link below for details". To the extent the Respondent intended to suggest that it had rights or legitimate interests in the disputed domain name by virtue of the service mark application to which it referred, the Panel can find no obvious connection between the Respondent and the applicant for the service mark application. It is not part of the Panel's function to undertake investigations in order to see whether the Respondent might have some rights in a service mark application made by a seemingly unrelated third party. But, even in the unlikely event that such a connection existed, the application post-dates the date on which the Complainant had acquired unregistered rights in the term HAPPYMOD and is therefore of inherently limited relevance. Moreover, the Respondent has not attempted to deal with the Complainant's assertions in respect of its use of the disputed domain name in order to confuse Internet users into believing that its website is that of the Complainant. Accordingly, even if it were possible for the Respondent to establish some form of interest in the service mark application to which it has referred, this would not provide an answer to the Complaint. In these circumstances, the Panel does not attach any weight to the Respondent's email.

It is evident from consideration of the Respondent's website that it is intended to confuse Internet users into believing that it is owned and operated by the Complainant. Moreover, the disputed domain name has evidently been chosen by the Respondent in order to attract visitors to its website who are likely to have been searching for the Complainant's website. In these circumstances, the Respondent's use of the disputed domain name does not comprise a *bona fide* offering of goods and services. In this respect, see the decision of the panel in *Philipp Plein v. Privacy Protection Service INC d/b/a PrivacyProtect.org / Norma Brandon, cheaphilippplein*, WIPO Case No. [D2015-1050](#); "The Respondent's use of a domain name that is confusingly similar to the Complainant's trade marks in order to attract Internet users looking for genuine products of the Complainant's company and to offer them unauthorized copies instead is a 'bait and switch' strategy that lacks *bona fides* and does not give rise to rights or a legitimate interests under the Policy". See also section 2.13.1 of the [WIPO Overview 3.0](#) which explains that UDRP "[p]anels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent".

There is no evidence that the Respondent has been commonly known by the disputed domain name and the second circumstance under paragraph 4(c) of the Policy is therefore inapplicable. The third circumstance is also inapplicable as the use the Respondent has made of the disputed domain name is commercial in character.

The Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name and the burden of production shifts to the Respondent to show that it does have

such rights or legitimate interests. The Respondent has failed to satisfy that burden and the Panel accordingly finds that the Respondent has no rights or legitimate interests with respect to the disputed domain name.

C. Registered or Used in Bad Faith

As the disputed domain name is identical to the Complainant's HAPPYMOD mark and the only known active use of it has been to resolve to a website which purports to be owned or operated by the Complainant, it is apparent, on at least a balance of probabilities, that the Respondent registered the disputed domain name with an awareness of the Complainant's mark and with the intention of taking unfair advantage of it. Registration of the disputed domain name in these circumstances is in bad faith; see *Verkada, Inc. v. WhoisGuard Protected, WhoisGuard, Inc. / Teresa Swanzy*, WIPO Case No. [D2021-0484](#). See also section 3.1.4 of the [WIPO Overview 3.0](#); "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 therefore finds the Respondent's registration of the disputed domain name to have been in bad faith.

Paragraph 4(b) of the Policy sets out, without limitation, circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The circumstance set out in paragraph 4(b)(iv) of the Policy is if a respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website. The use to which the Respondent has put the disputed domain name falls within these circumstances in that the form and content of its website will lead Internet users to believe that it is operated by, or with the authorization of, the Complainant. Such a belief will be reinforced because of the identical nature of the disputed domain name as compared to the Complainant's trade mark. The Respondent's use of the disputed domain name in order to create a website which masquerades as that of the Complainant is therefore in bad faith; see, by way of example, *Impact Crowd Technology S.L. v. WhoisGuard, Inc. / John Cannex, Seal Ltd*, WIPO Case No. [D2020-2688](#).

The Panel accordingly finds that the disputed domain name is also being used in bad faith.

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 <happymod.io> be transferred to the Complainant.

/Antony Gold/

Antony Gold

Sole Panelist

Date: December 5, 2022