

ADMINISTRATIVE PANEL DECISION

Hearst Communications, Inc. v. Dmytro Dorosh, Steadi Ltd.
Case No. D2022-4549

1. The Parties

The Complainant is Hearst Communications, Inc., United States of America ("United States"), internally represented.

The Respondent is Dmytro Dorosh, Steadi Ltd., Bulgaria.

2. The Domain Name and Registrar

The disputed domain name <hearsthealthinternational.com> is registered with Internet Domain Service BS Corp (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 29, 2022. On November 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 16, 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 (Whois Privacy Corp.) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 16, 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 amendment to the Complaint on December 20, 2022.

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 December 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 11, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 13, 2023.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on January 27, 2023.

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 diversified media, information and services company. One of its divisions is Hearst Health which encompasses its healthcare information businesses covering the clinical, pharmacy, home and hospice care and health insurance markets.

The Complainant is the owner, amongst others, of the following trademark registrations:

- China trademark registration No. 16667192 for HEARST, filed on April 9, 2015, registered on April 14, 2017, in international class 35;
- China trademark registration No. 16806291 for HEARST, filed on April 27, 2015, registered on April 14, 2017, in international class 9; and
- China trademark registration No. 20827309 for HEARST, filed on August 1, 2016, registered on April 21, 2018, in international class 41.

The disputed domain name <hearsthealthinternational.com> appears to have been initially registered by the Complainant on October 14, 2016, but lapsed on October 14, 2019.

According to the present Whois records, the disputed domain name was registered on March 24, 2021. At the time of the beginning of this proceeding the disputed domain name resolved to a webpage that reproduced the Complainant's Hearst Health division webpage.

5. Parties' Contentions

A. Complainant

The Complainant asserts that its Hearst Health division includes various businesses such as: "FDB (First Databank)", a leading provider of drug knowledge bases; "Zynx Health", a leading provider of evidence-based care plans, as well as order sets and clinical optimization programs, to measurably improve patient outcomes, enhancing safety and lowering costs; "MCG (formerly Milliman Care Guidelines)", a developer and producer of globally sourced, clinically validated best practices for health systems and insurance companies to drive effective and cost-appropriate care; "Homecare Homebase", a leading provider of comprehensive software-as-a-service solutions to the homecare and hospice market and "MHK", a leading solution provider helping health plans and pharmacy benefit managers deliver optimal care across their members' health journey through innovative technology that provides critical insights from enrollment through every stage of care.

Also according to the Complainant, the Hearst mark has been used in the United States since at least as early as 1887, having the Complainant become a leading global, diversified information services and media company with operations in 40 countries, presently encompassing financial services Fitch Group; Hearst Transportation, which includes CAMP Systems International, a major provider of software-as-a-service solutions for managing maintenance of jets and helicopters; ownership in cable television networks such as A&E, HISTORY, Lifetime and ESPN; 33 television stations; 24 daily and 52 weekly newspapers; digital services businesses; and nearly 250 magazines around the world.

Under the Complainant's view the disputed domain name is confusingly similar to the Complainant's trademark; having been registered by the Respondent to deceive the general public; not having the Respondent any rights or legitimate interests in it. Lastly, the Respondent asserts that the Respondent

registered the disputed domain name in bad faith and replicated the Complainant's website to deceive the general public, including the Complainant's Hearst Health division's actual and potential clients.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

- (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.

The Complainant must prove in this administrative proceeding that each of the aforementioned three elements is present in order to obtain the transfer of the disputed domain name.

In accordance with paragraph 14(a) of the Rules, if the Respondent does not submit a Response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

A. Identical or Confusingly Similar

The Complainant has established its rights in the registered HEARST trademark.

The Panel finds that the disputed domain name reproduces entirely the Complainant's HEARST trademark with the addition of the terms "health" and "international". It is well accepted that the first element functions primarily as a standing requirement and that the threshold test for confusing similarity involves a "reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name". The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), sections 1.7 and 1.8.

The first element of the Policy has therefore been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a non-exclusive list of circumstances that indicate a respondent's rights to or legitimate interests in a disputed domain name. These circumstances are:

- (i) before any notice of the dispute, the respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, in spite of not having acquired trademark or service mark rights; or
- (iii) the respondent is making 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.

The Respondent, in not formally responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights to or legitimate interests in the disputed domain name. This entitles the Panel to draw any such inferences from such default as it considers appropriate pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden of proof is still on the Complainant to make a *prima facie* case against the Respondent.

In that sense, and according to the evidence submitted, the Complainant has made a *prima facie* case against the Respondent that the Respondent has not been commonly known by the disputed domain name, and neither has there been any affiliation between the Respondent and the Complainant.

Also, the absence of any indication that the Respondent has rights in a term corresponding to the disputed domain name, or any possible link between the Respondent and the Complainant that could be inferred from the details known of the Respondent or the webpage relating to the disputed domain name, corroborates with the Panel's finding of the absence of rights or legitimate interests.

Furthermore, the use made of the disputed domain name in connection with a webpage reproducing the contents of the Complainant's Hearst Health division webpage further corroborates a finding of the Respondent's lack of rights or legitimate interests.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name.

The second element of the Policy has therefore been established.

C. Registered and Used in Bad Faith

The Policy indicates in paragraph 4(b) that bad faith registration and use can be found in view of:

- (i) circumstances indicating that the Respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring it to the Complainants who are the owner of a trademark relating to the disputed domain name or to a competitor of the Complainants, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) the Respondent has registered the disputed domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct; or
- (iii) the Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website or other location, by creating a likelihood of confusion with the Complainants' mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location.

The registration and use of the disputed domain name in bad faith can be found in the present case in view of the following circumstances:

- (i) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the disputed domain name, not having submitted a response;
- (ii) the use of the disputed domain name in connection with a webpage reproducing the contents of the Complainant's Hearst Health division webpage;

- (iii) the well-known status of the Complainant's trademark;
- (iv) the nature of the disputed domain name (consisting of the Complainant's trademark and additional terms relating to the Complainant's business), and the Respondent's intention to unduly profit from the value of the Complainant's trademark, suggesting a clear indication of the Respondent's registration and use of the disputed domain name in bad faith, with the implausibility of any good faith use to which the disputed domain name may be put; and
- (v) the Respondent's choice to retain a privacy protection service so as to conceal its true identity.

For the reasons stated above, the Panel finds that the disputed domain name was registered and is being used in bad faith.

The third element of the Policy has therefore 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 <hearsthealthinternational.com> be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: February 10, 2023