

ADMINISTRATIVE PANEL DECISION

Haier US Appliance Solutions, Inc. d/b/a/ GE Appliances v. Telema Harry
Case No. D2023-2636

1. The Parties

Complainant is Haier US Appliance Solutions, Inc. d/b/a/ GE Appliances, United States of America, represented by Dinsmore & Shohl LLP, United States of America.

Respondent is Telema Harry, United States of America.

2. The Domain Names and Registrar

The disputed domain names <smarthqservice.com> and <smarthqservicepropertymanagement.com> (the “Domain Names” are registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 19, 2023. On June 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On June 20, 2023, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 Respondent of the Complaint, and the proceedings commenced on June 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 13, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on July 19, 2023.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on July 24, 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

Complainant is a provider of household appliances, including refrigerators, microwaves, ovens, ranges, dishwashers, and maintenance and repair services, and has been in the business of providing such goods and services since around 1984. Complainant has used the SMARTHQ trademark in association with such goods and services.

Complainant owns several registered trademarks and trademark applications for the SMARTHQ mark, including:

- United States trademark application number 88/805,482 which was granted a Notice of Allowance on September 15, 2020;
- International registered trademark number 1552940 for SMARTHQ registered on August 5, 2020;
- Australian registered trademark number 2125108 for SMARTHQ word mark, registered on August 5, 2020;
- European Union registered trademark number 1552940 for SMARTHQ word mark, registered on August 5, 2020;
- New Zealand registered trademark number 1160630 for SMARTHQ word mark, registered on August 3, 2021;
- Singapore registered trademark number 40202020596Y for the SMARTHQ word mark, registered on April 6, 2021; and
- Mexican registered trademark numbers 2178671 and 2165540 for the SMARTHQ word mark, registered on November 25, 2020 and October 28, 2020 respectively.

Complainant contents that the SMARTHQ mark is used in connection with household appliances, software, appliance repair and maintenance, appliance distribution, and cloud-based software.

The United States Trademark Office granted a Notice of Allowance for United States trademark application number 88/805,482 on September 15, 2020 for the SMARTHQ Mark.

Complainant offers and advertises its products and services under its SMARTHQ Mark along with other well-known and longstanding trademarks which it is authorized to use through a license agreement. Complainant also offers computer and mobile applications for its SMARTHQ services through Google Play and the Apple App Store, that are listed as being offered by Complainant, i.e., "GE Appliances" and "Haier US Appliance Solutions, Inc."

The Domain Names <smarthqservice.com> and <smarthqservicepropertymanagement.com> were respectively registered on November 29, 2019 and November 1, 2021. The Domain Names each revert to a website that displays Complainant's SMARTHQ marks and content associated with Complainant's business.

The Domain Names were each registered by Respondent, during his employment with Complainant, where he was once responsible for assisting in the development and marketing of Complainant's SMARTHQ goods and services. The record also shows that during Respondent's employment with Complainant, Respondent registered, had control and access to the Domain Names, as well as various other social media accounts, on behalf of Complainant for the use and development of Complainant's SMARTHQ goods and services.

Prior to Respondent's employment termination and without authorization from Complainant, Respondent registered the Domain Names using his personal information, including a personal email account and telephone numbers.

On November 15, 2022, Complainant notified Respondent that his employment with Complainant would be terminated, effective December 15, 2022, at which time, and in accordance with the Employee Innovation and Proprietary Information Agreement, executed by Respondent at the beginning of Respondent's employment with Complainant, all property and proprietary information, including the GoDaddy account information, must be returned to Complainant.

Complainant did not agree to permit Respondent to retain ownership or control of the Domain Names after Respondent's employment termination. Prior to and leading up to the date on which Respondent's employment with Complainant was terminated, Complainant requested that Respondent transfer the Domain Names to Complainant, to which Respondent initially agreed.

As of the date of Respondent's employment termination with Complainant, Respondent did not return Complainant's proprietary information or transfer the Domain Names. Respondent still maintains control over the Domain Names, which remain active and are still associated with the SMARTHQ products and services.

5. Parties' Contentions

A. Complainant

Complainant contends that (i) each of the Domain Names is identical or confusingly similar to Complainant's trademarks; (ii) Respondent has no rights or legitimate interests in the Domain Names; and (iii) Respondent registered and is using the Domain Names in bad faith.

In particular, Complainant contends that it has trademark registrations for SMARTHQ and that Respondent registered and is using the Domain Names with the intention to confuse Internet users looking for *bona fide* and well-known SMARTHQ products and services.

Complainant notes that while Respondent was a former employee of Complainant, it has no further affiliation with Respondent. Complainant states that it did not authorize Respondent to register the Domain Names in Respondent's personal name. Complainant further contends that Respondent is using each of the Domain Names as a tool to exploit Complainant's reputation for its own commercial gain, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Names. Further, Complainant contends that Respondent has acted in bad faith in acquiring and setting up the Domain Names with his personal information, when Respondent clearly knew of Complainant's rights.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

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

- (i) the Domain Names are identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Names; and
- (iii) the Domain Names were registered and are being used in bad faith.

Section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)) states that failure to respond to the complainant's contentions would not by itself

mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true.

Thus, although in this case, Respondent has failed to respond to the Complaint, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence.

A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1

Complainant has provided evidence of its rights in the SMARTHQ trademarks, as noted above under section 4. Complainant has also submitted evidence which supports that the SMARTHQ trademarks are widely known and a distinctive identifier of Complainant's products and services. Complainant has therefore proven that it has the requisite rights in the SMARTHQ trademarks.

With Complainant's rights in the SMARTHQ trademarks established, the remaining question under the first element of the Policy is whether the Domain Names, typically disregarding the Top-Level Domain ("TLD") in which it is registered (in this case is, ".com"), are identical or confusingly similar to Complainant's trademark. See, e.g., *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#).

Here, the Domain Names are confusingly similar to Complainant's SMARTHQ trademarks. The addition of the respective words "service" and "servicepropertymanagement" after the SMARTHQ mark in the respective Domain Names, does not prevent a finding of confusing similarity between each of the Domain Names and the SMARTHQ trademarks as it is recognizable in each of the Domain Names.

Thus, the Panel finds that Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make a *prima facie* showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with relevant evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

From the record in this case, it is evident that Respondent, particularly as a former employee and who was once responsible for assisting in the development and marketing of Complainant's SMARTHQ goods and services, was, and is, aware of Complainant and its SMARTHQ trademarks, and does not have any rights or legitimate interests in the Domain Names. Complainant has also never assigned, sold, transferred or licensed any rights in its SMARTHQ marks to Respondent; and that Complainant has not granted Respondent permission to use or register its SMARTHQ mark as a domain name. Rather, Respondent executed contractual agreements at the start of his employment with Complainant that any and all proprietary information belonging to Complainant must be returned at the termination of employment.

Moreover, Complainant specifically states, and Respondent does not contradict or provide evidence to the contrary, that it did not authorize Respondent to register the Domain Names in Respondent's personal name.

Respondent is also not known to be associated with the SMARTHQ trademarks and there is no evidence showing that Respondent has been commonly known by the Domain Name.

In addition, Respondent has not used the Domain Names in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. Rather, and at the time of filing of the Complaint, the Domain Names resolved to websites which displayed Complainant's registered SMARTHQ trademark and content associated with Complainant's business, including Complainant's business address and contact information, which could mislead Internet users into thinking that the website has been authorized or operated by or affiliated with Complainant, and offered SMARTHQ-branded products and other GE-branded products – also owned by Complainant – for sale. Such use does not constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Name. See, e.g., *Intesa Sanpaolo S.p.A. v. Charles Duke / Oneandone Private Registration*, WIPO Case No. [D2013-0875](#).

Moreover, the nature of each of the Domain Names is inherently misleading and carries a risk of implied affiliation (see [WIPO Overview 3.0](#), section 2.5.1).

Accordingly, Complainant has provided evidence supporting its *prima facie* claim that Respondent lacks any rights or legitimate interests in the Domain Names. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Names, reinforcing the notion that Respondent was not using the Domain Names in connection with a *bona fide* offering.

Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Names and Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Respondent's actions indicate that Respondent registered and is using the Domain Names in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, namely:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

Complainant is well-established and known. Indeed, the record shows that Complainant's SMARTHQ trademarks and related products and services are widely known and recognized. In addition, Respondent was a former employee of Complainant, where he was once responsible for assisting in the development and marketing of Complainant's SMARTHQ goods and services. The record shows that during Respondent's employment with Complainant, Respondent registered, had control and access to the Domain Names, as well as various other social media accounts, on behalf of Complainant for the use and development of Complainant's SMARTHQ goods and services.

Therefore, Respondent was clearly aware of the SMARTHQ trademarks when it registered the Domain Names, knew, or should have known that the Domain Names were confusingly similar to Complainant's trademarks. See [WIPO Overview 3.0](#), section 3.2.2; see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

The Panel therefore finds that Respondent's awareness of Complainant's trademark rights at the time of registration shows bad faith. This is further bolstered by the fact that Respondent incorporated Complainant's SMARTHQ marks and registered the Domain Names without Complainant's authorization using his own personal contact information during his employment with Complainant.

Further, the registration of the Domain Names incorporating Complainant's SMARTHQ trademark in its entirety further shows Respondent's actual knowledge of Complainant's rights in the SMARTHQ trademarks at the time of registration of the Domain Names and its effort to opportunistically capitalize on the registration and use of the Domain Names.

The use of the SMARTHQ mark as the dominant part of the Domain Names is intended to capture Internet traffic from Internet users who are looking for Complainant's products and services. Therefore, by registering and using the Domain Names in its own name (and not that of its employer), Respondent has in effect (as per the terms of the Policy) intentionally attempted to attract, for commercial gain, Internet users to Respondent's webpage by creating a likelihood of confusion with Complainant's SMARTHQ marks as to the source, sponsorship, affiliation, or endorsement of Respondent's website.

Further, the Panel also notes the failure of Respondent to submit a formal Response or to provide any evidence of actual or contemplated good-faith use and the implausibility of any good-faith use to which the Domain Names may be put by Respondent.

Accordingly, the Panel finds that Respondent registered and is using the Domain Names in bad faith and Complainant succeeds under the third element of paragraph 4(a) of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Names, <smarthqservice.com> and <smarthqservicepropertymanagement.com> be transferred to Complainant.

/Kimberley Chen Nobles/

Kimberley Chen Nobles

Sole Panelist

Date: August 7, 2023