

## **ADMINISTRATIVE PANEL DECISION**

### **HESTRA-Handsken AB v. Jdeuu Tgbde**

### **Case No. D2023-4089**

#### **1. The Parties**

The Complainant is HESTRA-Handsken AB, Sweden, represented by Advokatbyrå Gulliksson AB, Sweden.

The Respondent is Jdeuu Tgbde, China.

#### **2. The Domain Names and Registrar**

The disputed domain names <hestrasale.com> and <shophestra.com> are registered with Name.com, Inc. Name.com, Inc. (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 29, 2023. On September 29, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 29, 2023, the Registrar transmitted by email to the Center its verification response confirming that the 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 the Respondent of the Complaint, and the proceedings commenced on October 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 25, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 27, 2023.

The Center appointed Ganna Prokhorova as the sole panelist in this matter on November 2, 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

Founded in 1936 in Sweden, the Complainant is a developer and manufacturer of gloves and accessories and is one of the world's leading producers of gloves for skiing, recreation, and leisure. In 2021 the Complainant produced over 2 million pairs of gloves. The Complainant is headquartered in Sweden but has subsidiaries in numerous countries as well as agents, distributors and retailers in over 40 countries including in Europe, North America, and Asia.

The Complainant is the proprietor of the globally protected trademark HESTRA, registered worldwide, in relation to gloves, mittens and other related accessories, such as:

- United States of America trademark registration No. 2888727 for HESTRA, registered on September 28, 2004 for goods in classes 25 and 28;
- International Registration No. 928592 for HESTRA, registered on January 23, 2007 for goods in classes 9, 18, 25 and 28, protected in different countries, including China.

The Complainant owns the domain names <hestragloves.se>, <hestragloves.com>, and <hestragloves.us>, and conducts sales and marketing through these websites alongside marketing and sales through its distributors.

The disputed domain names were registered on May 11, 2022, and currently resolve to websites offering for sale the goods marketed under the Complainant's trademark HESTRA.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant asserts that each of the elements enumerated in paragraph 4(a) of the Policy and the corresponding provisions in the Rules have been satisfied. In particular, the Complainant asserts that:

- (1) the disputed domain names are confusingly similar to the Complainant's HESTRA trademark, since they incorporate this mark in its entirety. The addition of terms "sale" and "shop" does not sufficiently distinguish the disputed domain names from the Complainant's trademark;
- (2) the Respondent has no rights or legitimate interests in the disputed domain names. The disputed domain names resolve to webpages offering for sale the Complainant's goods marketed under the Complainant's HESTRA trademark. However, there is no genuine affiliation, association or other commercial connection whatsoever between the Complainant on the one hand and the Respondent and the disputed domain names on the other hand. The Complainant has not been able to conclude whether the HESTRA products offered on the disputed websites are to any extent delivered or if the websites are merely a front for a pure money scam. Lacking any indication of the company behind the website, as well as the lack of any indication of how the websites are associated with the Complainant demonstrate that the Respondent has no rights or legitimate interest in respect to the disputed domain names; and
- (3) the Respondent has registered and is using the disputed domain names in bad faith. The Respondent intentionally attempts to attract for commercial gain Internet users and potential Complainant customers to the Respondent's websites by creating a likelihood of confusion between the Complainant's HESTRA trademark and the Complainant's marketing and sales of its original HESTRA products. The disputed domain names are used in the course of illegal activity.

The Complainant requests the transfer of the disputed domain names.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 3(c) of the UDRP Rules provides that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

The evidence in the case file suggests that both disputed domain names were registered on the same date, under identical domain name holder, each possessing identical addresses, which is sufficient to consolidate the disputed domain names in one case.

The burden for the Complainant under paragraph 4(a) of the Policy is to prove that:

- (i) the disputed domain names registered by the Respondent are identical or confusingly similar to a trademark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are 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 names.

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.

The Panel will further analyze the potential concurrence of the above circumstances. Moreover, the Panel has taken note of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") and, where appropriate, will decide consistent with the consensus views captured therein.

### **A. Identical or Confusingly Similar**

According to paragraph 4(a)(i) of the Policy, it should be established that the disputed domain names are identical or confusingly similar to a mark in which the Complainant has rights.

The Panel confirms that for the purposes of paragraph 4(a)(i) of the Policy, the Complainant has satisfied the threshold requirement of having relevant trademark rights for HESTRA.

With the Complainant's rights in HESTRA trademark established, the remaining question under the first element of the Policy is whether the disputed domain names are identical or confusingly similar to the Complainant's marks.

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". [WIPO Overview 3.0](#), section 1.7. This test typically involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The disputed domain names comprise the Complainant's HESTRA trademark in its entirety, preceded by the additional term "shop" in the case of <shophestra.com>, and followed by the additional term "sale" in the case of <hestrasale.com>. Prior UDRP panels have recognized that confusing similarity is established for purposes of the Policy where the disputed domain name incorporates the complainant's trademark in its entirety.

Furthermore, in cases where the relevant trademark is recognizable within the disputed domain name, the addition of other terms does not prevent a finding of confusing similarity under the first element. See [WIPO Overview 3.0](#), sections 1.7 and 1.8.

The generic Top-Level Domain (“gTLD”), such as “.com”, may be disregarded for purposes of comparison under the first element, as it is viewed as a standard registration requirement. See [WIPO Overview 3.0](#), section 1.11.1.

Therefore, the Panel finds that the disputed domain names are confusingly similar to the Complainant’s trademarks and that the requirement of paragraph 4(a)(i) of the Policy is met in this case.

## **B. Rights or Legitimate Interests**

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

It is well established that, as it is put in [WIPO Overview 3.0](#), section 2.1, while the overall burden of proof in the proceedings is on the complainant, proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. Therefore, the Panel agrees with prior UDRP panels that the complainant is required to make out a *prima facie* case before the burden of production on this element shifts to the respondent to show that it has rights or legitimate interests in the disputed domain name.

The Complainant has made out a *prima facie* case showing that the Respondent has no rights or legitimate interests in the disputed domain names, notably by demonstrating rights in the HESTRA trademark, which precede the Respondent’s registration of the disputed domain names, and confirming that the Respondent is neither affiliated with, nor has it been licensed or permitted to use the Complainant’s HESTRA trademark or any domain names incorporating the HESTRA trademark.

The disputed domain names are in use in relation to two different websites that are very similar to each other, and also similar to the Complainant’s original websites. The Panel finds that by using the disputed domain names in connection with websites that falsely appear to be websites associated with the Complainant by using the Complainant’s trademark and pictures of HESTRA products, the Respondent has failed to create a *bona fide* offering of goods or services.

According to the consensus view in UDRP panel decisions (see section 2.8 of the [WIPO Overview 3.0](#)), a reseller or distributor can be making a *bona fide* offering of goods and services and thus have a legitimate interest in the domain name if its use meets certain requirements. These requirements normally include the actual offering of goods and services at issue, the use of the site to sell only the trademarked goods or services, and the site’s accurate and prominent disclosure of the registrant’s relationship with the trademark holder. The respondent must also not try to “corner the market” in domain names that reflect the trademark. Many panels subscribing to this view have also found that not only authorized but also unauthorized resellers may fall within such so-called *Okidata* principles (e.g., *Okidata Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); *Dr. Ing. h.c. F. Porsche AG v. Del Fabbro Laurent*, WIPO Case No. [D2004-0481](#)).

After a thorough examination of the websites under the disputed domain names, the Panel did not find any elements that would prevent confusion with the Complainant. There is no clear statement on the corresponding websites indicating that the Respondent is not the trademark owner, even if they offer legitimate goods. This lack of clarity regarding the registrant’s relationship with the trademark owner does not assist the Respondent under the *Okidata* test, as the Respondent’s websites do not include any statement that clearly establishes the relationship between the Complainant and the Respondent.

The Respondent had the opportunity to demonstrate rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the *prima facie* case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the disputed domain name. In light of the above, the Complainant succeeds on the second element of the Policy (paragraph 4(a)(ii) of the Policy).

### **C. Registered and Used in Bad Faith**

According to paragraph 4(a)(iii) of the Policy, the Complainant must prove, on the balance of probabilities, both that the disputed domain name was registered in bad faith and that it is being used in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of factors, any one of which may demonstrate bad faith. Among these factors demonstrating bad faith registration and use is the use of a domain name to intentionally attempt to attract, for commercial gain, Internet users to a 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 the website or location or of a product or service on the website or location.

In the present case, the Panel finds it inconceivable that the Respondent was unaware of the Complainant and its rights in the HESTRA mark when it registered the disputed domain names.

Furthermore, the Panel is also of the opinion that no explanation may be reasonably submitted to understand why the Respondent selected the disputed domain names other than to mislead Internet users and create a likelihood of confusion with the Complainant. The combination of the word "shop" and "sale" with the Complainant's mark HESTRA in the disputed domain names constitutes additional proof of the above finding.

Consequently, it is established by the Panel that the Respondent registered the disputed domain names in bad faith.

The disputed domain names resolve to websites that claim to offer for sale HESTRA products. The websites linked to the disputed domain name include copies of the Complainant's trademark and reproduce images of the Complainant's products. As a result, the Respondent must have had knowledge of the Complainant's rights at the time of registering the disputed domain names. The Panel finds that the Respondent's awareness of the Complainant's trademark rights at the time of registration suggests bad faith, and that the actions of the Respondent in attempting to sell the goods can result in the public being misled as to the accuracy of the information provided or the origin, sponsorship, or association of the products offered or sold on the Respondent's website, are use in bad faith.

The Complainant presented evidence of its attempts to purchase HESTRA marked products from the "www.hestrasale.com" website, which ended unsuccessfully. Furthermore, according to the case file, the shipping company allegedly used by the Respondent for delivering goods is not operating. Additionally, the email address listed on the website as the contact email for the Respondent is non-functional. The Complainant also mentioned that the credit card number used for the order was subsequently involved in a series of fraudulent charges, leading to the card's closure. However, no evidence confirming these incidents was provided.

Finally, by failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown that the disputed domain names were registered and are being used in bad faith within the meaning of paragraph 4(a)(iii) 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 disputed domain names <hestrasale.com> and <shophestra.com> be transferred to the Complainant.

*/Ganna Prokhorova/*

**Ganna Prokhorova**

Sole Panelist

Date: November 16, 2023