

ADMINISTRATIVE PANEL DECISION

Chewy, Inc. v. Domain Admin, Privacy Protect, LLC / Tran Dinh Toan
Case No. D2022-2671

1. The Parties

The Complainant is Chewy, Inc., United States of America (“United States”), represented by Winterfeldt IP Group PLLC, United States.

The Respondent is Domain Admin, Privacy Protect, LLC, United States / Tran Dinh Toan, Viet Nam.

2. The Domain Name and Registrar

The disputed domain name <happychewys.com> (the “Disputed Domain Name”) is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 21, 2022. On July 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On July 22, 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 July 26, 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 July 30, 2022.

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 proceedings commenced on August 31, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 20, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 26, 2022.

The Center appointed Nicholas Weston as the sole panelist in this matter on October 3, 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 United States corporation that operates one of the largest online retailers of pet supply products in the United States, with approximately USD 8.9 billion in revenue in 2021. The Complainant holds registrations for the trademark CHEWY and variations of it in numerous countries, including in the United States pursuant to the Registration No. 5028009, in International Class 035, registered on August 23, 2016.

The Complainant is also the owner of, *inter alia*, the domain name <chewy.com>, which resolves to the company's main website.

The Disputed Domain Name <happychewys.com> was registered on May 19, 2022. The Complainant has supplied uncontested evidence that this Disputed Domain Name resolved to a website containing content lifted from the Complainant's official website and offering for sale pet supply products identical to the products offered by the Complainant on the Complainant's official website. As at October 7, 2022 the Disputed Domain Name displayed an inactive webpage.

5. Parties' Contentions

A. Complainant

The Complainant cites its trademark registrations for CHEWY in various countries as *prima facie* evidence of ownership.

The Complainant submits that the trademark CHEWY "has developed substantial public recognition and incalculable goodwill" and that its rights in that trademark predate the Respondent's registration of the Disputed Domain Name. It submits that the Disputed Domain Name is confusingly similar to its trademark, because the Disputed Domain Name incorporates in its entirety the CHEWY trademark and that the similarity is not removed by the addition of the word "happy".

The Complainant contends that the Respondent has no authorized rights or legitimate interests in respect of the Disputed Domain Name and that the "Respondent has never been authorized by [the] Complainant to use the CHEWY Marks in any manner, much less as part of the Disputed Domain Name."

Finally, the Complainant alleges that the registration and use of the Disputed Domain Name was, and currently is, in bad faith, contrary to the Policy and the Rules. It submits "[the] Respondent uses [the] Complainant's well-known CHEWY Marks and copyrighted product photographs and descriptions from [the] Complainant's primary website to intentionally confuse and mislead Internet users into providing [the] Respondent sensitive personal and financial information for a triangulation fraud scheme" which evidences registration and use of the Disputed Domain Name in bad faith.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant has the burden of proving the following:

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

A. Identical or Confusingly Similar

The Complainant has produced sufficient evidence to demonstrate that it has registered trademark rights in the mark CHEWY (see above in Section 4). The propriety of a domain name registration may be questioned by comparing it to a trademark registered in any country (see WIPO Overview of WIPO Panel Views on Selected URDP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 1.2.1).

Turning to whether the Disputed Domain Name is identical or confusingly similar to the CHEWY trademark, the Panel observes that the Disputed Domain Name comprises: (a) the word “happy”; (b) followed by an exact reproduction of the Complainant’s CHEWY trademark; (c) followed by the letter “s”; (d) followed by the generic Top-Level Domain (“gTLD”) “.com”.

It is well established that the gTLD used as technical part of a domain name may be disregarded (see section 1.11.1 of the [WIPO Overview 3.0](#)). The relevant comparison to be made is with the second-level portion of the Disputed Domain Name, specifically: “happychewys”.

It is also well-established that in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing (see [WIPO Overview 3.0](#), section 1.7).

This Panel accepts that the addition of the word “happy” and additional letter “s” does not preclude a finding of confusing similarity to the Complainant’s trademark (see, for example: *LEGO Juris A/S v. Whois Privacy Protection Service by VALUE-DOMAIN / Kazuhiko Seki*, WIPO Case No. [D2016-1080](#) (“Neither the hyphen nor “happy” detracts from the overall impression”)).

The Panel finds that the Complainant has established paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists the ways that the Respondent may demonstrate rights or legitimate interests in the Disputed Domain Name. The Policy also places the burden of proof on the Complainant to establish the absence of the Respondent’s rights or legitimate interests in the Disputed Domain Name. Because of the inherent difficulties in proving a negative, the consensus view is that the Complainant need only put forward a *prima facie* case that the Respondent lacks rights or legitimate interests. The burden of production then shifts to the Respondent to rebut that *prima facie* case (see [WIPO Overview 3.0](#), section 2.1).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because it has not licensed, permitted or authorized the Respondent to use the Complainant’s trademark or to sell its products and for those reasons, the Respondent is not making a *bona fide* offering of goods or services. The Complainant submits that “[the] Respondent willfully adopted [the] Complainant’s trademark within the Disputed Domain Name and copied [the] Complainant’s copyright-

protected product photographs and description in an attempt to unfairly capitalize on the valuable goodwill [the] Complainant has built in its CHEWY Marks and induce Internet users to purchase goods from [the] Respondent's Website.”

This Panel accepts that the Respondent is not an authorized reseller with a legitimate interest in a domain name incorporating a Complainant's mark, and there is no disclaimer on the website the Disputed Domain Name resolve to, therefore it cannot meet the tests set out in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). Nor, alternatively, is the Respondent commonly known by either of the Disputed Domain Name.

The composition of the Disputed Domain Name consists of the word “happy” and the Complainant's trademark with the letter “s” added. In this Panel's view, the conduct indicates an awareness of the Complainant and its mark and intent to take unfair advantage of such, which does not support a finding of any rights or legitimate interests. In order to find rights or legitimate interests in a domain name based on its dictionary meaning, the domain name should be genuinely used, or at least demonstrably intended for such use, in connection with the relied-upon dictionary meaning and not to trade off third-party trademark rights (see [WIPO Overview 3.0](#), section 2.1).

In this case, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because it is engaging in an illegitimate commercial use of the Disputed Domain Name by suggesting some association with the Complainant and misleading consumers who are seeking out the Complainant's mark CHEWY to opportunistically divert Internet traffic to its web page.

The Panel finds for the Complainant on the second element of the Policy.

C. Registered and Used in Bad Faith

The third element of the Policy that a complainant must also demonstrate is that the disputed domain name in question has been registered and used in bad faith. Paragraph 4(b) of the Policy sets out certain circumstances to be construed as evidence of both.

The evidence that the Respondent has registered and used the Disputed Domain Name in bad faith is overwhelming.

On the issue of registration, taking into account the composition of the Disputed Domain Name and the content of the website it resolves to, the Panel is satisfied that the Respondent knew of the Complainant's trademark CHEWY when it registered the Disputed Domain Name (see [WIPO Overview 3.0](#), section 3.2.2).

On the issue of use, the uncontradicted evidence of record is that the Disputed Domain Name was used to resolve to a website bearing the “Complainant's well-known CHEWY Marks and copyrighted product photographs and descriptions” from the Complainant's official website, and offering pet related goods for sale. In line with prior UDRP panel decisions, the Panel finds that this misconduct is an intentional attempt to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website (see [WIPO Overview 3.0](#), section 3.1.4).

Also, the Respondent did not provide proper contact details when it registered the Disputed Domain Name by supplying a false address, in further evidence of bad faith (see [WIPO Overview 3.0](#), section 3.6).

This Panel finds that the Respondent has taken the Complainant's trademark CHEWY and incorporated it in the Disputed Domain Name, together with the letter “s” and the word “happy”, without the Complainant's consent or authorization, for the purpose of capitalizing on the reputation of the trademark by diverting Internet users for commercial gain to its website which falls into the meaning of bad faith under paragraph 4(b)(iv) of the Policy.

Accordingly, the Panel finds that the Complainant has satisfied the requirements 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 Name <happychevys.com> be transferred to the Complainant.

/Nicholas Weston/

Nicholas Weston

Sole Panelist

Date: October 7, 2022