

## **ADMINISTRATIVE PANEL DECISION**

President and Fellows of Harvard College v. Andres Correla  
Case No. D2023-3410

### **1. The Parties**

The Complainant is President and Fellows of Harvard College, United States of America (“United States”), represented by Sunstein LLP, United States.

The Respondent is Andres Correla, United Kingdom (“UK”).

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

The disputed domain name <harvardinsight.com> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 9, 2023. On August 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On August 10, 2023, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 11, 2023, 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 August 15, 2023.

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 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 7, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 8, 2023.

The Center appointed Nicholas Weston as the sole panelist in this matter on September 13, 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 corporation organized and existing under the laws of the Commonwealth of Massachusetts, United States. Founded in 1636, the Complainant operates the oldest institution of higher education in the United States and enjoys a handsome global reputation. The Complainant holds numerous trademark registrations comprised of or containing the mark HARVARD, including United States Trademark Registration No. 1608533 for the word mark HARVARD, registered on July 31, 1990, for education services in International Class 41.

The Complainant also owns numerous domain names that comprise or contain the trademark HARVARD, including <harvard.edu> which hosts its main website.

The Disputed Domain Name was registered on December 14, 2022. The Disputed Domain Name redirects to a website at “www.ketoleantoday.com” that promotes a weight loss product that it falsely claims was discovered by a student of Harvard Medical School.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant cites its trademark registrations for HARVARD as *prima facie* evidence of ownership.

The Complainant’s contention is that its rights in the trademark HARVARD predate the Respondent’s registration of the Disputed Domain Name by more than 350 years. It submits that the Disputed Domain Name is confusingly similar to its trademark, because the Disputed Domain Name incorporates in its entirety the HARVARD trademark and that the confusing similarity is not affected by the addition of the word “insight”, and addition of the generic Top-Level Domain (“gTLD”) “.com”.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because the Respondent has no trademark licence with the Complainant and seeks “to promote a false association between Respondent and Harvard University thereby increasing traffic to Respondent’s website. This is evident because the [harvardinsight.com] site re-directs web-users to a site called [ketoleantoday.com] which displays an article titled ‘LIFE CHANGING’: Harvard Medical Student Discovers 1 Secret Mineral That Helps You Lose 52 lbs In 28 Days”. The Complainant contends that “[t]he Respondent has no *bona fide* reason to use the ‘HARVARD’ mark in connection with its website other than creating consumer confusion.”

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 that “the HARVARD trademark ... is considered one of the world’s most famous trademarks” and that “there is simply no plausible good-faith explanation for someone with no affiliation to Harvard to register a domain that contains the entirety of the trademark HARVARD for use in connection with a website that is intentionally using the Harvard name to promote its weight loss product”.

##### **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 HARVARD. 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 UDRP 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 HARVARD trademark, the Panel observes that the Disputed Domain Name is comprised of: (a) an exact reproduction of the Complainant's trademark HARVARD; (b) followed by the word "insight"; (c) followed by the gTLD ".com".

It is well established that the gTLD used as part of a domain name is generally disregarded. The relevant comparison to be made is with the second-level portion of the Disputed Domain Name, specifically: "harvardinsight".

The Panel finds the incorporation of the Complainant's trademark in combination with the word "insight" does not prevent a finding of confusing similarity under the first element (see [WIPO Overview 3.0](#), section 1.8).

As the relevant mark is incorporated in its entirety in the Disputed Domain Name, in line with previous UDRP decisions, this Panel finds the Disputed Domain Name is confusingly similar to the Complainant's HARVARD trademark for purposes of UDRP standing (see [WIPO Overview 3.0](#), section 1.7).

Accordingly, 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 the "Respondent has not sought a license or otherwise asked Harvard's permission to use Harvard's highly distinctive and famous HARVARD marks" and for that reason contends that the Respondent is not making a *bona fide* offering of goods or services.

The Respondent is not an authorized reseller with legitimate interests in a domain name incorporating a Complainant's mark. Nor, alternatively, is the Respondent commonly known by the Disputed Domain Name. The Panel accepts the Complainant's uncontested submission that the "Respondent has no legitimate interest in using Complainant's registered trademark for HARVARD".

This Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because it is engaging in illegitimate commercial use of the Disputed Domain Name. By incorporating the Complainant's trademark, the Respondent is falsely suggesting some association with the Complainant for the purpose of misleading consumers seeking out the Complainant's well-known mark HARVARD and opportunistically using the Complainant's trademark to redirect Internet traffic to another domain name and web page where commercial offerings are allegedly available.

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 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. In line with numerous other Panel decisions, this Panel finds that there is evidence in this proceeding that supports a finding that the Respondent has registered the Disputed Domain Name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademark. These are as follows: (i) seeking to cause confusion for the Respondent's commercial benefit, even if unsuccessful, having regard to the uncontradicted evidence of record that the Disputed Domain Name was used to redirect to a website bearing the Complainant's trademark, (ii) a lack of the Respondent's own rights to or legitimate interests in the Disputed Domain Name, (iii) redirecting the disputed domain name to a different, presumably Respondent-owned, website, noting also that the website it resolves to appears to be commercial in origin and does not contain any kind of disclaimer; and (iv) the absence of any conceivable good faith use, which certainly calls for an explanation where none has been forthcoming. (see [WIPO Overview 3.0](#), section 3.1.4).

Further, a gap of several years between the registration of the Complainant's trademark and the Respondent's registration of the Disputed Domain Name (containing the trademark) can in certain circumstances be an indicator of bad faith (see *Asian World of Martial Arts Inc. v. Texas International Property Associates*, WIPO Case No. [D2007-1415](#)). In this case, the Complainant's rights in its trademark predate any rights that could possibly flow from the Respondent's 2022 registration by more than 33 years.

On the issue of use, the Panel notes that the Disputed Domain Name was used to redirect to an online website that makes the representation "that a Harvard Medical School student discovered a 'secret mineral' while studying at Harvard Medical School to help people lose weight" and offers that product for sale. In line with prior UDRP panel decisions, the Panel finds that the obvious danger of online consumers being afforded inaccurate, incomplete or misleading information about medical products, services, and applications reinforces the Respondent's bad faith (see *Lilly ICOS LLC v. Tudor Burden, Burden Marketing*, WIPO Case No. [D2004-0794](#); and *Roche Products Inc. v. Michael Robert*, WIPO Case No. [D2008-1155](#)).

This Panel also views the provision of false contact information as an additional and separate indication of bad faith. In addition to the Written Notice, which seems to be undeliverable to the postal address provided by the Respondent to the Registrar, the postcode and city disclosed by the Registrar for the Respondent do not match (see [WIPO Overview 3.0](#), section 3.6).

This Panel finds that the Respondent has taken the Complainant's trademark HARVARD and incorporated it in the Disputed Domain Name without the Complainant's consent or authorization, along with the word "insight", 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, <harvardinsight.com>, be transferred to the Complainant.

*/Nicholas Weston/*

**Nicholas Weston**

Sole Panelist

Date: September 19, 2023