

ADMINISTRATIVE PANEL DECISION

Howes Percival LLP v. Kaishce English
Case No. DCO2023-0068

1. The Parties

The Complainant is Howes Percival LLP, United Kingdom, self-represented.

The Respondent is Kaishce English, United States of America.

2. The Domain Name and Registrar

The disputed domain name <howespercival.co> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 26, 2023. On July 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On July 26, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the originally-named Respondent (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 1, 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 amendment to the Complaint on August 3, 2023.

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 August 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 27, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 28, 2023.

The Center appointed Nicholas Smith as the sole panelist in this matter on September 5, 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 law firm based in the United Kingdom, incorporated under the name Howes Percival LLP in 2006 but trading (through its predecessors in title) under the HOWES PERCIVAL name since 1900. The Complainant has six offices in the United Kingdom and as of April 2022 had annual turnover of approximately GBP 26 million. The Complainant promotes its operations through various means including from its website at “www.howespercival.com” (“the Complainant’s Website”) which it has operated since 2003.

The Complainant holds a United Kingdom trademark registration for the HOWES PERCIVAL Mark (registration number UK00003727192), registered on March 4, 2022 for goods and services in classes 9, 16, 41 and 45.

The Domain Name was registered on July 5, 2023. The Domain Name resolves to the Complainant’s Website. The Complaint contains evidence that the Respondent has sent an email from an address ending in “@howespercival.co” purporting to be an official email from the Complainant regarding the payment of funds (presumably to an account unconnected to the Complainant).

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

Notably, the Complainant contends that:

- a) It is the owner of the HOWES PERCIVAL Mark, having registered the HOWES PERCIVAL Mark in the United Kingdom. The Domain Name is identical to the HOWES PERCIVAL Mark.
- b) There are no rights or legitimate interests held by the Respondent in respect of the Domain Name. The Complainant has not granted any license or authorization for the Respondent to use the HOWES PERCIVAL Mark. The Respondent is not commonly known by the HOWES PERCIVAL Mark, nor does it use the Domain Name for a *bona fide* purpose or legitimate noncommercial purpose. Rather, the Domain Name is used for emails impersonating the Complainant, which does not provide the Respondent with rights or legitimate interests in the Domain Name.
- c) The Domain Name was registered and is being used in bad faith. The Domain Name is being used to create phishing emails that impersonate the Complainant directing the payment of sums of money. This amounts to an attempt to perpetuate fraud.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the Domain Name. Accordingly, the Domain Name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that 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. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Name.

The Panel considers that the record of this case reflects that:

Before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.

The Respondent (as an individual, business, or other organization) has not been commonly known by the Domain Name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.

The Respondent is not making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.

The record contains no other factors demonstrating rights or legitimate interests of the Respondent in the Domain Name.

Simply redirecting the Domain Name to the Complainant's Website is not a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. Furthermore, the Respondent's use of the Domain Name is in connection with a phishing scheme, namely to send emails passing itself off as the Complainant with the aim of misleading recipients into paying sums of money into accounts presumably connected to the Respondent. Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the Domain Name constitutes bad faith under the Policy. The Domain Name has been used to create an email account from which it sent an email impersonating the Complainant seeking to mislead recipients as to the identity of the sender for its own commercial gain. Such conduct is deceptive, illegal, and in previous UDRP decisions has been found to be evidence of registration and use in bad faith, see *The Coca-Cola Company v. Marcus Steiner*, WIPO Case No. [D2012-1804](#).

Based on the available record, the Panel finds the third element of the Policy has 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 Domain Name, <howespercival.co>, be transferred to the Complainant.

/Nicholas Smith/

Nicholas Smith

Sole Panelist

Date: September 15, 2023