

ADMINISTRATIVE PANEL DECISION

Hopkins Manufacturing Corporation v. Yuzhen Shi
Case No. D2022-1734

1. The Parties

The Complainant is Hopkins Manufacturing Corporation, United States of America (“United States”), represented by Hovey Williams LLP, United States.

The Respondent is Yuzhen Shi, China.

2. The Domain Name and Registrar

The disputed domain name <hopkinstore.com> (the “Domain Name”) is registered with Name.com, Inc. (Name.com LLC) (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 12, 2022. On May 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On May 16, 2022, 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 June 9, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 29, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 30, 2022.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on July 20, 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 following facts are undisputed:

The Complainant is a Kansas (United States) corporation. Since at least 2006, the Complainant has advertised, manufactured, sold, and distributed its automotive lighting, safety, maintenance, and performance products, automotive accessories in the United States and other countries using its business name and trademark HOPKINS.

The Complainant is the owner of various trademark registrations, including but not limited to the United States trademark HOPKINS (word mark), with registration no. 3548317, with a registration date of December 16, 2008, for goods in classes 9, 11 and 12 (the "Trademark"). In addition, the Complainant is the owner of various trademark registrations for a logo, including but not limited to the United States Trademark (device mark), with registration no. 3552011, with a registration date of December 23, 2008, for goods in classes 9,11 and 12 (the "Logo").

The Complainant owns the domain name <hopkinsmfg.com> which resolves to the Complainant's website on which products under the HOPKINS brand are offered.

The Domain Name was registered on January 14, 2022. The Domain Name resolves to a website (the "Website") that prominently features the Trademark, the Logo and the Complainant's products. The Website resembles the Complainant's website and uses a highly similar color scheme and layout.

5. Parties' Contentions

A. Complainant

The Complainant contends the following:

The Domain Name is confusingly similar to the Complainant's Trademark. The Domain Name incorporates the Complainant's Trademark in its entirety.

The Respondent has no rights or legitimate interests in the Domain Name. The Respondent is not commonly known by the Domain Name. The Complainant states that the Domain Name is acquired by the Respondent for the sole purpose of running the "Hopkins Online Shop" under the guise of and palming off the goodwill of the Complainant and the Complainant's reputation associated with the Trademark. The Respondent is also not an authorized licensee of the Trademark, and therefore, the registration of the Domain Name and use of the Website fraudulently represents the Complainant's authorization, endorsement, sponsorship or approval of the Respondent's activities. According to the Complainant, this results in consumer deception related to the legitimacy of the Respondent's fraudulent actions and advertising through the Website. Also, there is no evidence indicating that before any notice to the Respondent to this dispute, the Respondent used or prepared to use the Domain Name in connection with a *bona fide* offering of goods or services. And last, the Complainant argues that the doctrine of "nominative fair use" is not applicable in this matter, since the three requirements for nominative fair use are not met by the Respondent.

The Domain Name was registered and is being used in bad faith. The Domain Name prominently features, without authorization, the entirety of the Trademark and the Logo and directs users to the Respondent's website fraught with unauthorized usages of the Trademark and Logo, advertising the Complainant's and the Complainant's competitors' products side-by-side under the Trademark. The copied content on the Website leads to a bad faith use of the Domain Name. The use of the Trademark and Logo throughout the Website palms off the goodwill of the Trademark and the Complainant's reputation, all to divert the Complainant's otherwise unsuspecting customers away from the Complainant's legitimate sales of its products and services

under the Trademark, and instead to the Respondent's Website. The Respondent is intentionally attempting to traffic Internet users through the Respondent's Website.

B. Respondent

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

6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements:

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

Noting the burden of proof on the Complainant, the Respondent's default (*i.e.*, failure to submit a formal response) would not by itself mean that the Complainant is deemed to have prevailed. The Respondent's default is not necessarily an admission that the Complainant's claims are true. See in this regard WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3, "In cases involving wholly unsupported and conclusory allegations advanced by the complainant, or where a good faith defense is apparent (*e.g.*, from the content of the website to which a disputed domain name resolves), panels may find that – despite a respondent's default – a complainant has failed to prove its case. Further to paragraph 14(b) of the UDRP Rules however, panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case *e.g.*, where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent."

A. Identical or Confusingly Similar

The Complainant must demonstrate that it has rights in a trademark or service mark and, if so, the Domain Name must be shown to be identical or confusingly similar to that mark.

The Complainant has shown that it has rights in the Trademark, valid in various jurisdictions, including the United States.

As set out in the [WIPO Overview 3.0](#), section 1.7, the first element functions primarily as a standing requirement. The threshold test for confusing similarity between the Domain Name and the Trademark involves a side-by-side comparison of the Domain Name and the textual components of the relevant trademark to assess whether the mark is recognizable within the Domain Name.

In light of the foregoing, the Panel finds that the Domain Name is clearly confusingly similar to the Trademark. The Trademark is included in its entirety and clearly recognizable in the Domain Name. The addition of the letters "tore" (which in combination with the last letter of the Trademark, *i.e.*, "s", can be read as the word "store") does not prevent a finding of confusing similarity.

Therefore, the Panel is satisfied that the first element of the Policy is met.

B. Rights or Legitimate Interests

The Panel has carefully considered the factual allegations that have been made by the Complainant and are supported by the submitted evidence.

In particular, the Respondent has failed to offer the Panel any of the types of evidence set forth in paragraph 4(c) of the Policy from which the Panel might conclude that the Respondent has rights or legitimate interests in the Domain Name, such as:

(i) use or preparation to use the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services prior to notice of the dispute; or

(ii) being commonly known by the Domain Name (as an individual, business or other organization) even if the Respondent has not acquired any trademark or service mark rights; or

(iii) making 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.

The Respondent does not seem to be affiliated with the Complainant in any way. There is no evidence that “hopkinstore” is the Respondent’s name or that the Respondent is commonly known under this name. There is also no evidence that the Respondent is, or has ever been, a licensee of the Complainant or that the Respondent has ever asked, or has ever been permitted in any way by the Complainant to register or use the Trademark, or to apply for or use any domain name incorporating the Trademark.

The Complainant has alleged that the Respondent’s use of the Domain Name results in consumer deception, which seems to be confirmed by the facts of the matter and which, lacking a response from the Respondent, has also not been rebutted by the Respondent. As such, this leads to the conclusion that the Domain Name is not used in relation to a *bona fide* offering of goods or services.

Even if the Respondent would be offering genuine goods on the Website, then the offering could not be considered as a *bona fide* offering or other commercial fair use of the Domain Name creating a legitimate interest on the part of the Respondent. The Website clearly does not accurately and prominently disclose the Respondents relationship (or the lack of a relationship) with the Complainant and thus the Respondent fails to meet in this respect one of the cumulative requirements from the so-called “Oki Data test” (see section 2.8.1 of the [WIPO Overview 3.0](#)).

As products are offered on the Website, the Website is clearly not used for noncommercial purposes.

Therefore, the Panel is satisfied that the second element of the Policy is met.

C. Registered and Used in Bad Faith

The Panel finds that the Domain Name was registered and is being used in bad faith.

The Panel refers to its considerations under Section 6.B and adds the following:

Taking into account the lay-out of the Website that resembles the Complainant’s website and the use of the Logo, the Respondent must have been aware of the existence of the Complainant’s activities and rights at the time the Respondent registered the Domain Name. In the Panel’s view, there is no plausible explanation why the Respondent registered and used the Domain Name other than the Respondent intending to trade off the goodwill and reputation associated with the Complainant. The Panel finds that the Respondent has intentionally attempted to attract Internet users to the Website by creating a likelihood of confusion with the Trademark and the Logo.

Last, the Respondent provided a wrong address and did not avail itself of the opportunity to respond to the claims made by the Complainant, which are also additional factors for considering a registration in bad faith (see [WIPO Overview 3.0](#), section 3.6).

Therefore, the Panel is satisfied that the third element of the Policy is met.

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 <hopkinstore.com> be transferred to the Complainant.

/Willem J. H. Leppink/

Willem J. H. Leppink

Sole Panelist

Date: July 29, 2022