

## **ADMINISTRATIVE PANEL DECISION**

Hershey Chocolate & Confectionery LLC v. Domain Administrator,  
See Privacy Guardian.org / op hjkla, ogred  
Case No. D2022-2940

### **1. The Parties**

The Complainant is Hershey Chocolate & Confectionery LLC, United States of America (“United States”), represented by Arnold & Porter Kaye Scholer LLP, United States.

The Respondent is Domain Administrator, See Privacy Guardian.org, United States / op hjkla, ogred, Malaysia.

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

The disputed domain name <hirsheys.com> is registered with NameSilo, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 9, 2022. On August 10, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 10, 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 August 12, 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 August 16, 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 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 8, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 14, 2022.

The Center appointed Rodrigo Azevedo as the sole panelist in this matter on September 19, 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 an American multinational company and one of the largest chocolate manufacturers in the world.

Among other brands, the Complainant's candy, chocolate and confectionery products are sold under the HERSHEY'S mark, since 1894.

The Complainant has obtained numerous registrations for the trademark HERSHEY'S in several regions of the world, including the United States (such as the trademark registered under number 54,041 on June 19, 1906, with first use in commerce on January 1, 1894).

The Respondent registered the disputed domain name <hirsheys.com> on May 13, 2021.

The disputed domain name resolves to a website streaming pornographic videos and presenting advertisements.

#### **5. Parties' Contentions**

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

The Complainant makes the following contentions:

- The disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The Complainant's HERSHEY and HERSHEY'S marks have been widely advertised and promoted in television, print, online and other advertising. The marks are universally recognized and relied upon as identifying the Complainant's as the sole source of its products, and as distinguishing Hershey's products from the goods and services of others. As a result, the HERSHEY and HERSHEY'S marks have acquired substantial goodwill and are extremely valuable commercial assets. The disputed domain name (1) merely substitutes the letter "i" in place of the first "e" in "hershey", creating the term "hirshey", which results in an aurally near-identical pronunciation and virtually identical spelling word; (2) is confusingly similar to the Complainant's own domain name <hersheys.com>; and (3) is so clearly similar to the Complainant's HERSHEY mark that it is likely to cause (and plainly is intended to cause) confusion among members of the public and others.

- The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant is not affiliated in any way with the Respondent and has never authorized the Respondent to register or use the disputed domain name or the HERSHEY or HERSHEY'S marks. The Respondent has no right or legitimate interest in the marks HERSHEY or HERSHEY'S, or in the disputed domain name. Upon information and belief, the Respondent is not commonly known by the name "Hirshey" or any variation thereof. The Complainant's adoption and registration of the marks HERSHEY and HERSHEY'S in the United States and elsewhere precedes the Respondent's registration of the disputed domain name. Moreover, given the widespread publicity and fame of the HERSHEY and HERSHEY'S marks, it is indisputable that the Respondent had knowledge of the Complainant's famous marks prior to the registration of the disputed domain name. Nor can the Respondent demonstrate any rights or legitimate interests in the disputed domain name. The Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services. To the contrary, it is apparent that the Respondent has intentionally registered the disputed domain name explicitly for the purpose of making an illegitimate or unfair use of

HERSHEY'S mark by misleading and diverting Internet users who are seeking information about the Complainant and its products to the Respondent's for-profit web site. Numerous UDRP decisions have held that directing Internet users to websites featuring revenue-generating advertisements is not a *bona fide* offering of goods or services.

- The disputed domain name was registered and is being used in bad faith. Given the international fame of the mark HERSHEY'S, it is inconceivable that the Respondent might have registered a domain name similar to or incorporating the mark without knowing of it, and it would be natural to conclude that the Respondent registered the disputed domain name in order to take advantage of the Complainant's reputation and its trademarks - constituting opportunistic bad faith under the Policy. The disputed domain name was intentionally chosen in bad faith to exploit typing and similar errors made by Internet users seeking to access the Complainant's official webpage who inadvertently type "hirshey" rather than "hershey" into a browser or search engine. Further, the registration and use of a domain name containing another's trademark, or a confusingly similar term, in connection with pornography websites also constitutes bad faith under the Policy. Finally, efforts to hide the identity of the real party in interest through the use of "privacy services" are frequently viewed by panels as evidence of bad faith registration.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy provides that in order to be entitled to a transfer of the disputed domain name, a complainant shall prove the following three elements:

- (i) the disputed 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 disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

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

The Panel has no doubt that "Hershey's" is a term directly connected with the Complainant's well-known candies and chocolates.

Annexes 4 and 5 to the Complaint show trademark registrations for HERSHEY'S obtained by the Complainant as early as in 1906.

The disputed domain name contains the mark HERSHEY'S in its entirety, simply substituting the first letter "e" by the letter "i" and removing the apostrophe. Such misspelling of the Complainant's trademark may characterize a practice commonly called "typosquatting", a kind of cybersquatting in which a respondent registers a domain name in order to take advantage of typing errors eventually made by Internet users seeking a complainant's website (see *CPP, Inc. v. Virtual Sky*, WIPO Case No. [D2006-0201](#)).

A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. This stems from the fact that the domain name contains sufficiently recognizable aspects of the relevant mark. See section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition. (["WIPO Overview 3.0"](#)).

Finally, it is already well established that the addition of a generic Top-Level Domain (“gTLD”) extension such as “.com” is typically irrelevant when determining whether a domain name is confusingly similar to a complainant’s trademark.

As a result, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademarks, and that the Complainant has satisfied the first element of the Policy.

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

Paragraph 4(c) of the Policy provides some examples without limitation of how a respondent can demonstrate a right or legitimate interest in a domain name:

(i) before receiving any notice of the dispute, the respondent used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services; or

(ii) the respondent has been commonly known by the domain name; or

(iii) the respondent is 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 at issue.

Based on the Respondent’s default and on the *prima facie* evidence in the Complaint, the Panel finds that the above circumstances are not present in this particular case and that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel notes that the present record provides no evidence to demonstrate the Respondent’s intent to use or to make preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. Indeed, the disputed domain name is currently linked to a website containing pornographic materials and is potentially generating revenue for the Respondent through advertising.

The Complainant has not licensed or authorized the usage of its trademarks to the Respondent, and it does not appear from the present record that the Respondent is commonly known by the disputed domain name. Actually, the Respondent has not indicated any reason to justify why the specific term “hirsheys” was chosen to compose the disputed domain name.

Consequently, the Panel is satisfied that the Respondent has no rights or legitimate interests in the disputed domain name, and the Complainant has proven the second element of the Policy.

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

Paragraph 4(b) of the Policy states that the following circumstances in particular, but without limitation, shall be evidence of registration and use of a domain name in bad faith:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 its website or location or of a product or service on its website or location.

When the disputed domain name was registered by the Respondent in 2021, the trademark HERSHEY'S was already registered and being used for more than 100 years, presenting a well-known status worldwide, directly connected to the Complainant's chocolates and candies.

Besides the gTLD ".com", the disputed domain name differs from the Complainant's mark HERSHEY'S by merely substituting one letter by another and removing the apostrophe. The Respondent had the opportunity to justify the adoption of a misspelled version of the Complainant's well-known mark in the disputed domain name, but the Respondent preferred to remain silent.

According to, section 3.1.4 of the [WIPO Overview 3.0](#), UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith.

Therefore, the Panel concludes that it is unlikely that the Respondent was not aware of the Complainant's trademarks and that the adoption of the disputed domain name was a mere coincidence.

As mentioned above, the disputed domain name is linked to a website containing pornographic videos and advertisement.

Connecting a disputed domain name very similar to a registered trademark to adult materials may qualify bad faith according to previous WIPO cases (see *Boehringer Ingelheim Pharma GmbH & Co. KG. v. Denis Stravinsky*, WIPO Case No. [D2019-1282](#)). Even more if it potentially derives commercial gain to the Respondent, through an advertisement scheme.

Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith, and the Complainant has also satisfied the third element 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 <hirsheys.com> be transferred to the Complainant.

*/Rodrigo Azevedo/*

**Rodrigo Azevedo**

Sole Panelist

Date: October 3, 2022