

ADMINISTRATIVE PANEL DECISION

President and Fellows of Harvard College v. Adam Mohd isa
Case No. D2022-3001

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 Adam Mohd isa, Malaysia.

2. The Domain Name and Registrar

The disputed domain name <healthharvard.com> (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 August 12, 2022. On August 15, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On August 15, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 18, 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 amendment to the Complaint on August 22, 2022. The Respondent sent an informal communication to the Center on August 18, 2022.

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 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 13, 2022. The Respondent did not submit any response. Accordingly, the Center proceeded to panel appointment on October 4, 2022.

The Center appointed Jeremy Speres as the sole panelist in this matter on November 7, 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 Commonwealth of Massachusetts, United States, corporation. It is the body responsible for the administration of Harvard University, which was founded in 1636, and according to the Complaint is the oldest institution of higher education in the United States. The Complainant's HARVARD mark has been recognised as being well-known in numerous prior UDRP cases, e.g. *President and Fellows of Harvard College v. Rachel McGhin*, WIPO Case No. [D2016-1220](#).

The Complainant's HARVARD mark is registered in many jurisdictions, including in the Respondent's country of Malaysia under registration no. 91004869 HARVARD and device in Class 25 with registration date June 14, 1995.

The Domain Name was registered on August 11, 2020, and currently resolves to a website offering films and television series for download. Additionally, the Panel has independently established, through the Internet Archive, that the Domain Name has previously resolved to a website featuring pornographic content¹.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to its HARVARD mark, that the Respondent has no rights or legitimate interests in the Domain Name, and the Domain Name was registered and used in bad faith given that it has been used to attract, for commercial gain, Internet users to a pornography website by creating a likelihood of confusion with the Complainant's well-known mark.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant's registered HARVARD mark is wholly contained within the Domain Name with only the addition of the term "health". Where the trade mark is recognisable within the disputed domain name (as in this case), the addition of other terms (including descriptive terms) does not prevent a finding of confusing similarity ([WIPO Overview 3.0](#) at section 1.8). The Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant's un rebutted evidence establishes that its HARVARD mark was registered and well-known long prior to registration of the Domain Name. The Domain Name is confusingly similar to the Complainant's mark and the Complainant has certified that the Domain Name is unauthorised by it.

¹ See section 4.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Respondent has provided no explanation as to why it chose the Domain Name. There is no semantic relationship or any other obvious connection between the Domain Name and the pornographic and media content to which it has resolved which may have imbued the Respondent's actions with *bona fides*. In the circumstances, and given what is said in relation to bad faith below, the likelihood is that the Respondent intended to take advantage of the Complainant's trade mark to attract users to pornographic and media sites for its commercial gain, which cannot confer rights or legitimate interests.

The Complainant has satisfied paragraph 4(a)(ii) of the Policy by virtue of having made out an unrebutted *prima facie* case ([WIPO Overview 3.0](#) at section 2.1).

C. Registered and Used in Bad Faith

The fact that the Complainant's mark is strongly associated with health-related research and educational services, combined with the Respondent's choice of a domain name incorporating "health", clearly indicates opportunism targeting the Complainant ([WIPO Overview 3.0](#) at section 3.2.1). In light of this and the fame of the Complainant's mark, there is no conceivable good faith use of the Domain Name, which, given the use to which the Domain Name has been put, is a strong indicator that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's famous mark, in line with paragraph 4(b)(iv) of the Policy ([WIPO Overview 3.0](#) at section 3.1.4).

It is widely accepted in UDRP jurisprudence that using a domain name that is confusingly similar to a well-known mark for pornography can tarnish the trade mark, which is an indicator of bad faith ([WIPO Overview 3.0](#) at section 3.12; *International Business Machines Corporation v. Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) / Xie Gege*, WIPO Case No. [D2021-0245](#)).

The Panel draws adverse inferences from the Respondent's failure to take part in the present proceeding where an explanation is certainly called for ([WIPO Overview 3.0](#) at section 4.3), and the use of a privacy proxy service ([WIPO Overview 3.0](#) at section 3.6).

The Complainant has satisfied 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 Domain Name, <healthharvard.com>, be transferred to the Complainant.

/Jeremy Speres/

Jeremy Speres

Sole Panelist

Date: November 15, 2022