

## **ADMINISTRATIVE PANEL DECISION**

HigherDOSE LLC v. rania afaf

Case No. D2022-3149

### **1. The Parties**

The Complainant is HigherDOSE LLC, United States of America (“United States”), represented by Bass, Berry & Sims PLC, United States of America.

The Respondent is rania afaf, Ukraine.

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

The disputed domain name <higherdose.pro> (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 25, 2022. On August 26, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On August 26, 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 September 19, 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 September 23, 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 October 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 24, 2022. The Respondent sent an informal communication to the Center on October 4, 2022. The Respondent did not submit any formal response. Accordingly, the Center notified the parties that it would proceed to panel appointment on October 28, 2022.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on November 16, 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. Further Procedural Considerations**

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition. Noting that the Respondent's disclosed location appears to be in Ukraine, which is subject to an international conflict at the date of this Decision that may impact case notification, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

Having considered all the circumstances of the case, the Panel is of the view that it should. The Center transmitted the written notice of the Complaint to both the named Privacy Service and the Respondent. The Center also sent the Notification of Complaint by email to the Respondent at its email address as registered with the Registrar and to a postmaster email address as specified by the Rules. There is no evidence that the case notification email to the disclosed Respondent email address was not successfully delivered.

The Panel also notes that the Complainant has specified in the Complaint that any challenge made by the Respondent to any decision to transfer or cancel the Domain Name shall be referred to the jurisdiction of the Courts of the location of the principal office of the concerned registrar. In this case, the principal office of the Registrar is in Arizona, United States of America.

It is moreover noted that, for the reasons which are set out later in this Decision, the Panel has no serious doubt that the Respondent registered and has used the Domain Name in bad faith and with the intention of unfairly targeting the Complainant's goodwill in its trademark. The Panel concludes that the Parties have been given a fair opportunity to present their case, and so that the administrative proceeding takes place with due expedition the Panel will proceed to a Decision accordingly.

#### **5. Factual Background**

The Complainant provides infrared saunas, infrared sauna blankets and at-home spa products. It opened its first infrared sauna in New York City in 2016. The Complainant expanded into numerous high-end spas. By 2020, the Complainant expanded its reach by selling infrared saunas and at-home spa products throughout the United States, as well as in Canada and countries in Europe.

The Complainant holds trademark registrations of HIGHERDOSE worldwide, such as United States trademark registration no. 5481364, registered on May 29, 2018, and European Union trademark registration no. 017934842, registered on June 27, 2019.

The Domain Name appears to be registered on July 19, 2022, after the Complainant's registered trademark rights. The Domain Name has resolved to a website seemingly impersonating the Complainant. The Respondent's website was an unauthorized copy of an earlier version of the Complainant's website. The website made unauthorized use of the Complainant's copyrighted photography and product descriptions.

#### **6. Parties' Contentions**

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

The Complainant provides evidence of trademark registrations. The Complainant argues that the Domain

Name is confusingly similar to the Complainant's trademark, as the Domain Name consists solely of the Complainant's trademark.

The Complainant asserts that the Respondent is not authorized to use the Complainant's trademark, and the Respondent is not commonly known by the Domain Name. The Respondent has not made any use of, or demonstrable preparations to use, the Domain Name in connection with a *bona fide* offering of goods or services. On the contrary, the Respondent use of the Domain Name to impersonate the Complainant, is rather evidence of faith, see below.

The Complainant argues that the Respondent has intentionally attempted to attract for commercial or other gain, 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 the Respondent's website. The Respondent has been using the Domain Name to fraudulently lure unsuspecting consumers to purchase items that the consumers may believe to be offered/provided by the Complainant, or through some phishing activity. Moreover, the Respondent must have been aware of the Complainant, as its activity and trademark registrations predate the Respondent's Domain Name registration. Finally, the Respondent has opted to register the Domain Name through a privacy service. It should be considered further evidence of bad faith in light of the Respondent's use of the Domain Name

## **B. Respondent**

The Respondent sent an informal communication to the Center on October 4, 2022, stating "Yes I want to suspend". The Respondent did not formally reply to the Complainant's contentions.

## **7. Discussion and Findings**

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

The Complainant has established that it has rights in the trademark HIGHERDOSE. The test for confusing similarity involves a comparison between the trademark and the Domain Name. The Domain Name incorporates the Complainant's trademark.

For the purpose of assessing under paragraph 4(a)(i) of the Policy, the Panel may ignore the generic Top Level Domain ("gTLD"), see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.11.1.

The Panel finds that the Domain Name is identical to a trademark in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

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

As stated in [WIPO Overview 3.0](#), section 2.1, "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".

The Complainant has made unrebutted assertions that it has not granted any authorization to the Respondent to register a domain name containing the Complainant's trademark or otherwise make use of the Complainant's mark. There is no evidence that the Respondent has registered the Domain Name as a trademark or acquired unregistered trademark rights. The Respondent has not made use of, or

demonstrable preparations to use, the Domain Name in connection with a *bona fide* offering. The Respondent's use of the Domain Name to impersonate the Complainant neither qualifies as *bona fide* nor as legitimate noncommercial or fair within the meaning of paragraph 4(c) of the Policy.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name in accordance with paragraph 4(a)(ii) of the Policy.

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

Based on the use of the Domain Name, the Panel finds that the Respondent must have been aware of the Complainant and its trademark when the Respondent registered the Domain Name.

The Respondent appears to have used the Domain Name to attempt to attract for commercial or other gain, users to its website or other online location, by creating a likelihood of confusion with the Complainant's trademark. Based on the evidence of the case, in particular the Respondent's use of the Domain Name, the Panel agrees that it is more likely than not that the Respondent has chosen and used the Domain Name in bad faith.

As regards the current inactive status of the Domain Name, the Panel finds that the current passive holding of the Domain Name does not prevent a finding of bad faith. See section 3.3 of the [WIPO Overview 3.0](#). For the reasons set out above, the Panel concludes that the Domain Name was registered and is being used in bad faith, within the meaning 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 Domain Name <higherdose.pro> be transferred to the Complainant.

*/Mathias Lilleengen/*

**Mathias Lilleengen**

Sole Panelist

Date: December 16, 2022