

ADMINISTRATIVE PANEL DECISION

GlaxoSmithKline Consumer Healthcare (UK) IP Limited v. Sam Liu, WEBFX
EMEA LIMITED

Case No. D2022-3705

1. The Parties

The Complainant is GlaxoSmithKline Consumer Healthcare (UK) IP Limited, United Kingdom (“UK”), represented by SafeNames Ltd., UK.

The Respondent is Sam Liu, WEBFX EMEA LIMITED, UK.

2. The Domain Names and Registrar

The disputed domain names <haleon.cloud>, <haleon.digital>, <haleon.group>, <haleon.london>, <haleon.online>, and <haleon.space>, (each a “Disputed Domain Name” and together the “Disputed Domain Names”) are registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 5, 2022. On October 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On October 6, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Names which differed from the named Respondent (Registration Private, Domains by Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 7, 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 October 11, 2022.

On October 6, 12, and 14, 2022, the Center received communications from the Parties expressing their interest to settle the procedure. On October 17, 2022, the Complainant requested for a suspension of the proceedings. The Center sent the Notification of Suspension to the Parties on October 17, 2022. The Complainant requested for the proceedings to be reinstated on November 3, 2022, because the Parties were unable to reach a settlement. The Center reinstated the proceeding as of November 5, 2022. On November 4, 5, and 6, the Center received informal communications from the Parties in relation to their failed settlement talks.

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 November 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 27, 2022. The Respondent did not submit a formal response. Accordingly, pursuant to paragraph 6 of the Rules, on December 2, 2022, the Center notified the Commencement of Panel Appointment Process.

The Center appointed Nick J. Gardner as the sole panelist in this matter on December 9, 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, GlaxoSmithKline Consumer Healthcare (UK) IP Limited, is a subsidiary of GSK plc, the well-known UK multinational pharmaceutical and biotechnology company. The Complainant holds GSK plc’s trademarks for the term HALEON.

GSK plc was formed in 2000 after the merger of Glaxo Wellcome plc and SmithKline Beecham plc. It has since become one of the top 10 pharmaceutical companies in the world, generating a turnover of GBP 34 billion in Fiscal Year 2021.

On February 22, 2022, GSK plc publicly announced the brand name of its new consumer healthcare corporate spin-off, HALEON. The completion of the demerger and listing of Haleon plc shares on the London Stock Exchange occurred in July 2022. Global media covered the announcement of the HALEON brand occurred with effect from February 22, 2022.

The term HALEON is a coined amalgamation of an old English word “Hale”, meaning “in good health”, and “Leon”, which is associated with the word “strength”.

Haleon plc is listed on the London Stock Exchange. It is also listed on the New York Stock Exchange. It has a market valuation of approximately GBP 30.5 billion

Haleon plc uses the HALEON brand in the string of the main domain name and website for its new consumer healthcare division: “www.haleon.com”. This website is used to inform online users of the HALEON brand, including job vacancies for roles located in various countries. Haleon plc owns and sells multiple well-known brands such as Sensodyne, Aquafresh, and Centrum, among others.

The Complainant has a number of registered trademarks for the term HALEON, covering multiple jurisdictions. See for example UK registration no. UK00003726732 registered on March 11, 2022. These trademarks are referred to in this decision as the HALEON trademark. At least one such trademark predates the date the Disputed Domain Names were registered – see Mexican trademark 2355199 registered on February 10, 2022.

All of the Disputed Domain Names were registered on February 24, 2022. The Disputed Domain Names all resolve to what are automatically generated “parking pages” containing links to third-party sites.

5. Parties' Contentions

A. Complainant

The Complainant makes a number of detailed points and references previous UDRP decisions. In summary, its case is as follows.

The Complainant contends that each Disputed Domain Name is identical to the HALEON trademark.

The Complainant says that the Respondent has no legitimate interests or rights in the Disputed Domain Names.

The Complainant says that the Respondent's registration of the Disputed Domain Names is a clear example of "opportunistic bad faith" in that the Respondent applied for the Disputed Domain Names' registrations two days after GSK plc publicly announced its intention to name its demerged consumer business HALEON.

B. Respondent

No formal response has been filed. The Panel will however consider in its discussion below the substantive points made by the Respondent in its informal communications with the Center – see further below.

6. Discussion and Findings

Preliminary Matters

The Panel notes that no formal Response has been filed. However, given that the Complaint and Written Notice were sent to the relevant addresses disclosed by the Registrar, then the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to "employ reasonably available means calculated to achieve actual notice". In any event, it is clear from the informal correspondence received from the Respondent that he is aware of the present proceeding. Accordingly, the Panel considers it is able to proceed to determine this Complaint and to draw inferences from the Respondent's failure to file any formal Response.

Substantive Matters

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

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

A. Identical or Confusingly Similar

The Complainant has rights to the HALEON trademark. It is well established that the generic Top-Level Domain ("gTLD"), in this case ".cloud, .digital, .group, .london, .online, and .space", does not affect the Disputed Domain Names for the purpose of determining whether it is identical or confusingly similar. See, for example, *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. [D2000-0429](#).

Accordingly, the Panel finds that each of the Disputed Domain Names is identical to the Complainant's trademark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a domain name:

- (i) before any notice to the respondent of the dispute, use of, or 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; or
- (ii) the respondent has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; 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 or service mark at issue.

None of these appear to apply in the present circumstances. The Complainant has not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Names or to use the HALEON trademark. The Complainant has prior rights in the HALEON trademark which precede the registration of the Disputed Domain Names. The Complainant has therefore established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the Disputed Domain Names and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Names (see, for example, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); and *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

No formal Response has been filed. The Panel has however considered what the Respondent has said in his correspondence with the Center. In his email of October 12, 2022, to the Center the Respondent said he was prepared to transfer the Disputed Domain Names to “Haleon” at cost. He went on to say that “We bought the domain name [sic] for our client Adam Hale for his cloud business. Mid project we heard the Haleon announcement hence why we registered the domains due the risk of them being bought. We will now register Hale On Technologies so it doesn’t conflict with [the Complainant]”. The Complainant responded to this email by an email of October 14, 2022, to the Respondent stating “Please provide us with documented evidence in support of your claims. In particular, please demonstrate that you began working on the below-alleged project prior to 22nd February 2022. We invite you to supply evidence such as: dated business-/project-formation related email correspondence; signs of credible investment in such business/project; and proof of a genuine plan to use the domain names in question”. There is no evidence before the Panel to suggest that the Respondent ever responded to this request or provided any of the material requested. The Panel regards the fact that the Respondent registered all the Disputed Domain Names on February 24, 2022, two days after GSK plc announced the demerger of part of its business under the name Haleon, as unlikely to be coincidental. Absent credible evidence of an earlier project on behalf of a client named “Hale” the Panel declines to attach any weight to the Respondent’s supposed explanation.

The Panel finds that the Respondent has failed to produce any credible evidence to establish his rights or legitimate interests in the Disputed Domain Names. Accordingly, the Panel finds the Respondent has no rights or any legitimate interests in the Disputed Domain Names and the second condition of paragraph 4(a) of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

- (i) circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

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

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

The Panel cannot find any plausible explanation for a good faith registration of the Disputed Domain Names given that "haleon" is a coined term with no independent meaning and the registration occurred two days after GSK plc announced the demerger of part of its business under the name Haleon. The Panel does not accept the supposed explanation provided by the Respondent in correspondence given his complete failure to provide any evidence corroborating that explanation (see above). The most likely inference is that the Respondent speculatively registered the Disputed Domain Names which corresponded to the newly chosen name of the demerged business and then hoped to sell the Disputed Domain Names to the business owner, for valuable consideration in excess of his out-of-pocket costs. That amounts to evidence of registration and use in bad faith within paragraph 4(b)(i) of the Policy (above). The Panel notes that in his correspondence the Respondent said he had made an offer to the Complainant in an email dated October 30, 2022, to sell the Disputed Domain Names "at our purchase cost". The Complainant indicated it had received no such email. The Respondent has not produced a copy of the email in question, and the Panel therefore attaches no weight to this supposed offer.

The Panel also notes the Respondent has not filed a formal Response and hence has not availed itself of the opportunity to present properly any case of legitimate use that he might have. The Panel infers that none exists.

Taking all of this into account the Panel concludes it is more likely than not that the Respondent's motive was to sell the Disputed Domain Names to the Complainant (or Haleon plc) at a price greater than his out of pocket acquisition costs.

A further basis for finding bad faith arises in that each Disputed Domain Name is linked to a parking page containing links to third-party sites. The Panel concludes that (iv) above also applies as each Disputed Domain Name is likely to attract traffic because of confusion with the Complainant's HALEON trademark, and presumably either the Respondent or some other party derives commercial gain as a result. Each website linked to a Disputed Domain Name comprises a series of PPC links to other third-party websites. The Panel infers that some consumers, once at this website will follow the provided links and "click through" to other sites which offer products some of which may compete with those of the Complainant. The Respondent presumably earns "click-through" linking revenue as a result. The Panel infers the website is automatically generated. This does not however matter. It is well established that where a domain name is used to generate revenue in respect of "click-through" traffic, and that traffic has been attracted because of the name's association with the Complainant, such use amounts to use in bad faith, see for example *Shangri-La International Hotel Management Limited v. NetIncome Ventures Inc.*, WIPO Case No. [D2006-1315](#); *Owens Corning v. NA*, WIPO Case No. [D2007-1143](#); *McDonald's Corporation v. ZusCom*, WIPO Case No. [D2007-1353](#); *Villeroy & Boch AG v. Mario Pingerna*, WIPO Case No. [D2007-1912](#); *Rolex Watch U.S.A., Inc. v. Vadim Krivitsky*, WIPO Case No. [D2008-0396](#).

See also WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition at section 3.5: "Can third-party generated material 'automatically' appearing on the website associated with a domain name form a basis for finding bad faith?"

Particularly with respect to “automatically” generated pay-per-click links, panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name (nor would such links ipso facto vest the respondent with rights or legitimate interests).

Neither the fact that such links are generated by a third party such as a registrar or auction platform (or their affiliate), nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of bad faith.”

Accordingly, the Panel finds that each of the Disputed Domain Names has been registered and is being used in bad faith. Accordingly the third condition of paragraph 4(a) of the Policy has been fulfilled.

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 Names <haleon.cloud>, <haleon.digital>, <haleon.group>, <haleon.london>, <haleon.online>, and <haleon.space>, be transferred to the Complainant.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: December 23, 2022