

## **ADMINISTRATIVE PANEL DECISION**

Hi-Tec Sports International Holdings B.V. v. Web Commerce  
Communications Limited, Client Care  
Case No. D2023-0842

### **1. The Parties**

The Complainant is Hi-Tec Sports International Holdings B.V., Netherlands, represented by Chiever B.V., Netherlands.

The Respondent is Web Commerce Communications Limited, Client Care, Malaysia.

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

The disputed domain name <hi-tecmexico.com> is registered with Alibaba.com Singapore E-Commerce Private Limited (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 24, 2023. On February 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 27, 2023, 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 February 27, 2023, 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 March 1, 2023.

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 March 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 27, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 29, 2023.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on April 3, 2023. 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 organized as a Dutch private limited company and headquartered in Amsterdam, Netherlands. It was founded in the United Kingdom in 1974 as a manufacturer of athletic shoes and has grown into an international supplier of sportswear, outdoor clothing, and bags, with a website at “www.hi-tec.com” (the “Complainant’s website”) and social media links, as well as regional versions. The Wikipedia article on the Complainant reports that the Complainant’s shares were traded on the London Stock Exchange for more than a decade before the Complainant was taken back into private ownership. The Wikipedia article also cites a number of industry and consumer awards recognizing the Complainant’s HI-TEC products.

The Complainant has used the HI-TEC brand since 1974, the Complainant or affiliates hold numerous trademark registrations around the world for marks consisting of or containing the name HI-TEC, including those listed below:

MARK	JURISDICTION	REGISTRATION NUMBER	REGISTRATION DATE
HI-TEC (word)	Germany	1058233	January 10, 1984
HI-TEC (word)	United States of America	1869704	December 27, 1994
HI-TEC (word)	Mexico	629952	October 26, 1999
HI-TEC (figurative [stylized letters])	European Union	000209304	May 10, 2001
HI-TEC (figurative [stylized letters])	United Kingdom	UK00900209304	May 10, 2001
HI-TEC (combined words and design)	Malaysia	2011015458	August 25, 2011
HI-TEC (figurative [combined words and design, current logo])	European Union	012093506	February 21, 2014
HI-TEC (figurative [combined words and design, current logo])	United Kingdom	UK00912093506	February 21, 2014
HI-TEC (word)	European Union	012093324	February 27, 2014
HI-TEC (word)	United Kingdom	UK00912093324	February 27, 2014

Currently, the most commonly used combined mark appears to be the one that appears on the Complainant’s website (the “Complainant’s current trademarked logo”):



The Registrar reports that the disputed domain name was registered on September 29, 2021, and is registered in the name of the Respondent Web Commerce Communications Limited, Client Care, showing a postal address in Kuala Lumpur, Malaysia.

Screenshots attached to the Complaint show that the disputed domain name resolved to a Spanish-language website (the “Respondent’s former website”) that in many respects imitated a 2022 version of the Complainant’s website. The Respondent’s former website copied the Complainant’s trademarked HI-TEC logo and photos of many of its footwear products, as well as “closely similar products”, accompanied by Spanish translations of some of the Complainant’s English descriptive text. Prices were quoted in Mexican pesos. The Respondent’s website included a contact page requesting the email addresses of site visitors and solicited payment for online orders by credit card. The “About Us” page of the Respondent’s former website described the Respondent in Spanish as a Mexican enterprise selling world-famous brands through “our on-line store”. The page did not identify the company and said nothing about the company’s relationship, if any, with the Complainant. The entity operating the website was also not identified elsewhere on the Respondent’s former website. The Privacy Policy, for example, identified the personal information controller only as “Hi-Tec Mexico.com”, the disputed domain name.

At the time of this Decision, the disputed domain name does not resolve to an active website.

## **5. Parties’ Contentions**

### **A. Complainant**

The Complainant asserts that the HI-TEC mark is incorporated in and recognizable in the disputed domain name, which is confusingly similar to the mark. The Complainant contends that it has not given the Respondent permission to use the mark, and the Respondent has no evident rights or legitimate interests in the disputed domain name, using it only to imitate a previous version of the Complainant’s website and misdirect consumers for commercial gain, “creating the false impression that they are in contact with Complainant or buying products from Complainant on its official or authorized Mexican website while it is not.”

The Complainant argues that this conduct also infringes the Complainant’s intellectual property rights and represents bad faith under the Policy.

### **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 divest a respondent of a domain name, a complainant must demonstrate each of the following: (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. Under paragraph 15(a) of the Rules, “[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

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

The first element of the UDRP “functions primarily as a standing requirement” and entails “a reasoned but relatively straightforward comparison between the complainant’s trademark and the disputed domain name”. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7.

The Complainant holds trademark registrations for HI-TEC as a word mark and as the dominant element of combined figurative marks. The disputed domain name incorporates that name in its entirety and adds a

geographic signifier, which does not avoid a finding of confusing similarity (see *id.*, section 1.8). As usual, the addition of the Top-Level Domain “.com” may be disregarded as a standard registration requirement (see *id.* section 1.11.1).

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s mark and concludes that the Complainant has established the first element of the Complaint.

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

Paragraph 4(c) of the Policy gives non-exclusive examples of instances in which a respondent may establish rights or legitimate interests in a domain name, by demonstrating any of the following:

- (i) before any notice to it of the dispute, the respondent’s 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 it 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.

Because a respondent in a UDRP proceeding is in the best position to assert rights or legitimate interests in a domain name, it is well established that after a complainant makes a *prima facie* case, the burden of production on this element shifts to the respondent to come forward with relevant evidence of its rights or legitimate interests in the domain name. See [WIPO Overview 3.0](#), section 2.1.

The Complainant has demonstrated trademark rights and denies any association with the Respondent. The Complainant has shown that the disputed domain name has been used to direct Internet users to the Respondent’s former website imitating the Complainant’s website, advertising what appear to be the Complainant’s goods (or possibly counterfeits) and goods similar to the Complainant’s, with no identification of the Respondent or its relationship, if any, with the Complainant. It is also not clear that the Respondent’s former website was limited to reselling only the Complainant’s goods, as it appears also to have featured “similar” products. Thus, the Respondent fails the “Oki Data” tests for making nominative fair use of a manufacturer’s mark in the disputed domain name, as outlined in [WIPO Overview 3.0](#), section 2.8, following *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) and its progeny. Moreover, the Panel finds that the disputed domain name is inherently misleading. See [WIPO Overview 3.0](#), section 2.5.1.

The Panel finds that the Complainant has made a *prima facie* case, and the Respondent has not come forward to respond to the Complaint and meet its burden of production to establish rights or legitimate interests in the disputed domain name. Accordingly, the Panel concludes that the Complainant prevails on the second element of the Complaint.

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

The Policy, paragraph 4(b), furnishes a non-exhaustive list of circumstances that “shall be evidence of the registration and use of a domain name in bad faith”, including the following (in which “you” refers to the registrant of the domain name):

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

The Respondent's former website reflects an instance of this form of bad faith by misdirecting Internet users for commercial gain. The Respondent was clearly aware of the Complainant, copying the Complainant's trademarked logo and many of the Complainant's product photos and (translated) product descriptions, on a website that avoided identifying the actual website operator. The website collected consumer contact and payment details and may or may not have fulfilled orders by shipping products, which may or may not have included genuine HI-TEC footwear. In any case, the disputed domain name was used to attract consumers familiar with the Complainant's well-established trademark, and the Respondent's former website was designed to heighten the impression of association with the Complainant, reproducing copyrighted material from the Complainant's website. This was evidently done for commercial gain, either to sell footwear purchased from the Complainant and other sources, possibly mislabeled, or possibly simply in furtherance of a phishing and fraud scheme. Either of these scenarios represents bad faith within the meaning of the Policy. The fact that the disputed domain name does not currently resolve to an active website does not prevent a finding of bad faith.

The Panel finds bad faith on this record and concludes that the Complainant has established the third element of the Complaint.

## **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, <hi-tecmexico.com>, be transferred to the Complainant.

*/W. Scott Blackmer/*

**W. Scott Blackmer**

Sole Panelist

Date: April 17, 2023