

ADMINISTRATIVE PANEL DECISION

HELSINN HEALTHCARE SA v. Stephen Baker, Baker

Case No. D2023-1119

1. The Parties

The Complainant is HELSINN HEALTHCARE SA, Switzerland, represented by Studio Barbero, Italy.

The Respondent is Stephen Baker, Baker, Italy.

2. The Domain Name and Registrar

The disputed domain name <helsinn.group> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 14, 2023. On March 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 15, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 March 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 5, 2023. The Response was filed with the Center on April 4, 2023.

The Center appointed Tuukka Airaksinen as the sole panelist in this matter on April 13, 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 was founded in 1976 and has been using the trademark HELSINN worldwide since 1983 for its pharmaceutical preparations. The Complainant's trademark has been registered in many countries, for example in Switzerland under registration No. 354118 as of January 6, 1987. The Complainant operates globally in some 190 countries either directly or through its network of partners.

The disputed domain name was registered on September 7, 2022, and does not resolve to an active website, but at the time of its registration it was redirected to a parking page with sponsored links relating to products of the Complainant's competitors.

5. Parties' Contentions

A. Complainant

The disputed domain name incorporates the whole of Complainant's trademark without any alteration.

The Respondent is not a licensee or otherwise authorized agent of the Complainant or in any other way authorized to use the Complainant's trademark. The Respondent is not commonly known by a name corresponding to the disputed domain name and is not offering any *bona fide* goods or services under the disputed domain name.

In pre-complaint correspondence, the Respondent has asked for EUR 6,770, then EUR 2,000 and lastly EUR 960 to transfer the disputed domain name to the Complainant.

When registering the disputed domain name, the Respondent must have been aware of the Complainant's trademark because of its long-standing and extensive use. The Respondent has also pointed the disputed domain name to a pay-per-click ("PPC") site earning commissions when Internet users click links at the website.

B. Respondent

After an informal communication and a follow-up, the Respondent agreed to transfer the disputed domain name to a nominated service provider. However, the Complainant informed that they wish to go forward with the Complaint to resolve the matter as soon as possible.

6. Discussion and Findings

In order to obtain the transfer of a domain name, a complainant must prove the three elements of paragraph 4(a) of the Policy, regardless of whether the respondent files a response to the complaint or not. The first element is that the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights. The second element a complainant must prove is that the respondent has no rights or legitimate interests in respect of the domain name. The third element a complainant must establish is that the domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires that the Complainant establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. Consequently, the Complainant must prove that it has rights to a trademark, and that the disputed domain name is identical or confusingly similar to this trademark.

According to section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), “[t]he applicable Top Level Domain (‘TLD’) in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test”.

The disputed domain name includes the Complainant’s trademark HELSINN in its entirety. This means that the disputed domain name is identical with the Complainant’s trademark and hence the first element of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires that the Complainant establish that the Respondent has no rights or legitimate interests to the disputed domain names.

It is widely accepted among UDRP panels that once a complainant has made a *prima facie* showing indicating the absence of the respondent’s rights or legitimate interests in a disputed domain name the burden of proof shifts to the respondent to come forward with evidence of such rights or legitimate interests. If the respondent fails to do so, the complainant is deemed to have satisfied the second element of the Policy. See, e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#), and section 2.1 of the [WIPO Overview 3.0](#).

The Complainant has credibly submitted that the Respondent is neither affiliated with the Complainant in any way nor has it been authorized by the Complainant to use and register the disputed domain names, that the Respondent has no rights or legitimate interests in the disputed domain names, and that the Respondent has not made and is not making a legitimate noncommercial or fair use of the disputed domain names and is not commonly known by the disputed domain names in accordance with paragraph 4(c)(ii) of the Policy.

Moreover, the Panel finds that the nature of the disputed domain names carries a high risk of implied affiliation with the Complainant’s trademark. See section 2.5.1 of the [WIPO Overview 3.0](#). The use of the identical disputed domain name to host pay-per-click links that redirect unsuspecting Internet users to competitors of the Complainant cannot constitute fair use. See section 2.9 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the Complainant has made a *prima facie* case that has not been rebutted by the Respondent. Considering the Panel’s findings below, the Panel finds that there are no other circumstances that provide the Respondent with any rights or legitimate interests in the disputed domain names. Therefore, the Panel finds that the second element of the Policy is fulfilled.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the Complainant establish that the disputed domain names have been registered and are being used in bad faith. Paragraph 4(b) of the Policy provides that the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

“(i) circumstances indicating that [the respondent has] registered or has 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 [the respondent’s] documented out-of-pocket costs directly related to the domain name; or

(ii) [the respondent has] 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 or competitor; or

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

Considering that the Complainant has been using and registering its trademark for several decades before the disputed domain name was registered, and taking into account the activity to which the disputed domain name has been put, the Respondent must have been aware of the Complainant and its trademark when registering the identical disputed domain name. See section 3.1.4 of the [WIPO Overview 3.0](#).

The disputed domain names resolves to a website offering pay-per-click links that redirect Internet users to products competing with the Complainant's products. Further, the Respondent has offered the disputed domain name to the Complainant for valuable consideration in likely excess of the out-of-pocket costs related to the disputed domain name. Therefore, the Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's trademark as to the source of the Products on the Respondent's website.

Therefore, the Panel finds that the third element of the Policy is 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 name, <helsinn.group>, be transferred to the Complainant.

/Tuukka Airaksinen/

Tuukka Airaksinen

Sole Panelist

Date: May 11, 2023