

ADMINISTRATIVE PANEL DECISION

Harvey Nichols and Company Limited v. ZhangQidong
Case No. D2023-2441

1. The Parties

The Complainant is Harvey Nichols and Company Limited, United Kingdom, represented by Lewis Silkin LLP, United Kingdom.

The Respondent is ZhangQidong, China.

2. The Domain Name and Registrar

The disputed domain name <newharveynichol.com> is registered with OwnRegistrar, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 6, 2023. On June 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 7, 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 (Whols Secure) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 7, 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 amendment to the Complaint on June 8, 2023.

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 June 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 28, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 30, 2023.

The Center appointed Geert Glas as the sole panelist in this matter on July 7, 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 an internationally renowned actor in high-end retail. The Complainant operates an international website and several stores on 14 locations worldwide. In the United Kingdom, Harvey Nichols has stores in London, Leeds, Edinburgh, Birmingham, Manchester, Bristol, and Liverpool. It sells designer fashion collections for men and women, fashion accessories, beauty products, fine wines and luxury foods.

The Complainant is the owner of several trademarks for HARVEY NICHOLS, including the following trademarks;

- European Union Trademark Registration HARVEY NICHOLS No. 002201705, registered on October 3, 2006;
- European Union Trademark Registration HARVEY NICHOLS No. 012799516, registered on September 9, 2014;
- United States of America Trademark Registration HARVEY NICHOLS No. 4980212, registered on June 21, 2016;
- United Kingdom Trademark Registration HARVEY NICHOLS No 001550291, registered on March 7, 1997.

The Complainant is also the owner of the domain name <harveynichols.com>.

The disputed domain name was registered on January 6, 2023. It appears from the Complaint that the disputed domain name resolves to an online shop where the name HARVEY NICHOLS is prominently displayed and which allegedly purports to provide products identical to and competing with those of the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant asserts the disputed domain name is confusingly similar to its HARVEY NICHOLS trademarks because the disputed domain name is virtually identical to the Complainant's HARVEY NICHOLS trademarks. The disputed domain name only differs as a result of the inclusion of the prefix "new" and by the omission of the final "s" of HARVEY NICHOLS.

The Complainant further argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or to register a domain name incorporating its HARVEY NICHOLS trademarks.

In addition, the Complainant affirms that the disputed domain name has been registered and is being used in bad faith. The Complainant asserts that its HARVEY NICHOLS trademarks have been registered since 1993 and that the Respondent must have been aware of its trademarks at the time the disputed domain name was registered. Moreover, the Complainant contends that the disputed domain name resolves to a website which replicates several aspects of the Complainant's website, illustrating the intention to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's registered HARVEY NICHOLS trademarks.

Therefore, the Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

To begin with, the Panel confirms that the Complainant has satisfied the threshold requirement of having trademark rights in HARVEY NICHOLS.

As stated at section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), a disputed domain name that incorporates at least a dominant feature of the relevant mark would generally not prevent a finding of confusing similarity.

As stated at section 1.9 of the [WIPO Overview 3.0](#), the obvious misspelling of a trademark is generally considered to be confusingly similar to the registered trademark.

Therefore, the omission of the "s" of HARVEY NICHOLS does not, in view of the Panel, prevent a finding of confusing similarity between the disputed domain name and the Complainant's HARVEY NICHOLS trademark.

As stated at section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would generally not prevent a finding of confusing similarity.

Therefore, the addition of "new" does not, in view of the Panel, prevent a finding of confusing similarity between the disputed domain name and the Complainant's HARVEY NICHOLS trademark.

Accordingly, the Panel finds that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

As stated at section 2.1 of the [WIPO Overview 3.0](#), while the overall burden of proof in UDRP proceedings is on the Complainant, the Panel recognizes that this would often result in the impossible task of proving a negative when proving a respondent's lack of rights or legitimate interests in a domain name, requiring information that is often primarily within the knowledge of the respondent.

Therefore, the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name to meet the requirements of paragraph 4(a)(ii) of the Policy.

With its complaint, the Complainant has provided *prima facie* evidence that the Respondent has no rights or legitimate interests, particularly no license to use the Complainant's trademark within the disputed domain name and no registered rights over the term "Harvey Nichols".

There is also no indication that the Respondent is commonly known by the disputed domain name. Furthermore, there is no evidence that the Respondent has conducted any *bona fide* business under the disputed domain name. To the contrary, as stated at the section 2.13 of the [WIPO Overview 3.0](#), the Panel notes that the disputed domain name is used in association with a misleading website to obviously impersonate the Complainant, which amounts to an illicit use that can never confer rights or legitimate interests upon the Respondent. There is a risk of implied affiliation.

As the Complainant has made a *prima facie* case on the absence of any rights or legitimate interests, it is up to the Respondent to provide evidence as to the existence of such rights or legitimate interests.

However, the Respondent failed to do so by choosing not to file a response. In the absence of a response to the Complainant's contentions, the Respondent has particularly failed to demonstrate any of the non-exclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c), or provide any other evidence of rights or legitimate interests in the disputed domain name.

Consequently, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, a complainant must establish the conjunctive requirement that the respondent registered and is using the disputed domain name in bad faith.

As far as registration in bad faith is concerned, the Panel is of the opinion that the trademark HARVEY NICHOLS enjoys significant reputation. Given the reputation of the Complainant's trademark, and the nature of the disputed domain name, it is not conceivable that the Respondent was not aware of the Complainant's trademark at the time of registration of the disputed domain name. The fact that the disputed domain name contains, in addition to the well-known trademark HARVEY NICHOLS, the prefix "new", designating an alleged new shopping website for HARVEY NICHOLS, is a further indication that the Respondent intended to target the Complainant and its well-known HARVEY NICHOLS trademark when it registered the disputed domain name. It is obvious to the Panel, that the Respondent has deliberately chosen the disputed domain name to target and mislead Internet users.

In view of the foregoing, the Panel finds that the disputed domain name was registered in bad faith.

As far as use in bad faith is concerned, the Panel particularly notes that the disputed domain name resolves to a website creating the false impression to be operated by or at least associated with the Complainant. The website to which the disputed domain name resolves replicates multiple aspects of the Complainant's website "www.harveynichols.com". In addition, the site is referenced in the visitor's tab as "100% authentic-Harvey Nichols". This shows 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 and its trademarks. The Panel is in the impossibility to conceive a plausible and legitimate use of the disputed domain name that would be in good faith.

In view of the foregoing, the Panel finds that the disputed domain name is used in bad faith.

The Panel therefore concludes that the disputed domain name was registered and is being used in bad faith and that the Complainant consequently has satisfied the third element of the Policy, namely, 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 disputed domain name <newharveynichol.com> be transferred to the Complainant.

/Geert Glas/

Geert Glas

Sole Panelist

Date: July 20, 2023