

ADMINISTRATIVE PANEL DECISION

Société des Produits Nestlé S.A. v. Hope Lee
Case No. D2023-3611

1. The Parties

The Complainant is Société des Produits Nestlé S.A., Switzerland, represented by Studio Barbero, Italy.

The Respondent is Hope Lee, China.

2. The Domain Name and Registrar

The disputed domain name <pureencapsulationpro.com> (the “Disputed Domain Name”) is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 28, 2023. On August 29, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On August 30, 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 (REDACTED FOR PRIVACY, Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 30, 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 September 1, 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 September 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 13, 2023.

The Center appointed Nicholas Weston as the sole panelist in this matter on October 23, 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 part of a Swiss multinational food consumer products company founded in 1866 that operates a business with 328,000 employees worldwide. The Complainant is the owner of several trademark registrations worldwide for PURE ENCAPSULATIONS, including, for example: United Kingdom Trademark Registration No. UK00909109844 for PURE ENCAPSULATIONS (word mark), registered on November 30, 2010, in classes 05, 29, and 35, and United States of America Trademark Registration No. 4111705 for PURE ENCAPSULATIONS (word mark), registered on March 13, 2012, in international classes 5 and 44.

The Complainant's PURE ENCAPSULATIONS trademark is promoted online using domain names that include <includingpureencapsulations.com> registered on November 19, 1996, and <pureencapsulationspro.com> registered on April 28, 2021.

The Respondent registered the Disputed Domain Name <pureencapsulationpro.com> on May 20, 2021. The Disputed Domain Name resolves to a pay-per-click ("PPC") parking page hosting sponsored links. The Disputed Domain Name subsequently redirected to other PPC webpages with sponsored links redirecting users to various commercial websites related to PURE ENCAPSULATIONS products and to competitors' dietary supplements.

5. Parties' Contentions

A. Complainant

The Complainant cites its trademark registrations internationally for the mark PURE ENCAPSULATIONS as *prima facie* evidence of ownership.

The Complainant submits that its rights in the mark PURE ENCAPSULATIONS predates the Respondent's registration of the Disputed Domain Name. It submits that "[t]he [Disputed] Domain Name incorporates the Complainant's PURE ENCAPSULATIONS trademark with the mere omission of the final letter 's' and the addition of the term 'pro'" and that the identity is not removed by the addition of the generic Top-Level Domain ("gTLD") ".com".

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and that "Respondent is not a licensee, authorized agent of Complainants or in any other way authorized to use Complainants' trademark." It also contends that "notwithstanding the words 'pure' and 'encapsulation' encompassed in the Domain Name might have a dictionary meaning, there is no element in this case suggesting that Respondent might have used the Domain Name for purposes other than to trade off Complainant's trademark".

Finally, the Complainant alleges that the Respondent registered and is using the Disputed Domain Name in bad faith and that "The [D]isputed [D]omain [N]ame was registered on May 20, 2021, 30 years after the PURE ENCAPSULATIONS brand was created, over 20 years after Complainant started using its domain name <pureencapsulations.com> to promote its brand and products online and less than a month after Complainant registered its domain name <pureencapsulationspro.com>. In view of the composition of the [Disputed] Domain Name <pureencapsulationpro.com>, confusingly similar to Complainant's prior trademark PURE ENCAPSULATIONS and almost identical to Complainant's prior domain name <pureencapsulationspro.com> - from which it differs only by the omission of one single letter 's', Respondent's registration of the [Disputed] Domain Name cannot amount to a mere coincidence."

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant has the burden of proving the following:

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

A. Identical or Confusingly Similar

The Complainant has produced sufficient evidence to demonstrate that it has registered trademark rights in the mark PURE ENCAPSULATIONS in numerous jurisdictions. The propriety of a domain name registration may be questioned by comparing it to a trademark registered in any country (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.2.1).

Turning to whether the Disputed Domain Name is identical or confusingly similar to the PURE ENCAPSULATIONS trademark, the Panel observes that the Disputed Domain Name comprises: (a) the Complainant's trademark PURE ENCAPSULATIONS with the pluralizing letter "s" omitted; (b) followed by the word "pro"; (c) followed by the gTLD ".com".

It is well established that the gTLD used as technical part of a domain name may be disregarded. The relevant comparison to be made is with the Second-Level portion of the Disputed Domain Name, specifically: "encapsulationpro" (see section 1.11.1 of the [WIPO Overview 3.0](#)).

In this case, the Disputed Domain Name incorporates the entirety of the Complainant's trademark except for the final letter "s". It is also well-established that in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing (see [WIPO Overview 3.0](#), section 1.7).

The Panel finds that the Complainant has established paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists the ways that the Respondent may demonstrate rights or legitimate interests in the Disputed Domain Name. The Policy also places the burden on the Complainant to establish the absence of the Respondent's rights or legitimate interests in the Disputed Domain Name. Because of the inherent difficulties in proving a negative, the consensus view is that the Complainant need only put forward a *prima facie* case that the Respondent lacks rights or legitimate interests. The burden of production then shifts to the Respondent to rebut that *prima facie* case (see [WIPO Overview 3.0](#), section 2.1).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because (i) the Disputed Domain Name resolves to a website hosting PPC links that redirect to competitors; (ii) the Respondent has not acquired or owned any trademark or service mark rights in the name PURE ENCAPSULATIONS, and has not been commonly known by the name PURE ENCAPSULATIONS; and (iii) the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name without intent for commercial gain.

The Panel accepts the Complainant's uncontested submission that use to direct Internet traffic to a PPC webpage is "neither as a *bona fide* offering of goods or services nor as a legitimate noncommercial or fair use of the [Disputed] Domain Name, without intent for commercial gain" and that " the combination of the terms 'pure' and 'encapsulation' with the suffix 'pro' in the Domain Name strongly suggests that Respondent's intent was indeed to attract and divert to its website users looking for Complainant's website at <pureencapsulationspro.com>".

In this Panel's view, the composition of the Disputed Domain Name does indicate an awareness and targeting of the Complainant with the intention to take unfair advantage of its trademark, which does not support a finding of any rights or legitimate interests.

The Panel finds for the Complainant on this element of the Policy.

C. Registered and Used in Bad Faith

The third element of the Policy requires that the Complainant must also demonstrate that the Disputed Domain Name has been registered and used in bad faith. Paragraph 4(b) of the Policy sets out certain circumstances to be construed as evidence of both of these conjunctive requirements.

The Panel finds that the evidence in the case shows the Respondent registered and has used the Disputed Domain Name in bad faith.

On the issue of registration, given the composition of the Disputed Domain Name, the Panel is satisfied that the Respondent targeted the Complainant's trademark PURE ENCAPSULATIONS when it registered the Disputed Domain Name and the Panel is prepared to infer that the Respondent knew, or should have known, that its registration would be identical or confusingly similar to the Complainant's trademark (see [WIPO Overview 3.0](#), section 3.2.2).

In addition, the gap of several years between registration of the Complainant's trademark and the Respondent's registration of the Disputed Domain Name, along with the composition of the Disputed Domain Name (containing an exact reproduction of the Complainant's well-known trademark) in the circumstances of this case is a further indicator of bad faith. In this case, the Complainant's rights in its trademark predate any rights that could possibly flow from the Respondent's registration of the trademark PURE ENCAPSULATIONS by approximately 10 years.

On the issue of use, the Complainant's evidence is that the Disputed Domain Name resolved to a PPC landing page displaying links that redirect Internet traffic to third-party competitor websites unaffiliated with the Complainant. This Panel accepts the Complainant's uncontested evidence as evidence of bad faith use. Targeting of this nature is a common example of bad faith as referred to in paragraph 4(b)(iv) of the Policy and identified in many previous UDRP decisions (see [WIPO Overview 3.0](#), sections 3.1.4 and 3.2.1).

The Panel also observes that the Respondent has been the unsuccessful respondent in a number of other UDRP proceedings that are easily located by a search of the Center's public website. See, e.g., *PC Connection, Inc. v. Hope Lee*, WIPO Case No. [D2017-2590](#); *Check Into Cash, Inc. v. Hope Lee*, WIPO Case No. [D2019-1316](#); *Deciem Beauty Group Inc. v. Super Privacy Service LTD c/o Dynadot / Hope Lee*, WIPO Case No. [D2021-0428](#); *Verizon Trademark Services LLC v. Hope Lee*, WIPO Case No. [D2023-1166](#); *Verizon Trademark Services LLC v. Hope Lee*, WIPO Case No. [D2023-1232](#). The Panel therefore finds that that the Respondent is a serial offender who deliberately targeted the Complainant and is engaged in a pattern of bad faith conduct. The sheer number of those adverse decisions involving a known bad actor indicates to this Panel a pattern of conduct that supports a further finding of bad faith against the Respondent (See [WIPO Overview 3.0](#), sections 3.1.2 and 4.4.5).

In the absence of responsive evidence to the contrary, this Panel accepts the Complainant's evidence and finds that the Respondent has registered and used the Complainant's trademark PURE ENCAPSULATIONS in the Disputed Domain Name, without the Complainant's consent or authorization, for the likely purpose of capitalizing on the reputation of the trademark to infringe upon the Complainant's rights.

Accordingly, the Panel finds that the Complainant has satisfied the requirements 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 Disputed Domain Name, <pureencapsulationpro.com>, be transferred to the Complainant.

/Nicholas Weston/

Nicholas Weston

Sole Panelist

Date: November 6, 2023