

ADMINISTRATIVE PANEL DECISION

Hershey Chocolate & Confectionery LLC v. tedd cor
Case No. D2023-3924

1. The Parties

The Complainant is Hershey Chocolate & Confectionery LLC, United States of America (“US”), represented by Arnold & Porter Kaye Scholer LLP, US.

The Respondent is tedd cor, Cameroon.

2. The Domain Name and Registrar

The disputed domain name <jollyranchergummies.com> (the “Disputed Domain Name”) is registered with Hostinger, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 19, 2023. On September 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On September 20, 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 (Domain Admin, Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 21, 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 September 29, 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 October 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 22, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 23, 2023.

The Center appointed Nick J. Gardner as the sole panelist in this matter on October 30, 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 a well-known US confectionery manufacturer. One of the brands it offers for sale is a range of candies marketed under the name “Jolly Rancher”. That brand has been marketed by the Complainant for over 70 years and is very successful. Within the range of candies which are branded in this manner are a particular variety of soft candy which is marketed as “Jolly Rancher Gummies”.

The Complainant owns the domain name <jollyrancher.com> which it uses to market the brand.

The Complainant is the exclusive licensee of numerous trade marks for the term “Jolly Rancher” in both word form and as a stylised device – see for example US Trademark Registration 1684586 registered on April 28, 1992. These trademarks are referred to as the “JOLLY RANCHER trademark” in this decision. The Respondent has not challenged the Complainant’s status of exclusive licensee, and the Panel accepts the Complainant’s status in this regard.

The Disputed Domain Name was registered by the Respondent on August 2, 2023. It does not now resolve to an active website but the filed evidence shows it has previously resolved to a website (the “Respondent’s Website”) which appears to offer for sale a range of the cannabis infused candies under the JOLLY RANCHER trademark (see further the discussion below).

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name. Notably the Complainant says the Respondent’s Website is offering for sale a range of cannabis infused products under the JOLLY RANCHER trademark and this is indicative of bad faith registration and use.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves 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.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the Disputed Domain Name. Accordingly, the Disputed Domain Name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms (here, “gummies”) may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the Disputed Domain Name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Note that the Complainant’s standing as an exclusive licensee of the JOLLY RANCHER trademark is sufficient to provide standing. [WIPO Overview 3.0](#), section 1.4.1.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name such as those enumerated in the Policy or otherwise.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Complainant alleges that the Respondent is selling, via the Respondent’s Website, cannabis infused candies under the JOLLY RANCHER trademark. The material that is in evidence as to the previous content of the Respondent’s Website shows a series of advertisements for various types of Jolly Rancher candies, each advertisement being accompanied by a picture of a bag of the candies concerned. It seems likely that these images are images of the Complainant’s genuine products, however, the Panel notes that “THC”, the main active ingredient of cannabis, was written on each bag of these candies with at least one bag also showing the words “THC”, “CA” and “Medicated” and displaying a photo of cannabis leaves. The Panel also notes that each of the items offered for sale is offered at a price of typically USD 28, which would be considered a high sale price for candies and could suggest these Jolly Rancher candies indeed contain cannabis.

It seems quite clear that the Respondent has deliberately selected a domain name which contains the Complainant’s trademark and uses it to attract customers for commercial gain. Registration and use in bad faith under paragraph 4(b)(iv) of the Policy is established where the respondent has intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the complainant’s mark. That is likely what has happened here.

Further, the Panel notes that the Complainant's evidence also shows that the Respondent was very recently a party to a UDRP proceeding for engaging in similar conduct. There, the panel found that the Respondent's registration of a domain name which wholly incorporated the complainant's mark for use in connection with an online store purportedly selling the complainant's products constituted bad faith registration (*Kiva Brands, Inc. v. tedd cor*, WIPO Case No. [D2023-3141](#)).

Based on the available record, the Panel finds the third element of the Policy has been established.

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 <jollyranchergummies.com> be transferred to the Complainant.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: November 13, 2023