

ADMINISTRATIVE PANEL DECISION

Hasheem Investments Holding Limited v. Nuri Jules
Case No. D2023-4698

1. The Parties

The Complainant is Hasheem Investments Holding Limited, United Arab Emirates, represented by Clyde & Co., United Arab Emirates.

The Respondent is Nuri Jules, United States of America (“United States”).

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 13, 2023. On November 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Unknown Registrant) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 17, 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 November 21, 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 November 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 12, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 13, 2023.

The Center appointed Antony Gold as the sole panelist in this matter on December 20, 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 investment company established by His Highness, Sheikh Butti Bin Juma Al Maktoum, head of the Al Maktoum family which is the ruling family of Dubai, United Arab Emirates. Since at least 2018, the Family Office of His Highness, Sheikh Butti Bin Juma Al Maktoum has operated a number of companies each of which incorporates the term “Hasheem” in its name. In addition to the Complainant, which is the parent company, other companies within the group include Hasheem Investments LLC, Hasheem Education LLC and Hasheem Real Estate Limited. In the branding of the Complainant’s companies, “Hasheem” is used in a common and stylized form so that it is the central and dominant text component of the logo for each company, and it is displayed on notepaper and on in-office signage. The Complainant also owns and operates the domain name <hasheemgroup.com>, albeit the website to which it resolves presently comprises solely a placeholder page.

The disputed domain name was registered on July 2, 2023. By July 22, 2023, the disputed domain name resolved to a website which purported to be that of the Complainant in that it contained information about the supposed investment strategy of the Complainant and stated that the chairman was “Shaikh Maktoum Butti”. The “About Us” section of the website opened with the statement that “Hasheem Investments Holding Ltd invests in ventures and growth stage companies that offer innovative technologies or business models geared at emerging markets”. The website contact address was an address in Dubai, United Arab Emirates, which is associated with the Complainant. The Complainant has produced examples of emails, dating from August 2023, associated with the disputed domain name which have been used for the purpose of phishing in that they have purportedly been sent by the Complainant to third parties soliciting opportunities for investment.

Attempts to access the website at the disputed domain name now generate a Deceptive Website Warning in the Internet user’s browser which states that the website may try to trick the user into installing software or disclosing personal or financial information.

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 contends that:

- the disputed domain name is identical to a trade mark in which it has rights. The Complainant contends that it has rights in the unregistered mark HASHEEM, and refers to its use of HASHEEM, as detailed above, which is confusingly similar to the disputed domain name. Previous panel decisions under the Policy have established that it is not necessary for a trade mark to be registered in order for a complainant to be able to establish rights under the first element;

- the Complainant says also that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It is not making a noncommercial or fair use of the disputed domain name in that it is using the disputed domain name in order to commit fraud. The Respondent’s Whois details provide a contact address for the Respondent in rural Tennessee, United States, which is an inherently unlikely address for a business supposed to be investing in funds and property developments in the Middle East and tends to confirm that the disputed domain name is being used without the Respondent having a legitimate interest in it;

- the disputed domain name has been registered and is being used in bad faith. The purpose for which the disputed domain name has been registered is to convince consumers that there is a link between the Respondent and the Complainant in order to defraud them of money or personal data.

B. Respondent

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

6. Discussion and Findings

Dealing, first, with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under, these Rules, the Panel shall be entitled to draw such inferences from this omission as it considers appropriate.

Paragraph 4(a) of the Policy requires that the Complainant proves each of the following three elements in respect of the disputed domain name in order to succeed in its Complaint: (i) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant asserts that, whilst it does not have any registered trade mark rights in the term "Hasheem", it has common law or unregistered trade mark rights in it. The evidence submitted in support of its claim is set out in the Factual Background section above.

Section 1.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") summarizes the nature of the evidence a complainant should adduce in order to demonstrate unregistered or common law trade mark rights for the purposes of the Policy, namely that the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant's goods and/or services. It explains that: "Relevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) includes a range of factors such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys".

The Complainant's evidence of acquired distinctiveness is thin when compared to the consensus position in terms of the burden it is required to meet, as reflected in the section 1.3 of the [WIPO Overview 3.0](#) referred to above. However, on balance it is just about sufficient, not least because the Respondent has chosen not to challenge the Complainant's assertions. Furthermore, the fact that the Respondent has established a website which purports to be that of the Complainant and is sending phishing emails from an associated email address, which claim to be sent by the Complainant, in itself points to a degree of repute on the part of the Complainant in the term "Hasheem" (see [WIPO Overview 3.0](#), section 1.3). Accordingly, by a narrow margin, the Panel finds the Complainant has established common law or unregistered trade mark rights in HASHEEM for the purposes of the Policy.

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 trade mark and the disputed domain name; see the [WIPO Overview 3.0](#), section 1.7. As a technical requirement of registration, the generic Top-Level Domain ("gTLD"), that is ".com" in the case of the disputed domain name, is usually disregarded when assessing confusing similarity. As explained at section 1.7: "While each case is judged on its own merits, 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". The disputed domain name reproduces the entirety of the Complainant's unregistered HASHEEM mark and it is clearly recognizable within it. The additional term within the disputed domain name, namely "investments", does not prevent a finding that the disputed domain name is confusingly similar to the Complainant's mark.

For the above reasons, based on the available record, the Panel finds that 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 by which a respondent may demonstrate rights or legitimate interests in a domain name. Although 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 difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element; see the [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. In particular, the Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; see paragraph 4(c)(i) of the Policy, and the [WIPO Overview 3.0](#), section 2.2. Previous UDRP panels have held that the use of a domain name for illegal activity, including phishing, distributing malware, impersonation/passing off, or other types of fraud, which would include the Respondent's use of the disputed domain name, as described above, can never confer rights or legitimate interests on a respondent; see section 2.13.1 of the [WIPO Overview 3.0](#). The Panel also takes into account the fact that the Respondent has chosen not to challenge the Complainant's assertion that it is using the disputed domain name for dishonest purposes;
- there is no evidence in the record that the Respondent has been commonly known by the disputed domain name; see paragraph 4(c)(ii) of the Policy and the [WIPO Overview 3.0](#), section 2.3;
- the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue; see paragraph 4(c)(iii) of the Policy and the [WIPO Overview 3.0](#), section 2.4;
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

For the above reasons, 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 record shows that, within a few weeks after the Respondent's registration of the disputed domain name in July 2023, it resolved to a website which masqueraded as that of the Complainant and was being used for the purpose of sending phishing emails. This establishes both an awareness by the Respondent of the Complainant's HASHEEM mark as at the date of registration of the disputed domain name and an intention on its part to take unfair advantage of it. The Respondent's registration of the disputed domain name is accordingly in bad faith.

Paragraph 4(b) of the Policy sets out, without limitation, circumstances which, if found by a panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The circumstance set out in paragraph 4(b)(iv) of the Policy is if a respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website. The use to which the Respondent has put the disputed domain name falls within this circumstance in that the content of its website will have misled Internet users into believing that it was operated by the Complainant and thereby be lured into disclosing personal data or seemingly investing with the Respondent. Such a belief will have been reinforced because of the confusing similarity between the disputed domain name and the Complainant's HASHEEM mark. See section 3.1.4 of the [WIPO Overview 3.0](#): "[G]iven that the use of a domain name for per se illegitimate activity such as the sale of counterfeit goods or phishing can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith". See also by way of example, *OANDA Corporation v. Privacy Service Provided by Withheld for Privacy ehf / RICHARD WILLIAMS*, WIPO Case No. [DCC2022-0006](#).

Moreover, the use of the disputed domain name in order to seek to deceive Internet users through the use of scamming emails as described above is manifestly in bad faith see section 3.4 of the [WIPO Overview 3.0](#), and *Société Anonyme des Bains de Mer et du Cercle des Etrangers à Monaco v. WhoisGuard Protected / WhoisGuard, Inc. / Json Werl*, WIPO Case No. [D2021-0901](#). Additionally, the fact that attempts to access the Respondent's website now generate a Deceptive Website Warning in an Internet browser tends to affirm that the Respondent has used, or is using, the disputed domain name in order to engage in dishonest activity and affirms bad faith on the part of the Respondent; see, for example, *SODEXO v. Peter C Foy, "Sodexo"*, WIPO Case No. [D2022-3643](#).

Having reviewed the record, and for the reasons set out above, the Panel finds the Respondent's registration and use of the disputed domain name has been in bad faith.

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 <hasheeminvestments.com> be transferred to the Complainant.

/Antony Gold/

Antony Gold

Sole Panelist

Date: January 3, 2024