

ADMINISTRATIVE PANEL DECISION

Happy Head, Inc., v. Nanci Nette
Case No. D2024-0649

1. The Parties

Complainant is Happy Head, Inc., United States of America (hereinafter “United States”), represented by Foundation Law Group LLP, United States.

Respondent is Nanci Nette, United States.

2. The Domain Name and Registrar

The disputed domain name <hihappyhead.com> (hereinafter “Disputed Domain Name”) 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 February 12, 2024. On February 13, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On February 14, 2024, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on February 15, 2024 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on February 21, 2024.

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 Respondent of the Complaint, and the proceedings commenced on February 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 17, 2024. Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 18, 2024.

The Center appointed Lawrence K. Nodine as the sole panelist in this matter on March 27, 2024. 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

Complainant has used the trademark HAPPY HEAD in connection with hair growth stimulant products since at least June 20, 2021. Complainant owns United States Trademark Registration No. 6,802,096 (registered on July 26, 2022) for the trademark HAPPY HEAD (hereinafter the "Mark"). Complainant also owns "instagram.com/hihappyhead" which, according to Complainant's allegations, has "tens of thousands of followers."

Complainant previously owned the Disputed Domain Name, which it registered on February 6, 2020. Complainant inadvertently allowed the Disputed Domain Name to expire on March 20, 2023, whereupon Respondent registered it. Prior to the expiration, Complainant rerouted visitors from the Disputed Domain Name to Complainant's primary website at "happyhead.com".

Respondent has been using the Disputed Domain Name to reroute visitors to a variety of websites including some that promote hair products that compete with Complainant's products.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

B. Respondent

Respondent did not reply to 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 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.

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 entirety of the Mark is reproduced within the Disputed Domain Name. The addition of "hi," does not prevent a finding of confusing similarity between the Disputed Domain Name and Complainant's Mark. Accordingly, the Disputed Domain Name is confusingly similar to the Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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 Respondent may demonstrate rights or legitimate interests in the Disputed Domain Name.

Although the overall burden of proof in UDRP proceedings is on 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 Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on Complainant). If Respondent fails to come forward with such relevant evidence, Complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the Disputed Domain Name. Respondent has not rebutted 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.

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Complainant uses “Hihappyhead” to designate its popular Instagram account. The Panel finds that Respondent registered the Disputed Domain Name in bad faith. Respondent has engaged in a pattern of bad faith registration and use of the domain names of others. This is not the first case involving Respondent. In *Homeaway.com, Inc. v. Nanci Nette*, WIPO Case No. [D2023-1561](#) the Panel observed: “Complainant has cited over 50 cases where Respondent [Nanci Nette] was found to have registered and used domain names in bad faith, all of which resulted in decisions against Respondent. These cases demonstrate that Respondent has repeatedly targeted in bad faith well-known trademarks and many other brands.” Id. (citing multiple decisions).

Given this pattern, the Panel finds that Respondent likely purchased the Disputed Domain Name because she was aware of and targeted Complainant use of the Mark in connection with hair growth stimulating products. This may be inferred from the competitive nature of the websites to which Respondent redirects visitors. Moreover, parties with a history of bad faith abuse of the domain name system who scavenge for mistakenly dropped domain names have a heightened duty to investigate whether the prior owner has rights in the dropped domain name. *Supermac’s (Holdings) Limited v. Domain Administrator, Domainmarket.Com*, WIPO Case No. [D2018-0540](#). A minimal online search would have revealed that Complainant maintained a popular website at <happyhead.com> where the HAPPY HEAD trademark is displayed with a ® trademark registration symbol.

The Panel also finds that Respondent uses the Disputed Domain Name in bad faith “intentionally [...] to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.” Policy paragraph 4(b)(iv).

The Panel finds that Complainant has established the third element 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 <hihappyhead.com> be transferred to Complainant.

/Lawrence K. Nodine/

Lawrence K. Nodine

Sole Panelist

Date: April 10, 2024