

ADMINISTRATIVE PANEL DECISION

Hunza G Limited v. Client Care, Web Commerce Communications Limited
Case No. D2024-0702

1. The Parties

The Complainant is Hunza G Limited, United Kingdom, represented by Briffa Legal Limited, United Kingdom.

The Respondent is Client Care, Web Commerce Communications Limited, Malaysia.

2. The Domain Names and Registrar

The disputed domain names <hunzag-australia.com> <hunzag-canada.com> <hunzag-danmark.com> <hunzag-espana.com> <hunzag-france.com> <hunzag-hrvatska.com> <hunzag-italia.com> <hunzag-norge.com> <hunzag-portugal.com> <hunzag-usa.com> are registered with Alibaba.com Singapore E-Commerce Private Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 15, 2024. On February 15, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On February 19, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 21, 2024 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 February 26, 2024.

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 March 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 25, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 29, 2024.

The Center appointed Alistair Payne as the sole panelist in this matter on April 5, 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

The Complainant based in the United Kingdom has since 2018 carries on the business of designing and selling swimwear under the HUNZA and HUNZA G trade marks. The HUNZA mark has been in use since 1984 in connection with swimwear and clothing by companies in the Complainant's group of companies. The Complainant's products are sold under its HUNZA G mark in the top 250 retail stores in the world and the Complainant has a substantial online presence with over 438,000 Instagram followers and it is regularly featured in the online press.

The Complainant owns various trade mark registrations for its HUNZA G mark including United States of America trade mark registration No. 6132758 registered on August 25, 2020 and European Union trade mark registration No. 017896483 registered on September 6, 2018. It also owns the domain name <hunzag.com> from which it operates its main website promoting its swimwear products.

The disputed domain names were all registered by the Respondent on January 30, 2024. The disputed domain name <hunzag-usa.com> resolves to a website that appears to be visually similar to the Complainant's website, features the Complainant's HUNZA G mark and purports to offer products which are seemingly identical to the Complainant's marks but at discounted prices. None of the other disputed domain names resolve to an active website, or appear to be in use at present.

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 names.

Notably, the Complainant contends that it owns registered trade mark rights as set out above for its HUNZA G trade mark. It says that each of the disputed domain names incorporates its HUNZA G mark and each is therefore confusingly similar to the Complainant's trade mark. It further says that the addition of a geographical term in each case, such as a country name, does not prevent a finding of confusing similarity.

The Complainant says that it has never authorised the Respondent to use its HUNZA G mark and that to the best of its knowledge and belief the Respondent is not commonly known by any of the disputed domain names and has no rights or legitimate interests in any of them. The Complainant says that the Respondent's only interest in any of the disputed domain names is to divert traffic away from the Complainant and potentially illegal use, such as by phishing. The Complainant says that the website associated with the disputed domain name purports to offer goods that originate from the Complainant although the Complainant has not authorised the Respondent to use the HUNZA G mark and nor has the Respondent ever been an authorised seller of the Complainant's goods. It also says that the Respondent is not making a legitimate, noncommercial, or fair use of any of the disputed domain names.

As far as bad faith is concerned, the Complainant asserts that its HUNZA G mark is distinctive and enjoys such a significant reputation that the Respondent in all likelihood knew or should have known of the existence of the Complainant's HUNZA G mark when the disputed domain names were registered and that there is no plausible explanation for it to have incorporated the HUNZA G mark in each of the disputed domain names. The Complainant submits that the Respondent had the Complainant's HUNZA G mark in mind when it registered each of the disputed domain names which is shown by the Respondent's unauthorised use of the Complainant's logo on the website at "www.hunzag-usa.com".

The Complainant asserts that the Respondent is using the disputed domain names intentionally to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's HUNZA G trade mark as to the source, affiliation or endorsement of the website, contrary to paragraph 4(b)(iv) of the Policy. It notes that the website at "www.hunzag-usa.com" contains content that calls to mind the Complainant's website, makes use of the Complainant's copyright works and purports to advertise the Complainant's goods. It says that this amounts to conduct in terms of paragraph 4(b)(iv) of the Policy and it is a reasonable assumption that the disputed domain names generate revenue, or are intended to generate revenue, in the future from the sale of counterfeit goods and the collection of consumer details.

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 trade mark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

The Complainant has shown rights in respect of a trade mark 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 names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms including in each case, respectively "-canada", "-danmark", "-australia", "-espana", "-france", "-hrvatska", "-italia" " – norge", "-portugal" and "-usa" may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

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. [WIPO Overview 3.0](#), section 2.1.

The Complainant has submitted that it has never authorised the Respondent to use its HUNZA G mark and that to the best of its knowledge and belief the Respondent is not commonly known by any of the disputed domain names and has no rights or legitimate interests in any of them.

The Complainant has also submitted that the website associated with the <hunzag-usa.com> disputed domain name purports to offer goods that originate from the Complainant, although the Complainant has not authorised the Respondent to use the HUNZA G mark and neither has the Respondent ever been authorised to sell the Complainant's goods. It has also asserted that the Respondent is not making a legitimate noncommercial or fair use of any of the disputed domain names.

While none of the other disputed domain names resolve to a website, or appear to have been used by the Respondent, based upon its unauthorised use of the Complainant's mark on the website to which the <hunzag-usa.com> disputed domain name resolves, it is reasonable to assume that it intends to make a similar use in relation to those disputed domain names. Specifically, the use of the disputed domain name <hunzag-usa.com> for purposes of impersonation cannot confer rights or legitimate interests. [WIPO Overview 3.0](#), section 2.13.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. 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 names 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.

In the present case, the Panel notes that the Respondent registered all of the disputed domain names on January 30, 2024, some years after the Complainant's registration of its HUNZA G trade mark registrations and many years after it first began using its HUNZA marks. The HUNZA G trade mark is highly distinctive and has been used by the Complainant since 2018 in connection with its swimwear collections which have been advertised online through its website at "www.hunzag.com" and through a large number of very well-known retail stores worldwide. Considering that the Respondent used the disputed domain name <hunzag-usa.com> to resolve to a website that appears to be visually similar to the Complainant's website, which features the Complainant's HUNZA G mark and which purports to offer products that are seemingly identical to the Complainant's marks but at discounted prices, it is most likely that the Respondent was well aware of the Complainant's HUNZA G mark and business at the date of registration of all of the disputed domain names.

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.

Under paragraph 4(b)(iv) of the Policy there is evidence of registration and use of the disputed domain name in bad faith where a Respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation or endorsement of the website.

It is apparent that the disputed domain name <hunzag-usa.com> has been used by the Respondent to divert Internet users to its website which features the HUNZA G marks, has a similar overall look to the Complainant's website and appears to feature discounted HUNZA G swimwear products. This is all in circumstances that the Complainant has never authorised such use and amounts to the Respondent having used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade marks in terms of paragraph 4(b)(iv) of the Policy and section 3.4 of the [WIPO Overview 3.0](#).

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of all of the disputed domain names other than <hunzag-usa.com> does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3.

Having reviewed the available record, the Panel notes the high degree of distinctiveness of the Complainant's trade mark, the Respondent's failure to provide an explanation of its conduct and the Respondent's failure to disclose its real identity. The Panel also notes that in view of the Respondent's unauthorised use of the disputed domain name <hunzag-usa.com> as described above, it can only be inferred that the Respondent is most likely to have registered other nine disputed domain names for similar use, namely to confuse and divert Internet users for the Respondent's own commercial purposes. In these circumstances the Panel finds that the passive holding of the disputed domain names <hunzag-australia.com> <hunzag-canada.com> <hunzag-danmark.com> <hunzag-espana.com> <hunzag-france.com> <hunzag-hrvatska.com> <hunzag-italia.com> <hunzag-norge.com> and <hunzag-portugal.com> does not prevent a finding of bad faith under the Policy.

The Panel finds that the Complainant has established the third element of the Policy in relation to each of the disputed domain names.

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 names <hunzag-australia.com> <hunzag-canada.com> <hunzag-danmark.com> <hunzag-espana.com> <hunzag-france.com> <hunzag-hrvatska.com> <hunzag-italia.com> <hunzag-norge.com> <hunzag-portugal.com> <hunzag-usa.com> be transferred to the Complainant.

/Alistair Payne/

Alistair Payne

Sole Panelist

Date: April 18, 2024