

ADMINISTRATIVE PANEL DECISION

Hellweg Die Profi-Bau- & Gartenmärkte GmbH & Co. KG v. Shelby Chaney
Case No. D2024-0865

1. The Parties

The Complainant is Hellweg Die Profi-Bau- & Gartenmärkte GmbH & Co. KG, Germany, represented by Kümmerlein, Simon & Partner, Germany.

The Respondent is Shelby Chaney, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <hellwegde.com> (the “Domain Name”) is registered with Gname.com Pte. Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 28, 2024. On March 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 6, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Unknown/Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 11, 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 amended Complaint on March 13, 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 the Respondent of the Complaint, and the proceedings commenced on March 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 8, 2024.

The Center appointed Gregor Vos as the sole panelist in this matter on April 17, 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 operates so-called do-it-yourself centers in Germany and Austria offering a range of products for building, renovation and design purposes in houses and gardens. The Complainant employs around 4,000 employees including around 400 trainees.

The Complainant is the owner of inter alia the following trademark registrations (the "Trademarks"):

- German Trade Mark registration No. 395486106 for the wordmark HELLWEG, registered on February 16, 1996;
- International Trade Mark registration No. 661964 for the wordmark HELLWEG, registered on March 27, 1996, with designation of Austria, the Benelux and Poland.

The Domain Name was registered on October 13, 2023. At the time of filing of the Complaint, the Domain Name resolved to a website that appeared to impersonate the Complainant and on which a purportedly fake contact form and order form were available to consumers.

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 Domain Name.

Notably, the Complainant first contends that the Domain Name is confusingly similar to its Trademarks, since it incorporates the Trademarks in their entirety with the mere addition of the geographical term "de" that refers to Germany where the Complainant is located.

Second, the Complainant states that the Respondent has no rights or legitimate interests in the Domain Name. The Respondent has never received authorization from the Complainant to use the Trademarks in the Domain Name and is not commonly known by the Domain Name. Also, the Respondent is not making a legitimate noncommercial or fair use of the Domain Name. On the contrary, the Complainant contends that the Respondent used the Domain Name for fraudulent activities.

Finally, according to the Complainant, the Respondent was undoubtedly aware of the Trademarks when registering the Domain Name. This is confirmed by the fact that the Respondent has attempted to impersonate the Complainant.

B. Respondent

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

6. Discussion and Findings

In view of the lack of a response filed by the Respondent as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs 5(f), 14(a) and 15(a) of the Rules,

the Panel is directed to decide this administrative proceeding on the basis of the Complainant's undisputed factual presentations.

For the Complainant to succeed, it must prove, within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

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

Only if all three elements have been fulfilled, the Panel is able to grant the remedies requested by the Complainant. The Panel will deal with each of the requirements in turn.

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 Trademarks and the 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 trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

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

Although the addition of another term here, the geographical term "de", 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 Domain Name and the Trademarks 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.

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 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 Domain Name such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity, here, claimed impersonation of the Complainant, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

Panels have held that the use of a domain name for illegal activity, here impersonating the Complainant for the purpose of fraudulent activities, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the Domain Name constitutes bad faith under the Policy. In particular, the Panel finds that it is not conceivable that the Respondent registered the Domain Name without knowledge of the Complainant and the Trademarks under which it is doing business. This is because the Respondent has impersonated the Complainant on the website to which the Domain Name resolved and used the Trademarks and other copyrighted materials from the Complainant.

In light of the foregoing, and taking into account the lack of rights to or legitimate interests in the Domain Name and in the absence of any conceivable good faith use, the Panel agrees with the Complainant that the Respondent registered and used the Domain Name in bad faith.

The Panel finds that the 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 Domain Name <hellwegde.com> be transferred to the Complainant.

/Gregor Vos/

Gregor Vos

Sole Panelist

Date: May 1, 2024