

ADMINISTRATIVE PANEL DECISION

Harboes Bryggeri A/S v. Maxwell Stark
Case No. D2024-1139

1. The Parties

The Complainant is Harboes Bryggeri A/S, Denmark, represented by Aera A/S, Denmark.

The Respondent is Maxwell Stark, United States of America.

2. The Domain Name and Registrar

The disputed domain name <harboeonline.shop> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 15, 2024. On March 15, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 15, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 18, 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 19, 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 25, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 14, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 16, 2024.

The Center appointed Gareth Dickson as the sole panelist in this matter on April 22, 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 is a Danish brewery established in 1883. It produces and sells alcoholic and non-alcoholic beverages. It employs around 600 people and distributes products in over 90 countries.

The Complainant owns several trade marks incorporating HARBOE (the “Mark”). Notable registrations include:

1. International Trade Mark No. 1185805 for HARBOE (word mark), registered on November 8, 2013;
2. European Union Trade Mark No. 000404798 for HARBOE (word mark), registered on October 23, 1998; and
3. Vietnamese Trade mark No. 478969 for HARBOE (word mark), registered on January 31, 2024.

The Complainant has provided evidence of these registrations in the form of trade mark certificates.

The disputed domain name was registered on February 22, 2024 and as at the date of the Complaint was being used for a website imitating the Complainant’s website, reproducing some of the artistic works appearing on the Complainant’s website and using the Complainant’s Mark in a variety of formats, including the Complainant’s logo.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to a trade mark in which the Complainant has rights. The disputed domain name incorporates the Mark in its entirety, with the addition of the term “online” and the generic Top Level Domain (“gTLD”) “.shop”, which are insufficient to prevent confusion.

The Complainant also argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant asserts that the Respondent is not commonly known by the disputed domain name, has not been authorised by it to use the Mark, and is not making a legitimate noncommercial or fair use of the disputed domain name.

The Complainant further submits that the disputed domain name was registered and is being used in bad faith. The Complainant states that by using the disputed domain name, the Respondent intentionally attempted to attract, for commercial gain, Internet users to the Respondent’s website, by creating a likelihood of confusion with the Mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website or of a product or service on the website.

The Complainant points out that its registrations for the Mark predate the Respondent’s disputed domain name registration, which supports the Complainant’s argument that the Respondent was likely aware of the Complainant’s rights in the Mark at the time of the disputed domain name registration, indicating bad faith.

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. See 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 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.

Although the addition of another term here, namely "online", 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. Similarly, the use of the gTLD ".shop" does not prevent a finding of confusing similarity.

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. See [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 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.

Panels have held that the use of a domain name for illegal activity, here, impersonation/passing off of the Complainant, can never confer rights or legitimate interests on a respondent. See [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.

In the present case, the Panel notes that the Respondent has registered the disputed domain name incorporating the Mark and has used it to direct Internet users to a website that imitates the Complainant's website, including through the further unauthorised use of the Complainant's Mark and of at least one artistic work from the Complainant's website.

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. See [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that the use of a domain name for illegal activity, here impersonation/passing off, constitutes bad faith. See [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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 disputed domain name <harboeonline.shop> be transferred to the Complainant.

/Gareth Dickson/

Gareth Dickson

Sole Panelist

Date: May 14, 2024