

## **ADMINISTRATIVE PANEL DECISION**

Hermes International v. Cho Bea Hun  
Case No. D2024-1182

### **1. The Parties**

The Complainant is Hermes International, France, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Cho Bea Hun, Republic of Korea.

### **2. The Domain Name and Registrar**

The disputed domain name <hermescare.com> is registered with Inames Co., Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 19, 2024. On March 19, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 20, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On March 22, 2024, the Center informed the parties in Korean and English, that the language of the registration agreement for the disputed domain name is Korean. On March 25, 2024, the Complainant submitted an amended Complaint supplemented with a request for English to be the language of the proceedings, along with amended annexes. The Respondent did not submit any comment on the Complainant’s submissions or the language of the proceedings.

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 April 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 25, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 3, 2024.

The Center appointed Kathryn Lee as the sole panelist in this matter on May 8, 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 French fashion luxury goods house. Established in 1837, the Complainant is in the business of creating, producing, and marketing articles, primarily in the field of leather goods, silk and textiles, ready-to-wear clothing and apparel, accessories, jewelry, watches, shoes, fragrances and beauty products, furniture, and tableware, among others. The Complainant was ranked 28<sup>th</sup> in the Best Global Brands by Interbrand in 2019 and ranked 33 for World's Most Valuable brands 2019 by Forbes. The Complainant has 22,037 employees worldwide and over 306 stores across 45 countries. In 2023, the Complainant had a revenue of 13,427 million Euro. The Complainant owns a number of trademark registrations for the HERMES mark worldwide, including International Trademark Registration Number 196756, registered on November 21, 1956, Korean Trademark Registration Number 4000629370000, registered on July 13, 1979..

The Respondent appears to be an individual operating a postpartum health clinic (hereinafter "clinic") with an address in the Republic of Korea.

The disputed domain name was registered on October 18, 2012, and as of the date of the Complainant, resolved to a website advertising the Respondent's clinic in the Republic of Korea.

#### **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 confusingly similar to the HERMES mark in which the Complainant has rights, as it consists of "hermes" and simply adds the generic term "care" to the end of the trademark. The Complaint further contends that the addition of the generic term to the Complainant's trademark does not negate the confusing similarity between the disputed domain name and the Complainant's trademark.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain name and confirms that it has not authorized or licensed rights to the Respondent in any respect. The Complainant contends that the Complainant sent a cease and desist to the Respondent when it discovered that the Respondent is using the HERMES mark in the name of a clinic and in the disputed domain name linked to the website of the clinic. The Complainant contends that the Respondent has since renamed the clinic, but that the disputed domain name still points to its website, and that even if the Respondent may not derive commercial benefit from such use, this represents illegitimate use, and even suggests opportunistic bad faith.

Finally, the Complainant contends that the disputed domain name was registered and used in bad faith. The Complainant contends that given the international fame of the HERMES trademark and numerous trademark registrations around the world, the Respondent knew, or at least should have known, of the Complainant and the Complainant's trademarks. The Complainant also contends that the Respondent intentionally misappropriated the Complainant's trademark as a way of redirecting Internet users searching for the Complainant to the website linked to the disputed domain name which has nothing to do with the Complainant, and that this is evidence of bad faith registration and use. The Complainant also states that the Complainant attempted to amicably resolve the matter with the Respondent by sending a cease and

desist, and while the Respondent initially agreed to allow the disputed domain name to lapse in October 2023, renewed the registration to October 2025 instead, which is further evidence of bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **Language**

The language of the Registration Agreement for the disputed domain name is Korean. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceedings shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceedings be English for several reasons, including that the Complainant and the Complainant's representative is unable to communicate in Korean and translating the Complaint would unfairly disadvantage and burden the Complainant and delay the proceedings. The Complainant also stated that the website on the disputed domain name contains English words and phrases such as "care," "clinic," "program," and "service quick menu," and that the disputed domain name is composed of Latin characters.

The Respondent did not submit any Response.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1). Given the fact that the Complainant is based in France and the Respondent is based in the Republic of Korea, English would appear to be a fair neutral language for rendering this decision. Further, the disputed domain name contains the English term "care" and the website on the disputed domain name displays a number of words in English such as the ones that the Complainant listed, as well as "helpline," "location," and "facility." Besides, both Parties were permitted to present their cases in the language of their preference. The Panel would have considered a Response in Korean, but no Response was submitted.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceedings shall be English.

### **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 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.

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 Complainant's HERMES 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 other terms – here, “care” – may bear on assessment of the second and third elements, the Panel finds the addition of such a 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.

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 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.

Although the Respondent has linked the disputed domain name to a website for a clinic, the clinic has since changed its name and there is no evidence that it is commonly known by the disputed domain name.

Besides, Panels have found that a domain name of a trademark plus an additional term cannot be fair use if it suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1. Here, the disputed domain name is suggestive of sponsorship or endorsement by the Complainant of the clinic services provided the Respondent.

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 first notes that the registration of the disputed domain name, which is confusingly similar to the Complainant’s famous HERMES mark, by the Respondent, who is unaffiliated with the Complainant, creates a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4.

Further, based on the fame of the Complainant and the Complainant’s mark, the Panel finds that it is highly unlikely for the Respondent to have registered the disputed domain name without any knowledge of the Complainant. The Respondent has not provided any explanation for having registered the disputed domain name, and with no response to claim otherwise, the Panel finds that the Respondent more likely selected the disputed domain name (and the tradename) in order to benefit from the significant fame and good will associated with the Complainant’s mark.

And through continued use of the disputed domain name despite the change of the tradename, the Respondent is intentionally attempting to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion as to the Complainant's mark with respect to the source, sponsorship, affiliation, or endorsement of the Respondent's website and the Respondent's clinic.

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 <hermescare.com> be transferred to the Complainant.

*/Kathryn Lee/*

**Kathryn Lee**

Sole Panelist

Date: May 22, 2024