

ADMINISTRATIVE PANEL DECISION

Hill's Pet Nutrition, Inc. v. Zhou Shichun, Huijing Li
Case No. D2024-1220

1. The Parties

The Complainant is Hill's Pet Nutrition, Inc., United States of America ("US"), represented by Fross Zelnick Lehrman & Zissu, PC, US.

The Respondents are Zhou Shichun, China, and Huijing Li, China.

2. The Domain Names and Registrars

The disputed domain name <storehills.com> is registered with Gname.com Pte. Ltd. The disputed domain name <thehillspet.com> is registered with Name.com, Inc. Gname.com Pte. Ltd. and Name.com, Inc. are hereinafter collectively referred to as the "Registrars".

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on March 20, 2024. On March 21, 2024, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On March 21 and March 22, 2024, the Registrars transmitted by email to the Center the verification responses disclosing registrant and contact information for the disputed domain names 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 27, 2024, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrars, requesting the Complainant to either file separate complaint(s) for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity and/or that all domain names are under common control. The Complainant filed an amended Complaint in English on March 27, 2024.

On March 27, 2024, the Center informed the parties in Chinese and English, that the language of the registration agreement for the disputed domain name <storehills.com> is Chinese. On the same day, the Complainant requested English to be the language of the proceeding. The Respondents did not submit any comment on the Complainant's submission.

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 Respondents in English and Chinese of the Complaint, and the proceedings commenced on April 4, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 24, 2024. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on April 25, 2024.

The Center appointed Karen Fong as the sole panelist in this matter on April 26, 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’s predecessors-in-title developed a specialist pet food in the 1930s evolving into the range of pet food formulas marketed and sold under the brand HILL’S.

The Complainant’s trade mark registrations for the HILL’S trade mark include the following:

- US Trade Mark Registration No. 955342, HILL’S, registered on March 13, 1973;
- US Trade Mark Registration No. 1417169, HILL’S, registered on November 18, 1986 ; and
- China Trade Mark Registration No. 928649, HILL’S registered on January 14, 1997 (individually and collectively, the “Trade Mark”).

The Complainant, either on its own or through affiliated companies, owns and operates the websites connected to the domain names <hillspet.com> and <hillspet.fr>. All the Complainant’s email communications are through the <hillspet.com> domain name.

Both the disputed domain names were registered by the Respondents, who appear to be based in China, on November 5, 2022. The disputed domain names resolved to websites (the “Websites”) which mimic the Complainant’s own website by using its copyright material, prominently displaying the Trade Mark and the Complainant’s logo in the banner and heading of the webpages, and offering for sale products that bear the Trade Marks at discounted prices which purport to be the Complainant’s products without any disclaimer clarifying the (lack of) relationship between the Parties. The Websites are virtually identical and contain false contact information.

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 the disputed domain names are confusingly similar to the Trade Mark in which it has rights, that the Respondents have no rights or legitimate interests with respect to the disputed domain names, and that the disputed domain names were registered and are being used in bad faith. The Complainant requests transfer of the disputed domain names.

B. Respondents

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

6. Discussion and Findings

6.1. Preliminary Issues

A. Consolidation: Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainant requests the consolidation of the Complaint against the disputed domain names registrants pursuant to paragraph 10(e) of the Rules.

The disputed domain names registrants did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2.

As regards common control, the Panel notes the following:

- (1) The disputed domain names include the Trade Mark as part of them;
- (2) The Websites contain almost identical content and both mimic the Complainant's websites;
- (3) The disputed domain names are registered to individual registrants on the same date who both purport to be based in China; and
- (4) The Respondents failed to file responses.

The evidence submitted points to the fact that the disputed domain names are subject to common control by the Respondents. The above pattern evidences common conduct based on the registration and use of the disputed domain names, and such conduct interferes with the Trade Mark. The Respondents had the opportunity but did not respond to the Complaint. As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain names registrants (referred to below as "the Respondent") in a single proceeding.

B. Language of the Proceeding

The language of the Registration Agreement for the disputed domain name <storethills.com> is Chinese. 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 proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English as both the disputed domain names and Websites are in the English language and contain contact details for the US. This is a clear indication that the Respondent is familiar and understands the English language.

The Respondent has not challenged the Complainant's language request and in fact has failed to file a response in either English or Chinese.

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 3.0](#), section 4.5.1).

Having considered all the matters above, including the fact that the language of the Registration Agreement of the other disputed domain name under the common control of the Respondent is in English, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2 Substantive Issues

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 3.0](#), section 1.7.

Based on the available record, the Panel finds 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 Panel finds that the entirety of the Trade Mark is reproduced within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the Trade Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms here "the", "pet" and "storet" 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 Trade Mark for the purposes of the Policy. [WIPO Overview 3.0](#), sections 1.8.

Based on the available record, 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.

While 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 often impossible 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. 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 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.

Based on the available record, 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 must have been aware of the Trade Mark when it registered the disputed domain names given the reputation of the Trade Mark and the fact that it was registered and used was such an extensive period prior to the registration of the disputed domain names.

In the [WIPO Overview 3.0](#), section 3.2.2 states as follows:

“Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant’s mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant’s mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent’s claim not to have been aware of the complainant’s mark.”

The fact that there is a clear absence of rights or legitimate interests coupled with the Respondent’s choice of the disputed domain names without any explanation is also a significant factor to consider (as stated in [WIPO Overview 3.0](#), section 3.2.1). The disputed domain names fall into the category stated above and the Panel finds that the registration is in bad faith.

The disputed domain names are also being used in bad faith. The unauthorised use of the Complainant’s copyright material including images from the Complainant’s website, the Trade Mark, the Complainant’s logo and the purported offer for sale of products bearing the Trade Mark at discounted prices on the Websites are clear indications of use for potentially illegal activity.

The content of the Websites is calculated to give the impression they have been authorised by or connected to the Complainant when this is not the case. These Websites were set up to deliberately mislead Internet users that they are connected to, authorised by, or affiliated with the Complainant. The Respondent employs the fame of the Trade Mark to mislead Internet users into visiting the Websites instead of the Complainant’s. From the above, the Panel concludes that the Respondent has intentionally attempted to attract, for commercial gain, by misleading Internet users into believing that the Websites and the products purportedly offered for sale and sold on them are those of or authorised or endorsed by the Complainant.

It is highly likely that Internet users when typing the disputed domain names into their browser or finding them through a search engine would have been looking for a site operated by the Complainant rather than the Respondent. The disputed domain names are likely to confuse Internet users trying to find the Complainant’s official website. Such confusion will inevitably result due to the fact that all the disputed domain names comprise the Trade Mark in its entirety or the dominant element of the Trade Mark.

The Panel therefore also concludes that the disputed domain names were registered and are being used in bad faith under paragraph 4(b)(iv) of the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 <storehills.com> and <thehillspet.com> be transferred to the Complainant.

/Karen Fong/

Karen Fong

Sole Panelist

Date: May 28, 2024