

ADMINISTRATIVE PANEL DECISION

Harboes Bryggeri A/S v. mark hong

Case No. D2024-1264

1. The Parties

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

The Respondent is mark hong, United States of America (“United States”)

2. The Domain Name and Registrar

The disputed domain name <harboemail.shop> is registered with Hostinger Operations, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 25, 2024. On March 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 27, 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 27, 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 28, 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 April 3, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 23, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 24, 2024.

The Center appointed Eva Fiammenghi 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, Harboes Bryggeri A/S, is one of the largest breweries in Denmark, founded in 1883.

The Complainant, known for its brand portfolio including HARBOE, CARIBIA, BEAR BEER, DARGUNER, HYPER MALT, VIKING, XRAY, and others, operates breweries in Skælskør and Germany employing approximately 600 individuals. Its beverages are distributed globally, spanning over 90 countries, with HARBOE emerging as a top-selling brand in the Scandinavian beer market. The Complainant has established a robust reputation and goodwill worldwide, supported by decades of expertise and a commitment to high-quality products.

The Complainant owns HARBOE trademark registrations in many jurisdictions, including, but not limited to, the following:

- International trademark HARBOE Reg. No: 1185805 registered on November 8, 2013, in class 32;
- European Union trademark HARBOE Reg. No: 000404798, registered on October 23, 1998, in class 32;
- International trademark HARBOE and device Reg. No: 992800, registered on January 30, 2009, in classes 32, 33 and 43;
- Danish Trademark HARBOE and device Reg.no: VR 200803664, registered on October 21, 2008, in classes 32, 33 and 43;

The Complainant is also the registrant of the domain name <harboe.com>, where the Complainant's products are advertised.

The disputed domain name was registered on March 16, 2024, and at the moment of the filing of the Complaint it was used for a website imitating the Complainant's website "www.harboe.com".

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.

The Complainant contends that the disputed domain name is confusingly similar to the trademarks HARBOE (which are entirely reproduced) with the simple addition of the generic word "mall" and the generic Top-Level Domain ("gTLD") ".shop".

The Respondent is not affiliated with the Complainant and there is no evidence to suggest that the Respondent has registered the disputed domain name with legitimate interests. The Complainant has never licensed or otherwise permitted the Respondent to use its trademark or to register any domain name including its trademark.

Lastly, the Complainant claims that the Respondent has registered and uses the disputed domain name in bad faith.

The Complainant requests that the disputed domain name be transferred to it.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must prove that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

These elements are discussed in turn below. In considering these elements, paragraph 15(a) of the Rules provides that the Panel shall decide the Complaint on the basis of statements and documents submitted and in accordance with the Policy, the Rules and any other rules or principles of law that the Panel deems applicable.

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 Panel finds the mark is recognizable 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 term here, "mall" 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.

The addition of the suffix "mall" to the disputed domain name does not sufficiently differentiate it from the Complainant's trademark HARBOE. .

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.

The Panel notes the composition of the disputed domain name, which carries a risk of implied affiliation with the Complainant as it reproduces the Complainant's mark HARBOE in its entirety added by the term "mall" and the gTLD ".shop", both related to the Complainant's products. [WIPO Overview 3.0](#), section 2.5.1. The Panel considers that the Respondent aims to confuse consumers.

This is further supported by the content of the website at the disputed domain name, which mimicked the Complainant's official website and displayed potentially false beverages as the Complainant's products..

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 finds that the disputed domain name was registered in bad faith by the Respondent. The registration occurred long after the establishment of the Complainant's trademark..

Moreover, by incorporating the trademark HARBOE into the disputed domain name, along with the term "mall," the Respondent appears to intend to exploit the reputation of the Complainant's trademark or create a false association with it. Additionally, the lack of any arguments or explanation by the Respondent in regard to legitimate reasons for choosing a confusingly similar domain name to the Complainant's trademark suggests opportunistic bad faith. The intentional use of the Complainant's trademark in the disputed domain name further indicates an attempt to create confusion and association with the Complainant. This is further supported by the fact that the disputed domain name used resolve to a website mimicking the Complainant's official website. Therefore, the registration and use of the dispute domain name by the Respondent constitutes bad faith.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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 <harboemail.shop> be transferred to the Complainant.

/Eva Fiammenghi/

Eva Fiammenghi

Sole Panelist

Date: May 9, 2024