

ADMINISTRATIVE PANEL DECISION

Dufry International AG (Dufry International SA) (Dufry International LTD) v.
jerben alviz
Case No. D2024-1321

1. The Parties

The Complainant is Dufry International AG (Dufry International SA) (Dufry International LTD), Switzerland, represented by Mosaic Legal Group, PLLC, United States of America (“United States”).

The Respondent is jerben alviz, Philippines.

2. The Domain Name and Registrar

The disputed domain name <hudsonbooksellers.org> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 27, 2024. On March 28, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Hidden (Unknown)) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 4, 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 the same day.

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 April 29, 2024.

The Center appointed Dawn Osborne as the sole panelist in this matter on May 2, 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 an established newsagent in the United States and owns a number of registrations including the mark HUDSON for newsagent services including United States Registration no 4583696 for HUDSON (plus H device) registered since August 12, 2014 (“the Registered Trade Mark”).

The disputed domain name registered in 2023 has been used for a fraudulent email scheme. It does not currently point to an active web site, but has been pointed to a web site displaying commercial pay per click (“PPC”) links including services offered at La Guardia Airport where the Complainant has a number of stores.

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 Complainant’s distinctive well known HUDSON mark.

The Respondent is not commonly known by the disputed domain name and is not authorised by the Complainant.

The disputed domain name has been used for a fraudulent email scheme and once resolved to a web site displaying commercial PPC links. The Respondent has no rights or legitimate interests in the disputed domain name.

The disputed domain name has been registered in opportunistic bad faith and used for a fraudulent email scheme pretending to be one of the Complainant’s Senior Vice Presidents, and commercial PPC links to cause confusion for commercial gain and disrupt the Complainant’s business.

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 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 disputed domain name includes the distinctive HUDSON word mark element of the Registered Trade Mark. [WIPO Overview 3.0](#), section 1.10 (design elements and disclaimers). The Panel finds the Complainant's HUDSON 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 terms, here "booksellers", may bear on assessment of the second and third elements, the Panel finds the addition of such term and a customary generic Top Level Domain, here ".org", 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.

The Respondent has used the disputed domain name in a fraudulent email scheme impersonating the Complainant.

Panels have held that the use of a domain name for illegal activity as applicable to this case: impersonation/passing off and fraud, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The disputed domain name has also been used for a website displaying commercial PPC links (relating to third party services at La Guardia Airport where the Complainant has several stores) which is commonly held not to be a bona fide offering of goods or services or a legitimate non commercial fair use.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

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

The Respondent has used the disputed domain name in a fraudulent email scheme impersonating the Complainant.

Panels have held that the use of a domain name for illegal activity, as applicable to this impersonation/passing off and fraud, 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 disputed domain name constitutes bad faith under the Policy.

The Panel also notes that the disputed domain name has also been used for a website with commercial PPC links for services offered at La Guardia Airport where the Complainant has a number of stores.

The Panel finds this use confusing and holds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark, disrupting the Complainant's business.

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 <hudsonbooksellers.org> be transferred to the Complainant.

/Dawn Osborne/

Dawn Osborne

Sole Panelist

Date: May 6, 2024