

ADMINISTRATIVE PANEL DECISION

JJA v. MNickels Cynthia
Case No. D2024-1396

1. The Parties

The Complainant is JJA, France, represented by Dennemeyer & Associates S.A., Luxembourg.

The Respondent is MNickels Cynthia, United States of America.

2. The Domain Name and Registrar

The disputed domain name <hesperidefr.com> (the “Disputed Domain Name”) is registered with Gname.com Pte. Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 2, 2024. On April 3, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On April 4, 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 (Unknown – Redacted for privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 9, 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 April 10, 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 22, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 12, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 15, 2024,

The Center appointed Michael Cover as the sole panelist in this matter on May 30, 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 international company, based in France, which was founded in 1976. The Complainant is a successful family business, now in the hands of the second generation of the family.

The Complainant has been a pioneer in the development of partnerships with China since 1979. The Complainant has developed a complete range of products in the home furnishings and decoration sector. The Complainant has developed its business to be what it calls a medium-sized enterprise.

The Complainant's HESPERIDE trademark is applied particularly to garden furniture, including tables, chairs, deckchair dining sets, parasols and barbecues.

The Complainant is the proprietor of many registrations for its trademark HESPERIDE throughout the world, including:

International trademark No. 1044063 HESPÉRIDE (logo), registered January 27, 2010, in Classes 6, 11, 18, 19, 20.

European trademark No. 010379196 HESPERIDE, registered April 30, 2012, in Classes 6, 11, 16, 17, 18, 19, 20, 21, 35.

France No. 3827403 HESPERIDE filed April 29, 2011, and registered December 30, 2011, in Classes 6, 11, 16, 17, 18, 19, 20, 21, 35.

The Complainant also owns numerous domain names, including <hesperide.com> registered on July 31, 2008 and <hesperide.fr> registered on November 25, 2015.

The Disputed Domain Name was registered on January 19, 2024. The Disputed Domain Name resolves to a website reproducing the HESPERIDE trademark of the Complainant and featuring images of pictures of the Complainant's goods.

5. Parties' Contentions

A. The Complainant

Identical or Confusingly Similar

The Complainant notes that the Disputed Domain Name was registered after the trademark registrations and domain name registrations of the Complainant, namely January 19, 2024.

The Complainant submits that the Disputed Domain Name is almost identical to the HESPERIDE trademark, in which the Complainant has earlier rights. The Complainant notes that the Disputed Domain Name is fully composed of the Complainant's trademark HESPERIDE, with the additional letters "fr" at the end, which will be understood as the country code for France, and the ".com" extension. The Complainant then submits the additional country code and ".com" extension are not sufficient to distinguish the Disputed Domain Name from the HESPERIDE trademarks and the Complainant's activity. The Complainant submits that the Complainant's trademark HESPERIDE is clearly recognizable in the Disputed Domain Name and is prominently visible in the disputed domain name <hesperidefr.com>. The Complainant submits that the Disputed Domain Name and the Complainant's trademark are partially identical and otherwise similar.

The Complainant concludes that the Panel should rule that the Complainant has satisfied the requirements of the first element under the Policy.

Rights or Legitimate Interests

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

In particular, the Complainant asserts that the Complainant has not licensed or authorized the Respondent to use the Complainant's HESPERIDE trademark or to apply for a domain name incorporating that trademark.

The Complainant submits that there is no evidence that the Respondent is making legitimate non-commercial or fair use of the Disputed Domain Name, especially, as the Complainant says, the Disputed Domain Name resolves to a website reproducing the Complainant's HESPERIDE trademark and selling goods of the Complainant at low prices. The Complainant continues that consumers would believe that they were visiting the official website of the Complainant, as the website in question features, as the Complainant puts it, the official logo for HESPERIDE and pictures of the Complainant's products. The Complainant submits that it is clear that the Respondent has misappropriated copyrighted images from the Complainant's website and that this is not legitimate use of the Disputed Domain Name.

The Complainant concludes that it has satisfied the second element of the Policy.

Registered and Used in Bad Faith

The Complainant submits that bad faith under the Policy is broadly understood to occur when a respondent takes unfair advantage of or otherwise abuses a complainant's trademark and goes on to seek to demonstrate that the Respondent in this case has registered and used the Disputed Domain Name in bad faith.

In this connection, the Complainant notes that the Disputed Domain Name incorporates the HESPERIDE trademark in its entirety, thereby falsely giving the impression, as the Complainant puts it, that the website to which the Disputed Domain Name directs users is authorized or connected to the Complainant.

The Complainant submits that, as a result of what the Complainant has already set out, it is clear that the Complainant is well-known in its field of activity and that the Respondent must have had knowledge of the Complainant's rights when the Respondent registered the Disputed Domain Name. The Complainant submits that the Respondent must have been aware of the Complainant's HESPERIDE trademark, as the Disputed Domain Name resolves to a website featuring the Complainant's trademark and that this inevitably leads to a likelihood of confusion. The Complainant continues that internet users will erroneously believe that the Disputed Domain Name is a domain name operated and/or authorized by the Complainant, the Complainant never having given such authorization.

The Complainant continues that there can be no plausible explanation for the Respondent's selection of the mark HESPERIDE as part of the Disputed Domain Name other than to misleadingly divert internet users to the Respondent's website for commercial gain and that internet users would believe that the website in question was a genuine website of the Complainant.

The Complainant submits that the Panel should conclude that the third element of the Policy has been satisfied.

B. Respondent

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

6. Discussion and Findings

The Complainant must establish on the balance of probabilities that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; that the Respondent has no rights or legitimate interests in the Disputed Domain Name; and that the Disputed Domain Name has been registered and is being used in bad faith.

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 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 Complainant's HESPERIDE trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. Although the addition of other terms here, "fr" 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. Also, the addition of the Top-Level ("gTLD") ".com" does not prevent a finding of confusing similarity, as the addition of the gTLD is a technical requirement of registration [WIPO Overview 3.0](#) section 1.11.1.

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 disputed 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 case under the second element of the Policy 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 not submitted that it has been authorized or licensed to use the Complainant's HESPERIDE trademark as part of the Disputed Domain Name. Such use as has taken place of the Disputed Domain Name, resolving as it does to a website that features the Complainant's HESPERIDE trademark does not constitute legitimate or fair non-commercial use. Furthermore, the website does not contain a disclaimer of association (or lack thereof) with the Complainant.

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 Respondent has intentionally attempted to attract for commercial gain internet users by creating a likelihood of confusion with the Complainant's HESPERIDE trademark and that, hence the Disputed Domain Name has been registered and is being used in bad faith. It is a reasonable inference that the Respondent knew of the well-known HESPERIDE trademark of the Complainant when registering the Disputed Domain Name.

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 <hesperidefr.com> be transferred to the Complainant.

/Michael D. Cover/

Michael D. Cover

Sole Panelist

Date: June 13, 2024