

ADMINISTRATIVE PANEL DECISION

HAVENSMART, LLC v. Aleksejs Dubro

Case No. D2024-1586

1. The Parties

The Complainant is HAVENSMART, LLC, United States of America ("United States"), represented by Sandberg Phoenix and von Gontard P.C., United States.

The Respondent is Aleksejs Dubro, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <havensmart.online> 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 April 18, 2024. On April 19, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 22, 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 (John Doe / Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 23, 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 29, 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 30, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 20, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 29, 2024.

The Center appointed Manuel Moreno-Torres as the sole panelist in this matter on June 6, 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 home automation company based in the United States established in 2021.

The Complainant is the owner before the United States Patent and Trademark Office of the following trademark (among others):

HAVEN SMART with registration No. 7122625 dated July, 25 2023.

The Complainant holds the domain name <havensmart.com> since August 2, 2021 where it displays its official website.

The disputed domain name was registered on February 26, 2024 and, resolved to a website where moving services were offered and used as its business name, address, and its EIN (employer identification number) those of the Complainant. Currently the website is blocked.

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 HAVEN SMART trademark has become recognized in the United States and has accrued immense goodwill as a trusted brand.

The Complainant also alleges that the Respondent is not a licensee or a subsidiary of the Complainant and, has never been authorized by the Complainant to use HAVEN SMART mark. The Complainant also affirms that there is no evidence that Respondent is commonly known by the name "haven smart", nor is making a legitimate noncommercial or fair use of the disputed domain name.

The Complainant claims that the Respondent is intentionally trading off the Complainant's goodwill and well-known trademark to drive traffic away from the Complainant's site. Moreover, by using data business of the Complainant (business address, EIN and the Complainant's registered name "Havensmart,LLC", the Respondent gives the false impression that the website to which the disputed domain name resolves is related to, authorized by, or affiliated with the Complainant.

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 satisfy the Panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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.

There are no exceptional circumstances within paragraph 5(f) of the Rules to prevent the Panel from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a Response. Under paragraph 14(a) of the Rules in the event of such a "default" the Panel is still required "to proceed with a decision on the complaint", whilst under paragraph 14(b) it "shall draw such inferences there

from as it considers appropriate". This dispute resolution procedure is accepted by the disputed domain name registrant as a condition of registration.

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 mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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.

Further, the Panel also notes that the composition the disputed domain name <havensmart.online> carries a high risk of implied affiliation with the Complainants' HAVENSMART trademark. See [WIPO Overview 3.0](#), section 2.5.1. This finding is particularly strengthened in connection with the use of certain business data of the Complainant in the Respondent's site, i.e., the registered name of the Complainant, the business address and the EIN number.

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's conduct fits in the scenario depicted in paragraph 4(b)(iv) of the Policy, that said, the Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark.

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 Panel finds that using the disputed domain name identical to the Complainant's trademark in a website where business information of the Complainant is reproduced, as noted above, denotes prior knowledge of the Complainant, its business, and trademarks. Under these circumstances, the Panel finds that, on balance, the Respondent knew or should have known about the Complainant when registering the disputed domain name and therefore, it was registered in bad faith.

The Panel has tried to access the website to which the disputed domain name points but is blocked. The message that appears reads in Russian: "The reason for the blocking is in the Control Panel and in the letter on the account owner's mailbox" (English translation). Insofar the use of the disputed domain name appears to have ceased but it is in the hands of the Respondent, there is an abusive threat remaining over the Complainant and, the passive holding of the website does not prevent a finding of bad faith.

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 <havensmart.online> be transferred to the Complainant.

/Manuel Moreno-Torres/

Manuel Moreno-Torres

Sole Panelist

Date: June 20, 2024