

## **ADMINISTRATIVE PANEL DECISION**

**CKE Restaurants, Inc. v. Domain Privacy, Domain Name Privacy Inc**  
**Case No. D2024-1712**

### **1. The Parties**

Complainant is CKE Restaurants, Inc., United States of America (“United States”), represented by Brand Enforcement Team 101 Domain, United States.

Respondent is Domain Privacy, Domain Name Privacy Inc, Cyprus.

### **2. The Domain Name and Registrar**

The disputed domain name <hardees-uae.online> (the “Domain Name”) is registered with Communigal Communications Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 23, 2024. On April 24, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 25, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from named Respondent (Information not available on Whois) and contact information in the Complaint. The Center sent an email communication to Complainant on April 29, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on April 30, 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 Respondent of the Complaint, and the proceedings commenced on May 7, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 27, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on June 3, 2024.

The Center appointed Clive L. Elliott K.C., as the sole panelist in this matter on June 10, 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

CKE Restaurants, Inc is the parent company of Hardee's Restaurants LLC, a wholly-owned and controlled subsidiary, (together or individually referred to as "Complainant") operating a restaurant chain with over 1,800 franchised or company-operated restaurants across the United States and 13 other foreign countries.

Complainant was founded in 1960, operating in the restaurant industry and building worldwide brand recognition around their trade mark "HARDEE'S" (Complainant's Mark). Complainant is also the registered owner of the following marks, but not limited to:

Mark	Jurisdiction	Registration No.	Registration Date	Classes
<b>HARDEE'S</b>	United States	1,729,627	November 3, 1992	45, 46
HARDEES	Jordan	17738	November 24, 1979	30
HARDEE'S	European Union	000946285	July 6, 2000	29, 30, 42

Complainant's primary website "www.hardees.com" was created in 1998 and provides access for online customers to learn more about Complainant's franchise locations, and detailed product and market descriptions promoted under Complainant's Mark.

Complainant maintains an extensive brand portfolio of over 50 domain names consisting of country-code Top-Level Domain ("ccTLD") and generic Top-Level Domain ("gTLD") variations of Complainant's Mark including <hardees.ae>, <hardees.jo>, <hardees.com.jo>, and <hardees.international>.

The Domain Name was registered on December 8, 2023, and does not resolve to an active website but rather it resolves as a deceptive website.

#### 5. Parties' Contentions

##### A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

Notably, Complainant contends that the Domain Name is confusingly similar to Complainant's Mark as it contains Complainant's Mark in its entirety, together with the letters "uae", which is an accepted abbreviation for the geographical region of United Arab Emirates.

Complainant asserts that Respondent has no rights or legitimate interests in the Domain Name, and it has not licensed nor allowed Respondent to use Complainant's Mark for any purpose.

Complainant states that in the course of its monitoring of brand infringement it became aware that the Domain Name resolved to a security threat warning and found that the Domain Name contained MX records with active email services.

Complainant submits that Respondent has registered and is using the Domain Name in bad faith for the purpose of deceiving the public and preventing consumers from navigating to Complainant's true domain <hardees.com>, thereby disrupting the business of Complainant and tarnishing Complainant's Mark.

## **B. Respondent**

Respondent did not reply to 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 Complainant's Mark and the Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

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 Complainant's Mark is certainly recognizable within the Domain Name. That is, on the basis that the Domain Name differs only to the extent of not having an apostrophe. However, only certain of Complainant's registered marks have an apostrophe, so it is not an essential feature of the trade mark registrations. Accordingly, the 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 "uae" 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 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 Respondent may demonstrate rights or legitimate interests in a 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 respondent lacks rights or legitimate interests, the burden of production on this element shifts to respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the Domain Name (although the burden of proof always remains on complainant). If respondent fails to come forward with such relevant evidence, complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the Domain Name. Respondent has not rebutted Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Name such as those enumerated in the Policy or otherwise.

Of particular significance in the present case, it is alleged that the Domain Name does not resolve to an active website and resolves to a security threat warning webpage and that the Domain Name contained mail exchanger (MX) records with active email services. Previous panels have found that activity such as here potential phishing and distributing malware does not confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Accordingly, 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 Respondent has engaged in questionable activities, namely allegedly using the Domain Name to resolve to a security threat warning webpage and embedding the Domain Name in MX records. While it is unclear how Respondent generates commercial gain from such activities, the Panel infers that Respondent is achieving some commercial gain and confusing Internet users.

Panels have held that the use of a domain name for illegal activity, here potential phishing and distributing malware, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent's registration and use of the Domain Name constitutes bad faith under the Policy.

Furthermore, from the inception of the UDRP, panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding; this is especially so where the disputed domain name is inherently deceptive.

The Panel finds that 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 Domain Name <hardees-uae.online> be transferred to Complainant.

*/Clive L. Elliott, K.C./*

**Clive L. Elliott, K.C.**

Sole Panelist

Date: June 25, 2024