

ADMINISTRATIVE PANEL DECISION

HigherDOSE LLC v. Jofra Ayden

Case No. D2024-1842

1. The Parties

The Complainant is HigherDOSE LLC, United States of America (“United States”), represented by Bass, Berry & Sims PLC, United States.

The Respondent is Jofra Ayden, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <higherdoser.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 1, 2024. On May 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 2, 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 May 7, 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 May 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 May 13, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 2, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 5, 2024.

The Center appointed Taras Kyslyy as the sole panelist in this matter on June 14, 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 provider of infrared saunas, infrared sauna blankets, and at-home spa products. The Complainant opened its first infrared sauna in a luxury spa in New York City in 2016. Soon thereafter, it expanded into numerous high-end spas throughout New York City. By 2020 the Complainant expanded its reach by selling infrared saunas and at-home spa products in mass throughout the United States, through hundreds of online and brick and mortar retailers, as well as in other countries, including Canada and throughout Europe. The Complainant asserts that since at least 2016 it has invested in protecting and marketing the HIGHER DOSE trademark, devoting tens of thousands of USD to advertising and promoting its services throughout the United States and in other countries. It further claims that its page on Instagram has almost 200,000 followers, and its products have been promoted by well-known celebrities and influencers, such as Ricki Lake, Amy Schumer, Kate Hudson, and Bethenny Frankel. In the last three years alone, the Complainant has earned substantial market-share and revenue from the sale of its products.

The Complainant owns numerous registrations of its HIGHER DOSE trademark in various jurisdictions, including for instance the United States trademark registration No. 5481364, registered on May 29, 2018.

The Complainant has its website at “www.higherdose.com”.

The disputed domain name was registered on February 23, 2024, and resolves to a website mocking the Complainant’s website and falsely pretending to be of the Complainant. The website at the disputed domain name is suggesting customers to share their personal credentials promising discounts for the Complainant’s products.

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 identical or confusingly similar to the Complainant’s trademark. The disputed domain name incorporates the entirety of the Complainant’s trademark and is both visually and phonetically identical to the Complainant’s trademark, further heightening the likelihood of confusion. The disputed domain name is confusingly similar to the Complainant’s globally known and valuable trademark and the Respondent’s use of the disputed domain name will cause consumers mistakenly to believe that the associated website is affiliated with or owned by the Complainant.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is merely using the disputed domain name to trade on the good name and reputation of the Complainant and its trademark in furtherance of the Respondent’s unlawful and unauthorized activities. The Complainant has not licensed or otherwise permitted the Respondent to use the Complainant’s trademark. There is no evidence or reasonable inference that the Respondent is currently known, or has ever been known, as “higherdose” or the owner of any trademarks or service marks consisting of “higherdose” or any variation thereof. The disputed domain name resolves to a retail site bearing a nearly identical copy of the Complainant’s website page for its ID.me program, incorporating the Complainant’s copyrighted material. The Respondent falsely represents that it is actually the Complainant, as evidenced by the banner at the bottom of the website at the disputed domain name. The Respondent is using the disputed domain name to falsely induce first responders, medical professionals, and government employees to provide personal credentials with the false promise of a special discount for the Complainant’s products. Phishing activities cannot be considered bona fide offerings of goods or service nor legitimate noncommercial or fair use.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. The disputed domain name is being used to divert Internet users seeking the Complainant's website with the ultimate motive to gain a profit, thereby disrupting the Complainant's business. The Respondent has been using the disputed domain name to fraudulently lure unsuspecting consumers to purchase items that the consumers may believe to be offered/provided by the Complainant. The disputed domain name resolves to a retail site bearing a nearly identical copy of the Complainant's website page for its ID.me program incorporating the Complainant's copyrighted material. The Respondent falsely represents that it is actually the Complainant. The Respondent is falsely inducing medical professionals, government employees, and first responders to provide personal credentials with the false promise of a special discount for the Complainant's products via the website at the disputed domain name. The Respondent is using the disputed domain name in bad faith since it does not have rights to use the Complainant's trademark. The Respondent's registration of the disputed domain name was with prior knowledge of the Complainant's famous trademark, which was in use and registered for years prior to the Respondent's registration of the disputed domain name. Because the Respondent's knowledge and intention may be determined by common sense inferences from circumstantial evidence, it can be inferred that the Respondent knew of the Complainant's business and the Complainant's well-known trademark. At the very least, the Respondent has constructive knowledge of the Complainant's widely known trademark and even assuming arguendo that the Respondent did not have actual knowledge, the Respondent would have also become aware of the Complainant's trademark by conducting a simple Internet search for the name it was choosing to register as the disputed domain name. The Respondent has opted to register the disputed domain name through a privacy service, which should be considered further evidence of bad faith in light of the Respondent's activities in connection with the disputed domain name.

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 (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 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, letter "r", may bear on assessment of the second and third elements, the Panel finds the addition of such letter 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 available evidence does not confirm that the Respondent is commonly known by the disputed domain name, which could demonstrate its rights or legitimate interests (see, e.g., *World Natural Bodybuilding Federation, Inc. v. Daniel Jones, TheDotCafe*, WIPO Case No. [D2008-0642](#)).

The disputed domain name directs Internet users to a website with a logo similar to the Complainant’s and designed similarly to the Complainant’s website to make the Internet users believe that they actually access the Complainant’s website. Past UDRP panels confirmed that such actions prove registrant has no rights or legitimate interests in a disputed domain name (see *Daniel C. Marino, Jr. v. Video Images Productions, et al.*, WIPO Case No. [D2000-0598](#), *Houghton Mifflin Co. v. Weatherman, Inc.*, WIPO Case No. [D2001-0211](#)).

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

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 the Respondent after registering the disputed domain name incorporating the Complainant’s trademark placed the website mocking the Complainant’s respective website and falsely pretending to be of the Complainant. The Panel finds this confirms the Respondent was aware and targeted the Complainant and its trademark when registering the disputed domain name, which is bad faith.

According to paragraph 4(b)(iv) of the Policy the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith: by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location. In this case, the disputed domain name is resolving to a website mocking the Complainant’s website and falsely pretending to be an official Complainant’s website to intentionally attract Internet users by creating likelihood of confusion with the Complainant’s trademark as to the source of the website and its products. The Panel finds the above confirms the disputed domain name was registered and is being used in bad faith.

Panels have held that the use of a domain name for illegal activity here, claimed, impersonation/passing off, 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 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 <higherdoser.com> be transferred to the Complainant.

/Taras Kyslyy/

Taras Kyslyy

Sole Panelist

Date: June 27, 2024