

ADMINISTRATIVE PANEL DECISION

The Kraft Heinz Company v. David Buskirk
Case No. D2024-1860

1. The Parties

The Complainant is The Kraft Heinz Company, United States of America (“United States”), represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is David Buskirk, United States.

2. The Domain Name and Registrar

The disputed domain name <krafthienz.com> 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 May 2, 2024. On May 3, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 3, 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 (Registration Private/ Domains By Proxy, LLC DomainsByProxy.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 6, 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 9, 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 a formal response but did send an informal email communication to the Center on May 10, 2024. Accordingly, the Center notified Commencement of Panel Appointment Process on June 10, 2024.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on June 13, 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, a publicly traded company formed in 2015 through the merger of Kraft Foods Group, Inc. and H.J. Heinz Holding Corporation, is one of the world's largest food and beverage companies. Headquartered in Pittsburgh, Pennsylvania, United States, the Complainant operates globally and reported worldwide sales in 2023 of approximately USD 27 billion. The Complainant operates a principal website at "www.kraftheinzcompany.com".

Since the 2015 merger, the Complainant and its operating companies are licensed to use the numerous KRAFT and HEINZ and derivative trademarks registered in multiple jurisdictions by the Complainant's subsidiaries Kraft Foods Group Brands LLC, H.J. Heinz Foods UK Limited, H. J. Heinz US Brands LLC, and H.J. Heinz Company Brands LLC. These include the following registrations:

Mark	Jurisdiction	Registration Number	Registration Date	Goods or Services
KRAFT (word)	United States	0670330	November 25, 1958	Fruits, juices, soup bases, desserts, etc., IC 1, 5, 29, 30, 31, and 32
KRAFT (word)	European Union	000148403	February 1, 1999	Meat products, sauces, juices, etc., IC 29, 30, and 32
HEINZ (word)	United States	62182	April 23, 1907	Pickles, sauces, soups, etc., IC 1, 5, 29, 30, 31, and 32
HEINZ (word)	European Union	000178467	February 1, 1999	Foods and beverages; meat products; sauces and dressings; agricultural products; juices; IC 5, 29, 30, 31, and 32
KRAFT HEINZ (word)	China	47340567	February 28, 2021	Foodstuffs of animal origin, IC 29
KRAFT HEINZ (word)	China	47358664	February 28, 2021	Foodstuffs of plant origin, IC 30

The Registrar reports that the disputed domain name was created on March 25, 2015. A press release attached to the Complaint shows that this was the same day that the proposed merger creating the Complainant was announced. (The Panel notes that this announcement was covered in national and international media on that day, as cited in the Wikipedia article on "Kraft Heinz".) The disputed domain name was registered in the name of a domain privacy service, but after receiving notice of the Complaint in this proceeding, the Registrar identified the underlying registrant as the Respondent, as individual showing no organization and listing a postal address in the State of North Carolina, United States and a gmail contact email address. The disputed domain name was hosted on a name server at "www.cashparking.com" but resolved to a blank landing page at the time of the Complaint and at the time of this Decision. There was no archived record of websites previously associated with the disputed domain name.

The Complainant reports sending a cease-and-desist letter to the Respondent through the Registrar but receiving no reply. This proceeding followed.

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 its registered KRAFT, HEINZ, and KRAFT HEINZ trademarks, merely inverting the letters "e" and "i" in the HEINZ and KRAFT HEINZ marks. The Complainant denies any association with the Respondent or any license to the Respondent to use the Complainant's marks. The Complainant asserts that there is no evidence that the Respondent is known by a corresponding name or otherwise has rights or legitimate interests in the disputed domain name. Rather, given the fame of the Complainant's marks, the Complainant argues that it is not possible to conceive that the Respondent was unaware of them, and the registration of the disputed domain name on the day of the Complainant's announced merger to create a new company merging the two long-established brands cannot be coincidental. The Complainant argues further that the non-use of the disputed domain name for an active website does not prevent a finding of bad faith, citing the "passive holding" doctrine following *Telstra Corp. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) (*Telstra*), and other WIPO UDRP decisions.

B. Respondent

The Respondent did not submit a formal Response. As noted above, the Respondent sent an email to the Center, reading in part as follows:

"The domain in question is krafthienz.com is not infringing with the USPTO as the name 'hienz' is not infringing on the name brand 'Heinz'.

This is a frivolous attempt to steal a domain that a party has no legal rights to. Period.

This domain in question was registered in for a crafting e-commerce site 'krafthienz' a phonetic take on 'craft things'

There is absolutely no grounds for dispute and this strong-arming will not sit well in the media. ...

I can be contacted directly to discuss releasing the domain to another registrar for a fee, but I refuse to be a victim to this bullying by CSC and parties."

In assessing the Respondent's remarks about the registration of the disputed domain name, the Panel must take into account the lack of a certification of accuracy and completeness, as required for a Response under the Rules, paragraph 5(c)(viii), as well as the lack of supporting evidence or argumentation.

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that a complainant must demonstrate each of the following:

- (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) and the respondent has no rights or legitimate interests in respect of the domain name;
- (iii) and the domain name has been registered and is being used in bad faith.

Under paragraph 15(a) of the Rules, "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

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. Here, the Complainant has rights in the registered KRAFT, HEINZ, and KRAFT HEINZ marks held by certain of its subsidiaries for the use of the Complainant and its group of companies.

The entirety of the KRAFT mark is reproduced within the disputed domain name. The HEINZ and KRAFT HEINZ marks are recognizable within the disputed domain name, which merely inverts the letters "e" and "i" in an apparent instance of typosquatting. The disputed domain name is confusingly similar visually and phonetically to the Complainant's marks. Accordingly, the Panel finds that the disputed domain name is confusingly similar to all three of these marks for the purposes of the Policy. [WIPO Overview 3.0](#), sections 1.7, 1.9.

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. There is no evidence that the Respondent is known by a corresponding name. In nearly nine years since the disputed domain name was created, it does not appear that it has been put to legitimate commercial or noncommercial fair use. The Respondent's email to the Center suggests a strained reading of the disputed domain name ("a phonetic take on 'craft things'") for a possible use in connection with a "crafting e-commerce site" but offers no evidence of demonstrable preparations for such a website as required by the Policy, paragraph 4(c)(ii), to support a claim of rights or legitimate interests.

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 the Respondent was likely aware of the well-known and long-established KRAFT and HEINZ marks when the Respondent acquired the disputed domain name. The Respondent does not deny such prior awareness in the Respondent's email to the Center but argues that the misspelling "hienz" makes the disputed domain name non-infringing. The timing of the registration of the disputed domain name on the day of the Kraft – Heinz merger announcement is damning. It is highly unlikely to be coincidental and strongly suggests both awareness of the established KRAFT and HEINZ marks and the impending emergence of a new KRAFT HEINZ mark. See [WIPO Overview 3.0](#), section 3.8.2 (domain names registered in anticipation of trademark rights).

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.

Panels have found that the non-use of a domain name, including a blank landing page as in this case, would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. The Panel notes in this case the distinctiveness and reputation of the Complainant's trademarks and the composition of the disputed domain name and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy as an instance of opportunistic typosquatting.

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 <krafthienz.com> be transferred to the Complainant.

/W. Scott Blackmer/
W. Scott Blackmer
Sole Panelist
Date: June 27, 2024