

## **ADMINISTRATIVE PANEL DECISION**

### **Hilidun Corporation v. Vincent PENARD**

### **Case No. D2024-2798**

#### **1. The Parties**

1.1 The Complainant is Hilidun Corporation, United States of America (“United States”), represented by Otterbourg P.C., United States.

1.2 The Respondent is Vincent PENARD, France.

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

2.1 The disputed domain name <hilidun.com> (the “Domain Name”) is registered with Wild West Domains, LLC (the “Registrar”).

#### **3. Procedural History**

3.1 The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 9, 2024. At that time, publicly available Whois details for the Domain Name identified the registrant as “Registration Private, Domains By Proxy, LLC”. On July 10, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On July 10, 2024, the Registrar transmitted by email to the Center its verification response disclosing the underlying registrant details in respect of Domain Name. The Center sent an email to the Complainant on July 11, 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 amendment to the Complaint on the same date.

3.2 The Center verified that the Complaint together with the amendment to the 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”).

3.3 In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on July 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 1, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 2, 2024.

3.4 The Center appointed Matthew S. Harris as the sole panelist in this matter on August 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**

4.1 The Complainant is a financing company based in New York, United States and has been active in the apparel industry since 1958. It provides traditional factoring services (credit and collection) and advances (loans) against accounts receivable, inventory, and orders.

4.2 The Complainant is also the owner of United States Registration No. 7,061,415 in class 36 registered on May 23, 2023, and claiming a first use in commerce in 2012. The mark consists of the letter “H” above the word “HILLDUN”, all in stylised lettering. It also uses the domain name <hilldun.com> in respect of its business.

4.3 The Domain Name was registered on June 25, 2024. The Respondent has used the Domain Name to impersonate the Complainant and its employees. In this respect, from the date of registration of the Domain Name, it has been used as part of the email address of someone purporting to be an employee of the Complainant requesting certain information from one of the Complainant’s customers in the United States. The Complainant has confirmed that employee neither sent nor authorised the sending of these emails.

4.4 Details provided in the registration of the Domain Name, but otherwise unconfirmed, suggest that the Respondent is an individual based in France.

#### **5. Parties’ Contentions**

##### **A. Complainant**

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

5.2 The Complainant contends so far as trade mark rights are concerned, that in addition to the United States registered trade mark identified above, it is also the owner of common law trade mark rights in the term HILLDUN and claims that those rights were recognised in *Hilldun Corporation v. Domain Administrator*, WIPO Case No. [DCO2023-0042](#). It claims that the Domain Name is “virtually identical to Hilldun’s name”. It also asserts that the use made of the Domain Name involves impersonation and fraud and that this cannot confer rights or legitimate interests and that such use demonstrates registration and use of the Domain Name in bad faith.

##### **B. Respondent**

5.3 The Respondent did not reply to the Complainant’s contentions.

#### **6. Discussion and Findings**

##### **A. Identical or Confusingly Similar**

6.1 It is generally 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 trade mark and the Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”), section 1.7.

6.2 The Panel finds the Complainant has shown rights in respect of a registered trade mark of which the term “Hilldun” is a significant part. The Panel also finds that the term “Hilldun”, and therefore that mark, is recognisable within the Domain Name. The reason for this is that the Domain Name involves a combination of the text “Hilidun” with the generic Top-Level Domain (“gTLD”) “.com”. The only difference between “Hilldun” and “Hilidun” is that the letter “l” has been replaced by the letter “i”. That substitution is likely to go unnoticed by many persons that encounter the Domain Name. The Panel is also satisfied, given the use that has been made of the Domain Name, that the Respondent has registered and used the Domain Name in the hope and expectation that it would not be so noticed. Accordingly, the Domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.9.

6.3 The Panel also accepts that it is likely that the Complainant also holds unregistered trade mark rights in the term “Hilldun”, in light of the fact that the Complainant has been in business since 1958 (presumably using this name, notwithstanding the claimed first use in commerce of the registered trade mark) and the finding of the Panel in *Hilldun Corporation v. Domain Administrator*, WIPO Case No. [DCO2023-0042](#). The difficulty here is that notwithstanding the finding in that case, it is for the Complainant independently to evidence those rights in the current proceedings (see [WIPO Overview 3.0](#), section 1.3) and the evidence filed in support of that contention in these proceedings is sparse. However, given the Panel’s conclusions in respect of the Complainant’s registered trade mark, it is not necessary to consider this issue further.

6.4 Accordingly, the first element of the Policy has been established.

## **B. Rights or Legitimate Interests and Registered and Used in Bad Faith**

6.5 It is usual for panels under the Policy to consider the issues of rights or legitimate interests and registration and use in bad faith in turn. However, in this case it is more convenient to consider those issues together. [WIPO Overview 3.0](#), section 2.15.

6.6 The Panel accepts that the Domain Name has been deliberately registered in order to falsely impersonate the Complainant and at least one of its employees, and that this is most likely to be for some form of financial gain. Exactly what is going on here and how this fraud operates is a little hard to follow. For example, the Complainant in support of its allegations exhibits and appears to rely upon emails that have dates that pre-date the registration of the Domain Name and which on their face appear to come from email addresses that use the <hilldun.com> domain name. Presumably, they did not come from such email addresses, but this is not addressed or explained. However, the Complainant has provided later emails that are using the Domain Name, and which falsely purport to be coming from an employee of the Complainant. These emails also seek personal information in order to address multiple payments of an invoice. The Panel, therefore, accepts that the Domain Name was registered, used and held in furtherance of some form of fraud.

6.7 There is obviously no right or legitimate interest in holding a domain name for the purpose of furtherance of a fraud through impersonation (see section 2.13 of the [WIPO Overview 3.0](#)), and the fact that a domain name is or has been used for such a purpose is evidence that no such right or legitimate interest exists. Further, the registration and use of a domain name for such a purpose involves registration and use in bad faith (see section 3.4 of the [WIPO Overview 3.0](#)). Arguably such activities fall with the scope of the example circumstances evidencing bad faith registration set out in paragraph 4(b)(iv) of the Policy. However, whether or not this is so, it is difficult to conceive of a more clear-cut example of bad faith registration and use of a domain name.

6.8 In the circumstances, the Panel finds that the second and third elements of the Policy have been established.

## 7. Decision

7.1 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 <hilidun.com> be transferred to the Complainant.

*/Matthew S. Harris/*

**Matthew S. Harris**

Sole Panelist

Date: August 7, 2024