

ADMINISTRATIVE PANEL DECISION

Rheem Manufacturing Company v. Josh Shampo
Case No. D2024-2883

1. The Parties

The Complainant is Rheem Manufacturing Company, United States of America (“United States”), represented by Eversheds Sutherland (US) LLP, United States.

The Respondent is Josh Shampo, United States.

2. The Domain Name and Registrar

The disputed domain name <htpgusa.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 July 16, 2024. On July 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 16, 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 (Domains by Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 18, 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 July 18, 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 July 24, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 13, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 16, 2024.

The Center appointed Ingrīda Kariņa-Bērziņa as the sole panelist in this matter on August 27, 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 an American company that manufactures commercial and residential air and water heating and cooling equipment and parts under the HTPG mark. It is the proprietor of United States Registration No. 4563756 for HTPG (word mark), registered on July 8, 2014, for services in class 40, claiming a date of first use in 2003.

The Complainant operates its primary business website at the domain name <htpg.com>, which it registered on December 7, 2002.

The disputed domain name was registered on March 3, 2010. The record states that the registration was updated on November 17, 2023. At the time of this Decision, it resolved to a website on which it was offered for sale for 1,400 USD. The record contains evidence that it previously resolved to an e-commerce website purporting to offer refrigeration and cooling equipment under the HTPG mark.

The record contains no information about the Respondent.

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 incorporates its HTPG mark in full and merely adds the abbreviation for the United States, the country in which the Complainant is headquartered and in which it operates. The Complainant claims common-law rights in respect of its HTPG mark from 2003. The Complainant's goods are among the most famous and well-known refrigeration and cooling products in the United States and throughout the world. The Complainant's website at the domain name <htpg.com>, registered in 2002, prominently displays its mark and stylized logo. The website located at the disputed domain name advertises commercial and industrial refrigeration and cooling equipment using the Complainant's mark. The Respondent's website prominently features the Complainant's HTPG mark and logo, references the Complainant's other brands, and purports to offer identical goods for sale. Contact information provided on the Respondent's website is identical to the locations of the Complainant's facilities. There is no information on the Respondent's website to clarify that the Respondent had no relationship with the Complainant. The Respondent clearly had knowledge of the Complainant as the disputed domain name was registered more than 20 years after the Complainant first used the HTPG mark in commerce.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Paragraph 4(a) of the UDRP requires the Complainant to make out all three of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the Respondent has registered and is using the disputed domain name 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. The Panel notes that the Complainant's HTPG mark was registered at the time of the Complaint, which, according to UDRP practice, is the relevant date for purposes of evaluating the Complainant's standing under the first element. [WIPO Overview 3.0](#), section 1.1.3.

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, "usa") may bear on assessment of the second and third elements, the Panel finds the addition of such a term 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 Panel finds that the disputed domain name, which reflects the Complainant's HTPG mark in its entirety plus an abbreviation for the United States, resolved to a website featuring the Complainant's HTPG mark and logo and offering similar products. There is no evidence that the Respondent has any right to use the Complainant's HTPG mark. Evidence of such activity indicates the Respondent's lack of rights or legitimate interests.

Panels have held that the use of a domain name for illegal activity (here, claimed impersonation/passing off) can never confer rights or legitimate interests on a respondent. The Panel notes that the Respondent's website contain unambiguous references to the Complainant, such as copying the Complainant's logo, providing its contact information, and offering similar products for sale. [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.

The Complainant asserts that the registration of the domain name post-dates the first use in commerce of the Complainant's HTPG mark by 20 years. From the information available in the record, the Panel surmises that the Complainant therefore considers that the disputed domain name was registered in 2023, when the registration was updated, rather than in 2010, when the disputed domain name was first created. The record shows that the HTPG trademark was registered in 2014.

It is well settled that transfer to a third party would amount to a new registration. The issue in this case is whether the circumstances support a finding of a new registration in 2023, or rather a formal change or update to a 2010 registration under the continued control of the same owner. According to UDRP practice, facts or circumstances supporting an inference that a change in registrant has occurred may typically include a change in the content of the website to which a domain name directs to take advantage of the complainant's mark or unsolicited attempts to sell the domain name to the complainant only following such asserted change in registrant. [WIPO Overview 3.0](#), section 3.9.

In this case, the record is silent on the timing of the establishment of the Respondent's website and any changes thereto. The Complainant makes no specific assertions regarding any change in registrant, and the available facts do not allow the Panel to draw conclusions regarding a possible change in registrant.

According to UDRP practice, where a domain name has been registered before a complainant has acquired trademark rights, only in exceptional cases would a complainant be able to prove a respondent's bad faith. [WIPO Overview 3.0](#), section 3.8.2. Accordingly, the Panel must consider whether the record supports a finding that the Complainant had established rights in its HTPG mark as of 2010, the date that the disputed domain name was first registered.

To establish unregistered or common law trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant's goods and/or services. [WIPO Overview 3.0](#), section 1.3. The evidence in the record supports a finding that the Complainant has provided evidence to support a finding that it had established unregistered trademark rights dating from 2003, when the HTPG mark was first used in commerce. The Panel notes the duration and nature of the use of the HTPG mark in connection with heating and cooling services. The Complainant registered its domain name at <htpg.com> in 2002 and the United States registration for the HTPG mark claims a date of first use in 2003. The Panel finds that the HTPG mark is not descriptive in respect of the goods and services for which the Complainant claims rights. Finally, the Panel finds that the Respondent's specific targeting of the Complainant supports the Complainant's assertion that its mark has achieved significance as a source identifier. [WIPO Overview 3.0](#), section 1.3.

Accordingly, in the present case the Panel notes that the Respondent intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark. The disputed domain name was registered several years after the Complainant established rights in its HTPG trademark. It reflects the Complainant's mark in its entirety plus a reference to the United States, where the Complainant conducts its business, therefore implying a connection to the Complainant. Under these circumstances, the Panel finds that the disputed domain name was registered and used in bad faith. [WIPO Overview 3.0](#), section 3.1.4.

Panels have held that the use of a domain name for illegal activity (here, claimed impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. The record contains evidence that the disputed domain name resolved to a website featuring the Complainant's mark, the Complainant's office locations and contact information, and purporting to offer for sale products identical to those offered by the Complainant. Such conduct is clearly indicative of bad faith use of the disputed domain name. 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 <htpgusa.com> be transferred to the Complainant.

/Ingrīda Kariņa-Bērziņa/

Ingrīda Kariņa-Bērziņa

Sole Panelist

Date: September 10, 2024