

ADMINISTRATIVE PANEL DECISION

Hill Mechanical Corp. a/k/a The Hill Group v. Debi Draft, [Name Redacted]
Case No. D2024-3461

1. The Parties

Complainant is Hill Mechanical Corp. a/k/a The Hill Group, United States of America (“United States” or “U.S.”), represented by Berger, Newmark & Frenchel, United States.

Respondent is Debi Draft, [Name Redacted]¹, United States.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 24, 2024. On August 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On August 28, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (“UNKNOWN OWNER OF WWW.HILLQRP.COM”) and contact information in the Complaint. The Center sent an email communication to Complainant on September 2, 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 September 7, 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”).

¹ The Respondent appears to have used the name of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on September 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 30, 2024. On September 16, 19 and 26, 2024, emails and a submission were filed by Landry Legal, PLLC representing [Name Redacted] claiming that they were not the true registrant of the Domain Name and that their contact information had been used without authorization.

The Center appointed John C. McElwaine as the sole panelist in this matter on October 9, 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

Complainant is a group of companies that provides HVAC and plumbing construction and servicing, fire protection, and other services to building owners and managers in the greater Chicago, Illinois area and throughout the midwestern United States.

The Domain Name was registered on August 7, 2024. At the time of filing the Complaint, the Domain Names did not resolve to an active website. However, the Domain Name was used as part of an email address for a business email compromise fraud.

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.

Complainant asserts the following facts in support of having valid unregistered, or common law, trademark rights. Complainant contends it has used "The Hill Group" as its trademark continuously since 2010 when it updated its marketing strategy and shortened its assumed name from "Hill Mechanical Group". Complainant asserts that it has used "The Hill Group" on its website at "www.hillgrp.com" since March 2011, and has continuously used this mark in trade and commerce. Complainant also contends that it maintains Facebook and LinkedIn accounts under the name "The Hill Group", with nearly 1,000 Facebook followers and 7,000 LinkedIn followers; that it participates in engineering job fairs at major universities as "The Hill Group"; that trade publications have referred to Complainant as "The Hill Group"; and that its invoices to customers and customer purchase orders contain the mark "The Hill Group". Complainant alleges that it has generated substantial revenues while using the HILL GROUP mark, amounting to over USD 1.6 billion in the last five years. Complainant asserts that these allegations collectively demonstrate that "The Hill Group" has acquired secondary meaning, and that Complainant has established common law trademark rights in the HILL GROUP trademark (hereinafter, the "HILL GROUP Mark").

Regarding the first element, Complainant asserts that the Domain Name is confusingly similar to HILL GROUP Mark. Complainant argues that the Domain Name incorporates the distinctive part of its mark, "HILL", and adds the letters "grp", which are visually similar to "grp" in Complainant's domain name.

Concerning the second element, Complainant states that it has not authorized Respondent to use its mark or register domain names incorporating the mark. Complainant alleges that Respondent is using the Domain Name for fraudulent email communications impersonating Complainant, which cannot constitute a bona fide offering of goods or services or a legitimate noncommercial or fair use.

As for the third element, Complainant contends that Respondent registered and is using the Domain Name in bad faith. Complainant points to Respondent's use of the Domain Name for fraudulent email

communications attempting to divert payments from Complainant's customers, which Complainant argues intentionally trades on the goodwill of its mark to attract Internet users for commercial gain.

B. Respondent

A submission was filed by [Name redacted]'s attorney, stating that they are not the true registrant of the Domain Name. They claim that the Domain Name was neither registered nor used by them. They assert that while the address listed in the domain name registration matches their office address, other details are incorrect. They state that the phone number provided is not associated with them, and the business name is misspelled. They argue that these discrepancies indicate that a third party has used false information, including their name and address, in an attempt to obscure their identity and create a misleading connection with them.

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

6. Discussion and Findings

To succeed in this UDRP proceeding, paragraph 4 of the Policy requires Complainant to prove its assertions with evidence demonstrating:

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

Because the submission filed was from a third party unrelated to the registration of the Domain Name, there was no substantive response filed to the allegations of the Complaint, and the Panel may accept as true the reasonable factual allegations stated within the Complaint and may draw appropriate inferences therefrom. See *St. Tropez Acquisition Co. Limited v. AnonymousSpeech LLC and Global House Inc.*, WIPO Case No. [D2009-1779](#); *Bjorn Kassoe Andersen v. Direction International*, WIPO Case No. [D2007-0605](#); see also paragraph 5(f) of the Rules ("If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint").

Having considered the Complaint, the Policy, the Rules, the Supplemental Rules, and applicable principles of law, the Panel's findings on each of the above-cited elements are as follows.

A. Identical or Confusingly Similar

The Panel finds that Complainant has established common law trademark rights in the HILL GROUP Mark through its continuous use since 2010 and the evidence of acquired distinctiveness. As stated in section 1.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), to establish unregistered or common law trademark rights, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant's goods and/or services.

The Domain Name incorporates the dominant part of Complainant's HILL GROUP Mark and adds the letters "qrp, which is a typo of "GRP", which is an abbreviation of GROUP and used in Complainant's domain name, <hillgroup.com>. As discussed in the [WIPO Overview 3.0](#), section 1.9, the consensus view is that "a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element". Similarly, previous UDRP panels have consistently held that "a mere addition or a minor misspelling of Complainant's trademark does not create a new or different mark in which Respondent has legitimate rights". *Express Scripts, Inc. v.*

Whois Privacy Protection Service, Inc. / Domaindeals, Domain Administrator, WIPO Case No. [D2008-1302](#) (“Such insignificant modifications to trademarks is commonly referred to as ‘typosquatting’ or ‘typo-piracy,’ as such conduct seeks to wrongfully take advantage of errors by users in typing domain names into their web browser’s location bar.”) Therefore, the Panel concludes that the Domain Name is confusingly similar to Complainant’s HILL GROUP Mark and Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

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 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 Policy² or otherwise.

As an initial matter, there is no evidence that Respondent is commonly known by the Domain Name. The Panel therefore finds, based on the record and the lack of evidence otherwise, that Respondent is not commonly known by the Domain Name, which was most likely false in furtherance of Respondent’s fraudulent scheme. See *Moncler S.p.A. v. Bestinfo*, WIPO Case No. [D2004-1049](#) (“the Panel notes that the respondent’s name is “Bestinfo” and that it can therefore not be “commonly known by the Domain Name.”)

The Panel finds that the purpose of registering the Domain Name was to engage in a fraudulent scheme, which is not a bona fide offering of goods or services. [WIPO Overview 3.0](#), section 2.13.1 (“Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.”); see also, *Startup Group v. Whois Agent, Domain Protection Services, Inc. / Dominique Geffroy*, WIPO Case No. [D2020-3303](#) (finding an employment offer scam to be an example of use of a domain name for the illegitimate purpose of impersonating the complainant in the furtherance of a fraudulent scheme).

The Panel finds that Respondent does not have rights or legitimate interests in the Domain Name and that Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, Complainant must show that Respondent registered and is using the Domain Name in bad faith. A non-exhaustive list of factors constituting bad faith registration and use is set out in paragraph 4(b) of the Policy.

² The Policy, paragraph 4(c), provides a non-exhaustive list of circumstances in which a respondent could demonstrate rights or legitimate interests in a contested domain name:“(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

Here, the evidence demonstrates that Respondent registered the Domain Name to perpetrate a fraudulent scheme. Complainant's HILL GROUP Mark was intentionally chosen when the Domain Name was registered with the intent to impersonate Complainant for the purpose of targeting its customers to engage in fraud. Knowledge of Complainant's business and its HILL GROUP Mark is established by the use of Complainant's HILL GROUP Mark, its correct domain name, and the title "Service A/R Coordinator" in the signature line of the fraudulent email. In light of the evidence proving the fraudulent use of the Domain Name, there could be no other legitimate explanation except that Respondent intentionally registered the Domain Name to cloak its actions and deceive recipients into believing the emails were from Complainant. Such activity constitutes a disruption of Complainant's business and also establishes bad faith registration and use. *Securitas AB v. Whois Privacy Protection Service, Inc. / A. H.*, WIPO Case No. [D2013-0117](#) (finding bad faith based upon the similarity of the disputed domain name and the complainant's mark, the fact that the complainant is a well-known global security company and the fact that the disputed domain name is being used to perpetrate an email scam.) In addition, registering a domain name with false contact details is commonly held to be bad faith under the Policy. See *Hermes International v. Jack Yong*, WIPO Case No. [D2017-1959](#) ("the fact of a non-existent postal address is difficult to explain"); *TBWA Worldwide, Inc. v. Karim Bendali*, WIPO Case No. [D2019-1932](#) (the postal address revealed by the Registrar was not accurate).

The use of the Domain Name to conduct fraud constitutes a disruption of Complainant's business and also establishes bad faith registration and use pursuant to paragraph 4(b)(iii) of the Policy. *Securitas AB v. Whois Privacy Protection Service, Inc. / A. H.*, WIPO Case No. [D2013-0117](#) (Finding bad faith based upon the similarity of the disputed domain name and the complainant's mark, the fact that the complainant is a well-known global security company, and the fact that the disputed domain name is being used to perpetrate an email scam.) As discussed above, Respondent used several other indicia of Complainant in addition to the Domain Name when communicating with third parties with the fraudulent purpose. In light of the actions undertaken by Respondent, it is inconceivable that Respondent coincidentally selected the Domain Name without any knowledge of Complainant. See e.g., *Arkema France v. Steve Co., Stave Co Ltd.*, WIPO Case No. [D2017-1632](#).

In finding a disputed domain name used only for an email scam was bad faith, the panel in *Kramer Law Firm, P.A. Attorneys and Counselors at Law v. BOA Online, Mark Heuvel*, WIPO Case No. [D2016-0387](#), pointed out that numerous UDRP panels have found such impersonation to constitute bad faith, even if the relevant domain names are used only for email communications. See, e.g., *Terex Corporation v. Williams Sid, Partners Associate*, WIPO Case No. [D2014-1742](#) ("Respondent was using the disputed domain name in conjunction with...an email address for sending scam invitations of employment with Complainant"); and *Olayan Investments Company v. Anthono Maka, Alahaji, Koko, Direct investment future company, ofer bahar*, WIPO Case No. [D2011-0128](#) ("although the disputed domain names have not been used in connection with active websites, they have been used in email addresses to send scam emails and to solicit a reply to an 'online location'").

For the reasons set forth above, the Panel holds that Complainant has met its burden under paragraph 4(a)(ii) of the Policy and has established that Respondent registered and is using the Domain Name in bad faith.

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, <hillgrp.com>, be transferred to the Complainant.

/John C McElwaine/

John C McElwaine

Sole Panelist

Date: October 18, 2024