

ADMINISTRATIVE PANEL DECISION

Hershey Chocolate & Confectionery LLC v. Honggi Kim
Case No. D2024-3818

1. The Parties

Complainant is Hershey Chocolate & Confectionery LLC, United States of America (“United States”), represented by Arnold & Porter Kaye Scholer LLP, United States.

Respondent is Honggi Kim, Republic of Korea.

2. The Domain Name and Registrar

The disputed domain name <hershey.com> is registered with Dynadot Inc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 19, 2024. On September 19, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 20, 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 Complainant on September 20, 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 26, 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 Respondent of the Complaint, and the proceedings commenced on September 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 16, 2024. Respondent sent email communications to the Center on several occasions in September and October 2024. The Center commenced the panel appointment process on October 29, 2024.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on November 12, 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 company organized under the laws of the United States that is a well-known producer of chocolate and confectionery products, including the HERSHEY and HERSHEY'S brands.

Complainant has provided evidence that it is the registered owner of numerous trademarks relating to its HERSHEY company name and its HERSHEY and HERSHEY'S brands, including, but not limited to, the following:

- word mark HERSHEY, United States Patent and Trademark Office ("USPTO"), registration number: 1455684, registration date: September 1, 1987, status: active;
- word mark HERSHEY'S, USPTO, registration number: 54041, registration date: June 19, 1906, status: active.

Moreover, Complainant has demonstrated to own the domain name <hersheys.com> which resolves to Complainant's main website to promote Complainant's products to the public, but also is used for email addresses from which Complainant's employees conduct Complainant's business.

Respondent, according to the disclosed Whois information for the disputed domain name, is located in the Republic of Korea. The disputed domain name was registered on October 13, 2023. By the time of rendering this decision, it resolves to a website at "www.hersheyz.com", which is a typical pay-per-click ("PPC") website, displaying hyperlinks redirecting Internet users to third parties' active commercial websites, including websites which offer chocolate and confectionery products. Moreover, Complainant has provided evidence that a third-level domain name "sslvpn" was set up under the disputed domain name, namely "sslvpn.hersheyz.com", which is identical to a sub domain name used by Complainant for business purposes, namely "sslvpn.hersheys.com". Also, Complainant has demonstrated that on August 18, 2024, an email was sent to it stating: "Hersheyz.com \$2Million, Want this name sold to Revulsion site?".

Complainant requests that the disputed domain name be transferred to Complainant.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name. Notably, Complainant contends to be a major manufacturer and seller of chocolate and confectionery products and snacks, and that its HERSHEY and HERSHEY'S trademarks have been in use in connection with those products already since 1894, and by virtue of extensive advertising and sales have become famous throughout the United States and elsewhere.

Complainant submits that the disputed domain name is confusingly similar to Complainant's well-established HERSHEY and HERSHEY'S trademarks, as it wholly incorporates Complainant's HERSHEY trademark, and is clearly similar to both of Complainant's HERSHEY and HERSHEYS trademarks and its domain name <hersheys.com>, except that Respondent has changed the letter "s" to the letter "z" at the end of HERSHEY'S and HERSHEYS, respectively. Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Complainant is not affiliated in any way with Respondent and has never authorized it to register or use the disputed domain name or

Complainant's HERSHEY and HERSHEY'S trademarks, (2) given the widespread publicity and fame of those trademarks, which are (almost) wholly incorporated in the disputed domain name, it is indisputable that Respondent had knowledge of Complainant's famous HERSHEY and HERSHEY'S trademarks prior to the registration of the disputed domain name, and (3) Respondent's modification of the last letter "s" constitutes an obvious misspelling of Complainant's HERSHEY and HERSHEY'S trademarks, referred to as "typo-squatting", which UDRP decisions have repeatedly held to violate the Policy. Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since (1) such registration leads the public and potentially even Complainant's employees to falsely believe that the disputed domain name is a genuine domain name of Complainant, (2) Respondent has registered the disputed domain name with full knowledge of Complainant's HERSHEY and HERSHEY'S trademarks, which is apparent from the long-standing and widespread use of those trademarks and their registration which by far predates Respondent's registration of the disputed domain name, (3) the adoption of the identical sub domain name demonstrates Respondent's awareness of Complainant's use of its <hersheys.com> domain name and an intent to use the infringing disputed domain name and its copycat domain name for fraudulent purposes, such as tricking users of Complainant's legitimate website services into submitting confidential information and computer network credentials to Respondent's disputed domain name, and (4) Respondent, or a person affiliated with Respondent, emailed Complainant offering to sell the disputed domain name for USD two million and threatening to sell the disputed domain name to a "Revulsion" website instead.

B. Respondent

Respondent did not file a formal Response, but sent a large number of informal email communications to the Center, starting September 20, 2024, through and including October 30, 2024, in which it e.g., stated that (1) the disputed domain name was parked as part of a new business model in the Internet era, (2) "Hershey" was merely a surname, could not be registered as a trademark, but could be freely used, (3) "Hersheyz" was similar to "Hershey", but not to Complainant's full company name, (4) selling a generic domain name is a property right, (5) Respondent's surname was not "Hershey", but "Kim", (6) the disputed domain was meant to be the plural form of "Hershey", and (7) the email offering the disputed domain name for USD 2 million was sent by a Domain Name Broker. Respondent's statements were accompanied by numerous practical examples, obviously for purposes of illustration.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

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

A. Identical or Confusingly Similar

First, 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 Complainant's HERSHEY and HERSHEY'S trademarks and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Complainant has shown rights in respect of its HERSHEY and HERSHEY'S trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Those trademarks are entirely (in the case of HERSHEY) or almost entirely (in the case of HERSHEY'S) reproduced within the disputed domain name, however added by the letter "z" (in the case of HERSHEY) or with the letter "s" being substituted by the letter "z" (in the case of HERSHEY'S). Leaving it open whether or not this constitutes an intentional misspelling or typo-squatting of Complainant's HERSHEY and HERSHEY'S trademarks, the Panel still finds that those trademarks are at

least easily recognizable within the disputed domain name and that the latter, therefore, is confusingly similar to those trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel, therefore, finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Second, paragraph 4(c) of the Policy provides a list of circumstances in which 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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed 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 disputed domain name such as those enumerated in the Policy or otherwise.

Respondent has not been authorized to use either of Complainant’s HERSHEY and HERSHEY’S trademarks, either as a domain name or in any other way. Also, there is no reason to believe that Respondent’s name somehow corresponds with the disputed domain name (e.g., its surname is neither “Hershey” nor “Hersheyz”, but “Kim”) and Respondent does not appear to have any (registered or unregistered) trademark rights associated with the terms “hershey” and/or “hersheyz” on its own. Finally, Respondent so far obviously has neither used the disputed domain name for a bona fide offering of goods or services nor for a legitimate noncommercial or fair purpose but to host a parked page at “www.hersheyz.com”, comprising PPC links redirecting Internet users to third parties’ active commercial websites, including websites which offer chocolate and confectionery products directly in competition with Complainant’s core business. UDRP panels agree that such use where PPC links compete with or capitalize on the reputation and goodwill of the complainant’s trademark or otherwise mislead Internet users, does not represent a bona fide offering. [WIPO Overview 3.0](#), section 2.9. Also, a respondent’s use of a complainant’s trademark to redirect Internet users, e.g., to a competing website, would not support a claim to rights or legitimate interests. [WIPO Overview 3.0](#), section 2.5.3. Finally, and in relation to Respondent’s argument that selling a generic domain name was a property right, UDRP panels have recognized that holding a domain name consisting of acronyms, dictionary words, or common phrases for resale can be bona fide and is not per se illegitimate under the UDRP (see [WIPO Overview 3.0](#), section 2.1), but have also found that the mere registration of such a domain name does not by itself automatically confer rights or legitimate interests therein (see [WIPO Overview 3.0](#), section 2.10.1).

The Panel, therefore, finds the second element of the Policy has been established, too.

C. Registered and Used in Bad Faith

Third, 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.

It is undisputed between the Parties that Complainant's HERSHEY and HERSHEY'S trademarks, due to extensive advertising and sales over many decades, are famous in the United States and elsewhere. Also, this Panel recognizes Respondent's setting up of a third-level domain name "sslvpn" under the disputed domain name, namely "sslvpn.hersheyz.com", which is identical to a sub domain name used by Complainant for business purposes, namely "sslvpn.hersheys.com". Against this background, it is reasonable to argue that that Respondent was well aware of Complainant and its right in the famous HERSHEY and HERSHEY'S trademarks when it registered the disputed domain name and that the latter is clearly directed thereto. Moreover, resolving the disputed domain name which is confusingly similar to those trademarks to a typical PPC website showing a variety of hyperlinks to active third-party websites, which even include companies belonging to Complainant's direct competitors in the chocolate and confectionary industry, for the obvious purpose of generating PPC revenues, is a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusion with Complainant's HERSHEY and HERSHEY'S trademarks as to the source, sponsorship, affiliation or endorsement of this website. Such circumstances are evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy. In this context, UDRP panels widely agree that, particularly with respect to "automatically" generated PPC links, a respondent cannot disclaim responsibility for content appearing on the website associated with the disputed domain name, and that neither the fact that such PPC links are generated by a third party (e.g., the Registrar), nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of bad faith. [WIPO Overview 3.0](#), section 3.5.

For the sake of completeness, it should be noted that the Panel deliberately refrained from making the offer dated August 18, 2024, to sell the disputed domain name to Complainant for USD 2 million combined with the threat of alternative transfer to a "Revulsion" website a further subject of the reasons for this Decision, simply because, according to the facts as submitted to the Panel, doubts remained as to whether this offer actually originated from Respondent or not. And ultimately, this offer was not relevant to the Decision's outcome.

Finally, it also carries weight in the eyes of the Panel that Respondent obviously provided false or incomplete contact information in the Whois register for the disputed domain name since, according to the email correspondence between the Center and the postal courier, the Written Notice on the Notification of Complaint dated September 26, 2024, could not be delivered. This fact at least throws a light on Respondent's behavior which supports the Panel's bad faith finding.

The Panel, therefore, holds that Complainant has established the third element of the Policy, too.

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, <hersheyz.com>, be transferred to Complainant.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: December 4, 2024