

## **ADMINISTRATIVE PANEL DECISION**

Hershey Chocolate & Confectionery LLC v. Domain Administrator, Fundacion Privacy Services LTD

Case No. D2024-3828

### **1. The Parties**

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

The Respondent is Domain Administrator, Fundacion Privacy Services LTD, Panama.

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

The disputed domain name <askhrhersheys.com> is registered with Media Elite Holdings Limited (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 19, 2024. On September 20, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 24, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and its contact details.

The Center verified that 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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the 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. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 17, 2024.

The Center appointed Harini Narayanswamy as the sole panelist in this matter on October 22, 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 a world renown chocolate, confectionery and snack manufacturer. Its products are marketed under its trademarks HERSHEY and HERSHEY'S. Among the numerous registered trademarks owned by Complainant are:

United States trademark registration number 54,041 for the HERSHEY'S stylized word mark for chocolate, cocoa and preparations thereof, registered on June 19, 1906, with date of first use since January 1, 1894.

United States trademark registration 863,592 for the HERSHEY'S mark for chocolate, cocoa and preparations registered on January 14, 1969, with date of first use since January 1, 1894.

United States trademark registration 1,455,684 for the mark HERSHEY, under classes 35, 37, 40, 41 and 42 registered on September 1, 1987.

The disputed domain name was registered on February 11, 2021. At the time of filing of the present Complaint, the landing page where the disputed domain name is parked displays various sponsored links. Mail exchange (MX) records are set up with the disputed domain name.

#### **5. Parties' Contentions**

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

The Complainant contends that the trademark HERSHEY'S has been used since 1894 and the marks HERSHEY and HERSHEY'S are widely advertised and promoted. The Complainant states that it has achieved billions of dollars of sales under these marks, due to which it has acquired substantial goodwill and reputation globally. Several UDRP decisions have also recognized the fame and reputation associated with the HERSHEY and HERSHEY'S marks. The Complainant contends that notwithstanding the use of the additional term "ask" and letters "hr", in the disputed domain name, the inclusion of the HERSHEY trademark renders it confusingly similar to its marks.

The Complainant states that it owns the domain names <askhershey.com> and <hersheys.com> which are used by the Complainant to communicate with the public about its products. The Complainant states that the former domain name is used on its product packaging and latter is used for email communication by its employees to conduct business. Notably, the Complainant contends that the disputed domain name registered by the Respondent is similar to its domain names <askhershey.com> and <hersheys.com>.

The Complainant further argues that the Respondent's use of its mark in the disputed domain name indicates intentional and deliberate targeting with an intention to confuse the public and gives a false impression of association with the Complainant. The Complainant alleges that MX records are set up by Respondent for the disputed domain name, which means it can be used for confusingly similar email addresses to engage in fraudulent activity.

The Complainant states that the Respondent's registration of the disputed domain name is willful bad faith, and it was done with full knowledge of the Complainant's preexisting rights in the HERSHEY and HERSHEY'S marks. The Complainant adds that the Respondent seeks to capitalize on the fame and reputation of the HERSHEY and HERSHEY'S marks and hence its conduct amounts to bad faith registration and use of the disputed domain name.

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

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

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

## 6. Discussion and Findings

The Complainant in these proceedings is required to establish three elements under paragraph 4 (a) of the Policy for transfer of the disputed domain name, these are:

- (i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) The Respondent lacks rights or legitimate interests in the disputed domain name; and
- (iii) The disputed domain name was registered and is being used in bad faith by the Respondent.

### A. Identical or Confusingly Similar

The first element requires the Complainant to establish the disputed domain name is confusingly similar to a trademark or a service mark in which it has rights. 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 provided evidence of its registered trademark for the HERSHEY and HERSHEY'S marks. Trademark registration is prima facie evidence of rights in the mark. The Complainant has therefore 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 finds the HERSHEY'S mark is reproduced within the disputed domain name. The disputed domain name contains the additional term "ask" and the letters "hr" along with the mark. Additional terms or letters do not prevent a finding of confusing similarity, where the mark is recognizable within the disputed domain name. The Panel finds, in line with UDRP consensus view, that the addition of the term or letters along with the trademark 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.

Accordingly, for the reasons discussed, the disputed domain name is confusingly similar to the mark under the Policy. [WIPO Overview 3.0](#), section 1.7. The 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.

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. The Respondent did not avail itself of the opportunity to respond in these proceedings and has not provided any explanation for choosing the disputed domain name.

Having reviewed the available record, the Panel finds the Complainant has made a prima facie case for the reasons that the Respondent is not commonly known by the disputed domain name nor demonstrated any legitimate reason for the registration of the disputed domain name. The Panel notes that the Respondent

has made unauthorized use of the Complainant's registered trademark in the disputed domain name, as no permission, authorization or license to use the mark or variants of the mark has been given to the Respondent by the Complainant. Prior UDRP panels have found that the use of a domain name to host a parked page comprising pay-per-click ("PPC") links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark.

Moreover, the disputed domain name carries a risk of implied affiliation to the Complainant's mark. The Panel finds the disputed domain name incorporating the trademark and the letters "hr" along with the term "ask", closely resembles the Complainant's own domain name <askhershey.com> and provides a basis to infer that the Respondent's intention is to mislead Internet users seeking or expecting the Complainant.

For the reasons discussed, 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 the second element of the Policy has been established.

### **C. Registered and Used in Bad Faith**

The third element under paragraph 4(a)(iii) of the Policy requires the Complainant to establish the disputed domain name has been registered and used in bad faith by the Respondent. The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy specifies circumstances, in particular, but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

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 also 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 indicates:

- (i) circumstances indicate that the respondent has registered or acquired the domain name primarily for purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

The present Complaint is based on the Complainant's well-known HERSHEY and HERSHEY'S marks which are used extensively in several jurisdictions worldwide and are widely known and reputed. The Complainant has established the prior reputation and fame associated with its marks which has been recognized in numerous UDRP decisions. The Panel also notes that the Respondent has set up MX records and has failed to respond in these proceedings.

The Complainant has alleged that MX records that have been set up with the disputed domain name are with the intention to defraud people looking to reach the Complainant's human resources department. Although

no concrete evidence has been submitted by the Complainant, the overall circumstances of the present case present a risk that the disputed domain name could be used for fraudulent emails impersonating the Complainant.

Having reviewed the record, the Panel finds the disputed domain name resolves to a parking page that displays PPC links related to human resources.

The Panel finds there is sufficient material to support the Complainant's arguments that the Respondent has registered and used the disputed domain name in a manner as described under paragraph 4(b)(iv) of the Policy. The Panel concludes that the Respondent's registration and use of the disputed domain name targets the Complainant's well-known mark which constitutes bad faith under the Policy and creates a likelihood of confusion among Internet users.

The Panel finds for the reasons discussed above that the Complainant has established the third element of the Policy that the disputed domain name has been registered in bad faith and is being used in bad faith.

The Complainant has satisfied all three of the elements required under the Policy for a transfer of the disputed domain name.

## **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 <askhrhersheys.com> be transferred to the Complainant.

*/Harini Narayanswamy/*

**Harini Narayanswamy**

Sole Panelist

Date: November 5, 2024