

ADMINISTRATIVE PANEL DECISION

HMS Industrial Networks AB v. Name Redacted

Case No. D2024-4161

1. The Parties

The Complainant is HMS Industrial Networks AB, Sweden, represented by Abion AB, Sweden.

The Respondent is Name Redacted¹.

2. The Domain Name and Registrar

The disputed domain name <hms-network.net> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 9, 2024. On October 10, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 10, 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 the Complainant on October 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 amended Complaint on October 15, 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 the Complainant’s CEO 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Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case.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. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on October 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 5, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 6, 2024.

The Center appointed Jonas Gulliksson as the sole panelist in this matter on November 15, 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 global manufacturer of industrial communication solutions. It owns the trademark HMS NETWORK, for which it asserts unregistered trademark rights established through several decades of use.

The Complainant is the owner of the domain name <hms-network.com> registered in 2016.

The disputed domain name was registered on September 16, 2024, and it was used to send a fraudulent email impersonating the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant mainly alleges the following:

HMS Networks was originally founded in Sweden in 1988. Today HMS Networks is a global manufacturer of industrial communication solutions with subsidiaries in the United States of America and Japan. The company was also named "Export Company of the Year" in 2008 and is listed on the NASDAQ Stockholm.

The HMS NETWORKS trademark is a well-established trademark in Sweden and HMS Networks AB was registered as a trade name in 2000. The Complainant's main corporate website was also published in 2000 under the domain name <hms-networks.com>. The name HMS Networks has been used in all activities globally since 2000. The company's rapid growth in Sweden and internationally established its brand reputation on an international level. After more than 20 years of extensive use, the mark HMS NETWORKS has acquired distinctiveness and reputation not only in Sweden, but also internationally. The Complainant's marks are known in the appropriate business or consumer circles in Sweden (and in other countries) as a symbol specific to its proprietor's goods or services.

The disputed domain name was registered on September 16, 2024, many years after the first use of Complainant's HMS NETWORKS trademark and trade name. The Complainant has not licensed or authorized the Respondent to register or use the disputed domain name, nor is the Respondent affiliated with the Complainant in any way. There is no evidence that the Respondent is known by the disputed domain name or owns any corresponding registered trademarks. The Respondent has not used or prepared to use the disputed domain name in connection with a bona fide offering of goods or services, or otherwise made a legitimate noncommercial or fair use of the disputed domain name. To the contrary, the Respondent has sent phishing emails impersonating the Complainant.

When reading the disputed domain name, Internet users may not notice the difference and may be misled into believing that the disputed domain name is directly affiliated with or authorized by the Complainant, which is not the case. The Respondent has used the disputed domain name to perpetrate fraud, specifically a phishing scheme. On September 16, 2024, the Respondent sent an email using the disputed domain name and impersonating the Complainant's CEO. The email was sent to a partner of the Complainant with

the purpose of deceiving the recipient into believing that the email was a message sent by the Complainant, which is not the case. The maneuver of sending an email from the email address containing the disputed domain name was intended to impersonate the Complainant and its CEO in order to most likely divert payments. Such fraudulent activity clearly demonstrates that the Respondent registered the disputed domain name with the HMS NETWORKS trademark and the Complainant in mind in order to conduct a phishing scheme.

In addition, the Complainant sent a cease-and-desist letter to the Respondent informing the Respondent of the Complainant's rights to the HMS NETWORKS trademark, to which the Respondent failed to respond. Such conduct is indicative of bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy requires the Complainant to prove all three of the following elements:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the 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. Identity or Confusingly similar

The primary question in any UDRP proceeding is whether the complainant possesses rights in a trademark or service mark that is alleged to be identical or confusingly similar to the disputed domain name. The Panel has thoroughly reviewed the evidence of trademark rights presented in the Complaint, which includes:

- The Complainant's use of the domain name <hms-networks.com> since its registration in 2000.
- The Complainant's use of the company name "HMS Networks AB" since its registration in 2000.
- Extensive use of the unregistered trademark HMS NETWORKS over several decades, during which the Complainant's business has thrived, generating substantial revenue and receiving significant recognition.

A fundamental principle of trademark law is that rights in a trademark can be acquired through use, and such rights exist even though the trademark may not be registered. See *Uitgeverij Crux v. W. Frederic Isler*, WIPO Case No. D2000-0575. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.3 clarifies the factors of evidence necessary to establish unregistered rights in a name or mark.

In essence, the Complainant must demonstrate that the name has become a distinctive identifier associated with the complainant or its goods and services. Relevant evidence of such "secondary meaning" includes the duration and volume of sales under the mark, the nature and extent of advertising, consumer surveys, and media recognition.

While based on the evidence the Panel would be prepared to find rights in the HMS NETWORKS mark for purposes of the Policy, because of the Complainant's rights under national law, a finding on that is not strictly necessary. The Complainant has registered and uses "HMS Networks AB" as its trade name. In Sweden, the exclusive right to a trade name encompasses all types of use under the Trade Names Act (1974:156).

Furthermore, Swedish case law includes instances where domain name use has been deemed an infringement of the exclusive right to a company name, such as in Stockholm's district court's judgment in case T 18479-04.

The common nature of distinctive signs held by trademarks and registered trade names as per paragraph 3 of the Trade Names Act, confirms that the registered Trade Name "HMS Networks AB" is a valid commercial sign in Sweden. Therefore, it is included in the reference to trademarks under the "Uniform Policy", which should be interpreted broadly, see *Banca March, S.A. v. Digigrup.com*, WIPO Case No. D2000-1341. The Panel therefore finds that the Complainant has registered rights in the HMS Networks AB trade name.

The Complainant's trademark HMS NETWORKS is recognizable within the disputed domain name. UDRP panels consistently hold that the Top-Level Domain ("TLD") in this case ".net" is disregarded under the first element confusing similarity test. Accordingly, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademark. Consequently, the Panel finds that the requirements of the first element of the Policy have been satisfied.

B. Rights or Legitimate Interests

In cases where a Respondent fails to submit a Response, the Complainant is still required to establish a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Panel concludes that the Complainant has successfully established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not provided any evidence to the contrary. Therefore, the Panel finds that the requirements of the second element of the Policy have been met.

C. Registered and Used in Bad Faith

The Complainant's rights in HMS NETWORKS mark predates the registration of the disputed domain name, and it is apparent that the disputed domain name was registered with full knowledge of the Complainant and its registered trade name. The Respondent used the name of the Complainant's CEO when registering the disputed domain name. These circumstances strongly support a finding of bad faith registration.

In addition, the Panel concludes that the Respondent has engaged in fraudulent activity using the disputed domain name. Panels have held that the use of a domain name for illegal activity here, claimed as, impersonation constitutes bad faith. WIPO Overview 3.0, section 3.4. 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 thus has no difficulty in concluding that the third element of the Policy has been met.

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, <hms-network.net> be transferred to the Complainant.

/Jonas Gulliksson/

Jonas Gulliksson

Sole Panelist

Date: November 25, 2024