

## **ADMINISTRATIVE PANEL DECISION**

Humboldt Seed Company LLC v. Pot Sistemak S.L.  
Case No. D2024-4349

### **1. The Parties**

The Complainant is Humboldt Seed Company LLC, United States of America (“United States”), represented by Sugrañes, S.L.P., Spain.

The Respondent is Pot Sistemak S.L., Spain, represented by Asegi Sunion, Spain.

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

The disputed domain name <humboldtseeds.net> is registered with 10dencehispahard, S.L. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on October 22, 2024. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 28, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On October 29, 2024, the Center informed the parties in Spanish and English, that the language of the registration agreement for the disputed domain name is Spanish. On October 30, 2024, the Complainant requested that English be the language of the proceeding. The Respondent did not submit any comment on the language of the proceeding.

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 November 4, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 24, 2024. The Response was filed with the Center in Spanish on November 22, 2024.

The Center appointed Matthew Kennedy as the sole panelist in this matter on November 29, 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 licensed cannabis seed provider founded in 2001 by Nathaniel Pennington and another individual in Humboldt County, California, United States. It initially bred for patients under a medical marijuana initiative and now creates cannabis seeds for the recreational market, providing them to both commercial and home growers. The Complainant's seeds are available in the United States (in certain States) as well as other countries, including Spain. The Complainant obtained certain United States trademark registrations but assigned them in 2022 to a corporation named HSC International, of which Ms. Pennington is an officer. These included the following:

- United States trademark registrations numbers 5736780 and 5736781, both for HUMBOLDT SEED COMPANY, both registered on April 30, 2019 with claims of first use in commerce on August 31, 2010 (both applied for on February 3, 2017), specifying services in classes 41 and 44, both with a disclaimer of "COMPANY"; and
- United States trademark registration number 5716207 for a figurative HUMBOLDT SEED COMPANY EST. 2001 mark, registered on April 2, 2019, with a claim of first use in commerce on February 11, 2017 (application filed on March 2, 2017), specifying services in class 41, with a disclaimer of "HUMBOLDT SEED COMPANY EST. 2001".

HSC International is the holder of the above trademark registrations, which remain current. The Complainant is the current holder of trademark registrations in other jurisdictions, including the following:

- European Union trademark registration number 018071184 for the figurative HUMBOLDT SEED COMPANY EST. 2001 mark, registered on October 24, 2019, specifying goods and services in classes 25, 31, 35, and 44; and
- United Kingdom trademark registration number UK00918071184 for the figurative HUMBOLDT SEED COMPANY EST. 2001 mark, registered on October 24, 2019, specifying goods and services in classes 25, 31, 35, and 44.

Ms. Pennington also registered the disputed domain name <humboldtseedcompany.com> on October 14, 2010, which the Complainant has since used in connection with a website to commercialize its cannabis seeds.

The Respondent was established in 2001 in Spain for the purpose of selling seeds, fertilizers, flowers, plants and chemical products and articles related to gardening and floristry. The Respondent has obtained multiple trademark registrations, including the following:

- European Union trademark registration number 010137057 for DINAFEM, registered on December 22, 2011, specifying seeds and other goods and services in classes 31 and 35;
- European Union trademark registration number 012176491 for a figurative HUMBOLDT SEED ORGANIZATION mark, registered on February 19, 2014 (applied for on September 27, 2013), specifying seeds and other goods and services in classes 25, 31, and 35; and
- European Union trademark registration number 017979032 for a figurative LA MOTA mark, registered on March 7, 2019, specifying goods and services in classes 31 and 35.

The Respondent's figurative HUMBOLDT SEED ORGANIZATION mark registration expired on September 27, 2023 but the others remain current. The Respondent uses the domain name <dinafem.org> in connection with a website for Dinafem Seeds where it offers seeds for sale. According to the Response, the Respondent also uses the domain names <lamota.org> and <lamotadistribucion.com> in connection with websites but, at the time of this Decision, neither resolves to an active website.

The disputed domain name was created on August 7, 2012. According to the Response, it was registered by the Respondent on February 26, 2013. The disputed domain name resolves to a website displaying the figurative HUMBOLDT SEED ORGANIZATION mark with the title "Welcome to the Humboldt Seed Organization" and the sub-title: "Buy the genuine cannabis seeds directly from the real Humboldt Seed Organization breeders on the best American cannabis seed bank." The site offers multiple language versions for Internet users to shop in the "Humboldt Seeds store". Accepted payment methods include Bitcoin. However, since 2020, the website has also displayed a banner advising that "We are unable to process any orders until further notice". A "More information" button triggers a pop-up notification that the Respondent is unable to engage in any commercial activity and is working around the clock to resume normal activity as soon as possible.<sup>1</sup> According to the Response, this notice is displayed in order to comply with a provisional order made by the National High Court of Spain (Juzgado Central de Instrucción nº 6, Audiencia Nacional, Autos 88/2019). Neither that order nor any other part of the record of that judicial proceeding has been presented in evidence in this UDRP proceeding. Nothing on the record of this UDRP proceeding indicates that the Respondent has been convicted of any wrongdoing.

## 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 is identical to its HUMBOLDT SEED COMPANY mark for the purposes of the Policy.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant alleges that the disputed domain name has been used for years to commit illegal activities such as selling drugs. The associated website tarnishes the goodwill and reputation of the Complainant. The Complainant has not authorized, licensed, or otherwise permitted the Respondent or any other party to use its trademark. The Respondent's products are mostly known in the market as DINAFEM or DINAMED and its trademarks are not related to the Complainant's trademarks. The disputed domain name may mislead consumers or Internet users into thinking that its associated website is operated by the Complainant.

The disputed domain name was registered and is being used in bad faith. The HUMBOLDT SEED COMPANY trademark is well established through long and widespread use; the Complainant has acquired a significant reputation and level of goodwill in its trademark internationally and the disputed domain name reproduces the most distinctive terms of the trademark. The Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor because it currently resolves to a site without content. The Respondent has intentionally attempted to attract, for commercial

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<sup>1</sup>The Panel notes its general powers articulated inter alia in paragraphs 10 and 12 of the Rules and has visited the website associated with the disputed domain name to corroborate the Complainant's archived screenshot of that site, given that the Complainant's network administrator blocked it from accessing the website at the time when it filed the Complaint, and to corroborate the Respondent's evidence of the banner and pop-up notification displayed on its website. The Panel has also visited the Internet archive ("www.archive.org"), which is also a matter of public record, to verify the Respondent's evidence regarding the time when the banner was added to its website. The Panel considers this process of corroboration and verification useful in assessing the case merits and reaching a decision. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.8.

gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source of the Respondent's website.

## **B. Respondent**

The Respondent contends that the Complainant has not satisfied any of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Respondent contends that the first element of paragraph 4(a) is not met because "Humboldt" is a geographical term. Humboldt County is known in the cannabis sector, in which both Parties are engaged, as a region where high-quality cannabis plants are grown and produced. Numerous panels have found that geographical terms are not per se covered by the Policy. Further, as HSC International is not a party to this proceeding; only the Complainant's European Union and United Kingdom marks may be taken into account. Directive (EU) 2015/2436 provides that exclusive rights conferred by a trade mark should not entitle the owner to prohibit the use of signs or indications by third parties which are used fairly and thus in accordance with honest practices in industrial and commercial matters.

The Respondent has rights and legitimate interests in respect of the disputed domain name. In 2013, the Respondent reached private agreements with a United States national to establish its own seed bank different from its existing seed banks, using seeds and plants from Humboldt County, California. When the Respondent registered the disputed domain name, it applied for a European Union trademark for the same name at the same time. From then until 2020, it sold its products using the website associated with the disputed domain name, making an honest use of the "Humboldt" name. The website explains in detail the history of the region and the reasons why plants from there are so appreciated. Clearly, the Respondent is not trying to divert visitors from other websites, nor trying to create confusion about the origin or provenance of its products as if they came from the Complainant. There are significant differences between the two websites, particularly in terms of the presentation of the products and their packaging. The Respondent has been using the disputed domain name in connection with an offering of goods in accordance with honest practices since 2013, which was prior to the registration of the Complainant's European Union and United Kingdom trademarks in 2017. The Respondent's marks are all related to its distribution business, which covers seed banks, its own seeds and seeds of different brands. It is utterly untrue that the disputed domain name has been used to commit illegal activities. The Respondent has not been convicted of anything.

The disputed domain name was not registered and is not being used in bad faith. The Complainant's trademark is not inherently distinctive and it corresponds to a geographical area. The reputation attached to that term belongs to all websites that sell seeds or plants from that geographical area. The Complainant's mark is not displayed on the Respondent's website and nothing on the website is similar to the Complainant's trademark or name beyond the indication of source. The Respondent's website does not sell or link to the Complainant's products. In all the years since the Parties registered their respective domain names and trademarks, neither has made a complaint.

The Respondent submits that the only reason the Complainant has filed the Complaint now is because it knows that the Respondent is subject to a judicial procedure that temporarily prevents it from conducting business. In reality, it is the Complainant who is not acting in good faith but seeking to obtain an illegal competitive advantage. The procedural situation of the Respondent does not affect the Complainant in any way, since in the cannabis sector it is well known that Humboldt is synonymous with quality plants cultivated in that area so that there is no association between the Parties.

## **6. Discussion and Findings**

### **6.1 Language of the Proceeding**

The language of the Registration Agreement for the disputed domain name is Spanish. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise

in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including that there is evidence that the Respondent can understand English, the disputed domain name incorporates an English word (“seeds”), and the content of the associated website is in English.

The Response was filed in Spanish, but the Respondent did not comment on the Complainant’s request for the language of the proceeding to be English. The detailed content of the Response shows that the Respondent has in fact understood the Complaint.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties’ ability to understand and use the proposed language, time and costs. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.5.1.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English but that the Panel will accept the Response as filed in Spanish, without translation.

## **6.2 Substantive Issues**

Paragraph 4(a) of the Policy provides that a complainant must prove each of the following elements with respect to the disputed domain name:

- (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 disputed domain name has been registered and is being used in bad faith.

### **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. See [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of the figurative HUMBOLDT SEED COMPANY EST. 2001 mark at the time when the Complaint was filed. See [WIPO Overview 3.0](#), sections 1.1.3 and 1.2.1.

The Respondent argues that the first element of paragraph 4(a) is not met because “Humboldt” is a geographical term. The Panel has taken note that “Humboldt” is the name of a county in northern California where the Complainant is based. However, the Complainant claims rights in that term as part of a registered trademark, not as a geographical term per se. See [WIPO Overview 3.0](#), section 1.6. The Respondent refers to a decision of a prior UDRP panel regarding rights to use a geographic term in good faith. However, that panel did so under the second element of paragraph 4(a), not under the first element. See *Ente Público de Comunicación del Principado de Asturias v. Araz c.b. (Araz Net, S.L.)*, WIPO Case No. [D2008-0874](#).

The Respondent also argues that the United States trademark registrations may not be taken into account because the Complainant assigned them to HSC International. The Panel recalls that a trademark owner’s related company may be considered to have rights in a trademark under the UDRP for purposes of standing to file a complaint. See [WIPO Overview 3.0](#), section 1.4.1. In the present case, the evidence shows that the

Complainant's founder is also an officer of HSC International. However, it is unnecessary to consider the relationship between the two companies further as the Complainant has already established that it has standing by virtue of its current trademark registrations in other jurisdictions.

Turning to the comparison with the disputed domain name, the Panel notes that the disputed domain name contains the dominant textual element of the Complainant's figurative HUMBOLDT SEED COMPANY EST. 2001 mark (i.e., the term "Humboldt") as its initial element, together with the word "seed" that is also in the mark. Although the disputed domain name omits the text shown in small print in the mark, and although it adds a plural "s" and the word "organization", the dominant element of the mark is clearly recognizable within the disputed domain name. The Panel will not take into account the design elements of the mark because these cannot be reflected in a domain name. The only additional element in the disputed domain name is a generic Top-Level Domain ("gTLD") extension (".net") which, as a standard requirement of domain name registration, may be disregarded in the assessment of confusing similarity. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the first element of paragraph 4(a) of the Policy. See [WIPO Overview 3.0](#), sections 1.7, 1.8, 1.10, and 1.11.1.

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

### **B. Rights or Legitimate Interests, Bad Faith, and the Scope of the Policy**

The disputed domain name resolves to a website where the Respondent nominally offers for sale cannabis seeds, which is the same type of product that the Complainant provides. It is not alleged that the Respondent is related to the Complainant. The Respondent ceased to process orders on the website four years ago allegedly due to a provisional order made by a Spanish court.

The disputed domain name was registered in 2012 and allegedly acquired by the Respondent in 2013, in any case years before the Complainant obtained its trademark registrations (including those that it has since assigned to HSC International). The Panel recalls that where a respondent registers a domain name before the complainant's trademark rights accrue, panels will not normally find bad faith on the part of the respondent. See [WIPO Overview 3.0](#), section 3.8.1. The Panel has considered the possibility that there may be exceptional circumstances indicating that the Respondent registered the disputed domain name in anticipation of the Complainant's nascent, as yet unregistered, trademark rights. See [WIPO Overview 3.0](#), section 3.8.2. In the present case, the Complainant's earliest trademark registrations include claims of first use in commerce in 2010 but, despite its importance to this aspect of the dispute, the only evidence on the record regarding that time is a business license issued by Humboldt County in 2010 and a domain name registration in the same year.

It is clear that the disputed domain name and associated website are parts of a broader, more complex trademark dispute between the Parties. The Complainant alleges that the Respondent impersonated the Complainant on its website while the Respondent, for its part, refers to itself as "the real Humboldt Seed Organization", implying that another entity (such as the Complainant) may be confused with itself. "Humboldt Seed Organization" is not the Respondent's name but it was the textual element of a trademark that it registered after it acquired the disputed domain name (before the Complainant applied for its trademarks) but which expired before this UDRP proceeding commenced. The Respondent presents its goods as an "American cannabis seed bank" when it is a Spanish company, but it claims to be using "Humboldt" in the disputed domain name as a fair use of a descriptive term for all seed banks from that area. There is no evidence besides the Respondent's own website regarding the reputation of Humboldt County as a provenance of seeds, nor is there any evidence to substantiate the Respondent's assertion that it has concluded agreements to source its cannabis seeds from that area.

The Panel recalls that it is not a general domain name court, and that the Policy is not designed to adjudicate all disputes of any kind that relate in any way to domain names. Rather, the Policy establishes a streamlined, inexpensive administrative dispute resolution procedure intended only for the relatively narrow class of cases of "abusive cybersquatting". The UDRP is not an appropriate procedure to adjudicate a complex dispute such as this one where the Panel does not have the benefit of witness testimony, disclosure

of documents, or the other appropriate instruments that are typically available to assist a court to resolve parties' dispute.

Therefore, the Panel has decided to deny the Complaint, not on the merits, but on the broader ground that the case regarding the disputed domain name is part of a broader, more complex trademark dispute between the Parties that exceeds the scope of the UDRP. The wider trademark dispute can be addressed by a court of competent jurisdiction. See [WIPO Overview 3.0](#), section 4.14.6.

### **C. Whether the Complaint was Brought in Bad Faith**

Paragraph 15(e) of the Rules provides that, if after considering the submissions, the Panel finds that the Complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or to harass the domain-name holder, the Panel shall declare in its decision that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding. The mere lack of success of the complaint is not, on its own, sufficient to constitute reverse domain name hijacking. [WIPO Overview 3.0](#), section 4.16.

The Panel has decided to deny the Complaint on broad grounds but that does not imply that it was brought in bad faith.

The Respondent submits that the Complainant has not acted in good faith but rather filed the Complaint to obtain an illegal competitive advantage while the Respondent is subject to a court procedure. In the Panel's view, the fact that the Complaint was filed after the expiry of the Respondent's trademark registration is not a sign of bad faith. The Respondent does not allege that the court procedure prevented it from renewing its figurative HUMBOLDT SEED ORGANIZATION trademark registration.

The Respondent also alleges that the Complainant did not act in good faith when it submitted a recent screenshot showing that its access to the Respondent's website was blocked. However, the Complainant did submit an archived screenshot of the website as well and there is no reason to believe that it configured its Internet browser to mislead the Panel.

Accordingly, the Panel does not find that the Complaint was brought in bad faith.

### **7. Decision**

For the foregoing reasons, the Complaint is denied.

*/Matthew Kennedy/*

**Matthew Kennedy**

Sole Panelist

Date: December 13, 2024