

ADMINISTRATIVE PANEL DECISION

Herbalife International, Inc v. Ivan Koshmar
Case No. D2024-4491

1. The Parties

The Complainant is Herbalife International, Inc, United States of America, represented by Brand Monitor Limited Liability Company, Russian Federation.

The Respondent is Ivan Koshmar, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <herbalife24-7.com> is registered with Nicenic International Group Co., Limited (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 31, 2024. On November 1, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 3, 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 (NICENIC INTERNATIONAL GROUP CO., LIMITED / REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 4, 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 amendment to the Complaint on November 8, 2024.

The Center verified that the Complaint together with the amendment to 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 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 2, 2024. The Respondent did not submit a formal response but sent two email communications to the Center on November 21, 2024.

The Center appointed Alissia Shchichka as the sole panelist in this matter on December 6, 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 Herbalife International Inc., a global company specializing in nutrition, including dietary and nutritional supplements as well as personal care products. Founded in 1980, the Complainant has established a significant presence in the industry and markets its "HERBALIFE" brand widely in the United States and internationally. According to Euromonitor (CH2024 edition, based on 2023 global market share data), Herbalife is recognized as a leading brand in active and lifestyle nutrition.

The Complainant has evidenced to be the registered owner of numerous trademarks worldwide relating to its trademarks HERBALIFE including, but not limited, to the following:

- Russian Trademark Registration No. 429452, for the word mark HERBALIFE, registered on February 3, 2011, in classes 3, 5, 29, 30, 32, 35, 41, 43, and 44
- Russian Trademark Registration No. 531919, for the word mark HERBALIFE, registered on January 14, 2015, in classes 11, and 21
- International Trademark Registration No. 1174496, designating numerous countries, for the word mark HERBALIFE SKIN, registered on August 2, 2013, in class 3.

The aforementioned trademarks were registered prior to the disputed domain name, which was registered on March 6, 2021. The disputed domain name resolves to a website that commercializes products bearing the HERBALIFE trademark, presents itself as an 'independent distributor and consultant for the company HERBALIFE,' and displays HERBALIFE trademarks.

According to the disclosed Whois information, the Respondent of the disputed domain name is located in the Russian Federation.

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.

The Complainant claims that the disputed domain name is confusingly similar to its HERBALIFE trademark, as it incorporates the trademark in its entirety as a dominant element. The minor alteration- specifically, the addition of the figures "24-7" at the end of the Complainant's trademark- does not prevent a finding of confusing similarity.

The Complainant further asserts that the Respondent lacks rights or legitimate interests in the disputed domain name for several reasons. First, the Respondent has neither used nor demonstrated any preparations to use the disputed domain name in connection with a bona fide offering of goods or services. Instead, the sole purpose of the Respondent's use of the disputed domain name is to engage in commercial transactions through a website offering goods bearing the Complainant's HERBALIFE trademark. Second, the Respondent is not affiliated with, licensed by, or otherwise authorized to use the HERBALIFE trademark in connection with the disputed domain name. Third, the Respondent is not commonly known by the disputed domain name and has not acquired any trademark rights associated with it.

Finally, the Complainant asserts that the Respondent has registered and is using the disputed domain name in bad faith for several reasons. First, the Respondent had actual or constructive knowledge of the Complainant's trademark at the time of registering and using the disputed domain name, given the Complainant's popularity and extensive presence in the media and popular culture. Second, the Respondent has intentionally sought to attract Internet traffic for commercial gain by creating a likelihood of confusion with the Complainant's HERBALIFE trademark. Third, the Respondent is deliberately misleading Internet users for commercial benefit by falsely claiming to be "an official Herbalife website" and creating the false impression that the Complainant sponsors, endorses, or is affiliated with the Respondent's website. As a result, it is inevitable that some consumers searching online for the Complainant's dietary and nutrition products will encounter the Respondent's website and mistakenly purchase goods from the Respondent instead of from the Complainant.

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

B. Respondent

The Respondent did not provide a formal or substantive reply to the Complainant's contentions. However, the Respondent submitted two informal email communications in Russian, stating that the website operates in Russian Federation and does not infringe any rights. They further noted that Herbalife's withdrawal from Russian Federation had affected its distributors and questioned the grounds of the Complaint, asserting that no rules had been violated.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the 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 the Complainant has rights; and
- (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.

The Respondent's default in the case at hand does not automatically result in a decision in favor of the Complainant, however, paragraph 5(f) of the Rules provides that if the Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from the Respondent's failure to submit a substantive response as it considers appropriate.

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. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

The Complainant has 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 entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here, the figures 24-7 may bear on assessment of the second and third elements, the Panel finds the addition of such terms 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.

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

B. Rights or Legitimate Interests

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.

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 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.

In this regard, the Panel particularly believes that the Respondent’s use of the disputed domain name is not bona fide in light of the criteria set forth in “Okidata test” and the Respondent thus is not entitled to use the disputed domain name accordingly. *Okidata Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); and [WIPO Overview 3.0](#), section 2.8

Those criteria, if fulfilled, may enable a respondent, such as a reseller or independent service provider, to establish rights or legitimate interests in a domain name that incorporates a trademark owner’s mark. However, the criteria set forth in Okidata are not satisfied in the present case. The website linked to the disputed domain name fails to accurately and prominently disclose the nature of the relationship- or the lack of it- between the Respondent and the Complainant.

On the contrary, the content of the Respondent’s website strongly suggests an affiliation with the Complainant. This includes the prominent display of the Complainant’s trademarks and official product images, as well as statements implying an official association, such as “I am an independent distributor and consultant for Herbalife” and references to “direct deliveries from Herbalife’s official warehouses.” In summary, the overall content of the Respondent’s website clearly conveys the message that the Respondent is an official or authorized reseller/distributor of the Complainant’s products, creating a misleading impression that the disputed domain name is either endorsed by or formally associated with the Complainant.

Finally, given the composition of the disputed domain name, wholly incorporating the Complainant’s trademark with the addition of the figures “24-7” and the absence of any relationship between the Respondent and the Complainant, the disputed domain name carries a risk of implied affiliation with the Complainant, and can constitute neither a bona fide use nor a legitimate noncommercial or fair use of the disputed domain name. [WIPO Overview 3.0](#), section 2.5.1.

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

C. Registered and Used in Bad Faith

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.

In this case, the Panel observes that the Complainant's HERBALIFE trademark registrations significantly predate the Respondent's registration of the disputed domain name. The choice of the disputed domain name is clearly not a coincidence. Given the deliberate inclusion of "24-7" in the disputed domain name, the Panel is convinced that the Respondent must have been aware of the Complainant and its trademark at the time of registration. The expression "24-7" is commonly associated with continuous availability, a characteristic typical of commercial online stores. The addition of these figures, combined with the HERBALIFE trademark, strongly suggests that the Respondent intended to convey the message that HERBALIFE products were always available for sale. This further demonstrates that, at the time of registering the disputed domain name, the Respondent planned to use it in connection with an online store to sell these products.

This, combined with the use of the Complainant's trademarks and logo on the Respondent's website, indicates an intention to mislead consumers into believing the site is officially affiliated with the Complainant. Indeed, the Respondent's website does not accurately indicate that there is no relationship between the Respondent and the Complainant. Instead, the content misleads the public into believing that the website is owned by, connected to, or endorsed by the Complainant.

Such intentional use of the disputed domain name in an attempt to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website, constitutes use of the disputed domain name in bad faith for the purposes of the Policy. [WIPO Overview 3.0](#), section 3.1.4.

Furthermore, Panels have held that the use of a domain name for illegal activity here, impersonation/passing off, or other types of fraud constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

In this context, the Panel also attaches significance to the fact that the Center did not receive any substantive response from the Respondent. The Respondent sent an informal response to the Center and clearly acknowledged being the owner of the disputed domain name but did not present any arguments that could justify the good faith of its registration and use of the disputed domain name.

The Panel finds that, in the circumstances of this case, the Respondent's registration and use of the disputed domain name constitute bad faith.

The Panel finds that the Complainant has established the third element of the Policy.

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 <herbalife24-7.com> be transferred to the Complainant.

/Alissia Shchichka/

Alissia Shchichka

Sole Panelist

Date: December 18, 2024