

ADMINISTRATIVE PANEL DECISION

Hilldun Corporation v. Domain Administrator
Case No. DCO2023-0042

1. The Parties

The Complainant is Hilldun Corporation, United States of America (“United States”), represented by Otterbourg P.C., United States.

The Respondent is Domain Administrator, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <hilldun.co> is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 27, 2023. On April 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 28, 2023, 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 (True Registrant of Hilldun.co c/o, Dynadot LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 2, 2023 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 May 2, 2023.

The Center verified that the Complaint together with the amendment to the Complaint/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 the Respondent of the Complaint, and the proceedings commenced on May 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 23, 2023. The Respondent sent an email communication to the Center on May 3, 2023.

The Center appointed John Swinson as the sole panelist in this matter on May 31, 2023. 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 based in New York, United States and is a financing company in the apparel industry that has been in business since 1958.

Since 1958, the Complainant has provided accounts receivable and factoring services to businesses based on both purchase orders and invoices. Over the years, some of the iconic brands the Complainant has worked with include Tommy Hilfiger, Betsy Johnson, Marc Jacobs, Alexander Wang, A.L.C., Golden Goose, Amiri and hundreds of others.

The Respondent did not file a response, so little information is known about the Respondent. The Registrar's records state that the Respondent has an address in Nigeria.

The disputed domain name was registered on March 7, 2023.

At one time, the disputed domain name resolved to a pay-per-click website that advertised accounts receivable servicing and other financial services. At the present time, the disputed domain name does not resolve to an active website.

In March 2023, emails were sent from email addresses at the disputed domain name to clients of the Complainant asking for payments to be made by the clients to the Complainant at a different bank account than that used by the Complainant.

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 Complainant has common law rights in "Hilldun" and that the Respondent is using the disputed domain name to mislead the Complainant's customers by posing as the Complainant and requesting that these customers make payments to a bank account which is not controlled by the Complainant. The Complainant contends that the Respondent's activities are a clear case of trademark infringement, fraud, and phishing.

B. Respondent

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

An automated email message was sent by the Respondent to the Center on May 3, 2023, which stated: "Our office is closed for a short time while we are on holiday. We will get back to you as soon as we can but there could be a delay. Please be patient with us."

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (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 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.

The *onus* of proving these elements is on the Complainant.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

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.

Based on the available record, the Panel finds the Complainant has established unregistered trademark or service mark rights for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3. The Respondent's use of the disputed domain name to impersonate the Complainant is additional evidence to show the fame and reputation of the Complainant's trademark.

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

Based on the available record, 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.

While 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 often impossible 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. 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 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.

The Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.

- the Respondent (as an individual, business, or other organization) has not been commonly known by the disputed domain name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.
- the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. Here, the disputed domain name is being used for email fraud. Compare *Insured Aircraft Title Service, LLC v. Privacy service provided by Withheld for Privacy ehf / Noah Josh, Sergio Manny, Karl Anderson, Eve Manesh, Regina Hank, Knight Carl*, WIPO Case No. [D2022-2011](#). Such use can never be *bona fide* use for the purposes of the second element of the Policy.

Based on the available record, 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.

The Panel considers that the record of this case reflects that:

The Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line 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. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

As far as the Panel is aware, the Respondent has not used, and does not intend to use, the disputed domain name other than to display PPC links or to conduct fraudulent activities via email. The disputed domain name is not descriptive of the services advertised via the PPC links – or descriptive of any other good or service. There is no other obvious reason for the Respondent to register the disputed domain name other than for the purpose of attempting to trade off the Complainant's goodwill. It is also relevant that the disputed domain name is identical to the Complainant's HILLDUN trademark. As such, the Panel concludes the Respondent has attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion as to the source, affiliation or endorsement of the website. This amounts to evidence of bad faith registration and use under paragraph 4(b)(iv) of the Policy.

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 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.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. The Respondent's use of the disputed domain name to send fraudulent emails to the Complainant's customers is additional evidence of bad faith.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 <hilldun.co> be transferred to the Complainant.

/John Swinson/

John Swinson

Sole Panelist

Date: June 15, 2023