

ADMINISTRATIVE PANEL DECISION

Harvey Nichols and Company Limited v. Zdfgd Sftgh
Case No. D2022-4418

1. The Parties

Complainant is Harvey Nichols and Company Limited, United Kingdom (“UK”), represented by Lewis Silkin LLP, UK.

Respondent is Zdfgd Sftgh, Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <harveynicholsale.com> (the “Domain Name”) is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 18, 2022. On November 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On November 21, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for which differed from the named Respondent (Whois Agent, Domain Protection Services, Inc.) and contact information in the Complaint. The Center sent an email communication to Complainant on November 22, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on November 28, 2022.

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 Respondent of the Complaint, and the proceedings commenced on November 30, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 20, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on December 21, 2022.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on December 29, 2022. 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

Complainant opened its first store in London in 1831 and operates worldwide today in the fashion industry, with an emphasis in exclusive, niche, and established labels. Complainant also operates through a website, which allows customers to shop from over 200 countries, and through the presence of Complainant's stores in both the UK and worldwide.

Complainant owns numerous registered trademarks worldwide for the HARVEY NICHOLS mark, including the following trade mark registrations:

- European Union ("EU") Trade Mark registration number 002201705 for HARVEY NICHOLS word mark, registered on October 3, 2006;
- EU trademark registration number 012799516 for HARVEY NICHOLS word mark, registered on September 9, 2014;
- United States of America trademark registration number 4980212 for HARVEY NICHOLS word mark, registered on June 21, 2016;
- UK trademark registration number 001550291 for HARVEY NICHOLS word mark, registered on March 7, 1997; and
- EU trademark registration number 002203859 for HN design and word mark registered on January 7, 2004.

Complainant also owns and operates its website "www.harveynichols.com", which received over 25 million visits online during the 2019/2020 year.

The Domain Name was registered on July 15, 2022, and reverts to a website that offers goods bearing Complainant's registered trademarks, including the HARVEY NICHOLS and HN marks, and which appears to replicate Complainant's website, offering goods and services that appear to be HARVEY NICHOLS branded products, sold at a discount.

5. Parties' Contentions

A. Complainant

Complainant contends that (i) the Domain Name is identical or confusingly similar to Complainant's trademarks; (ii) Respondent has no rights or legitimate interests in the Domain Name; and (iii) Respondent registered and is using the Domain Name in bad faith.

In particular, Complainant contends that it has trademark registrations for HARVEY NICHOLS and that Respondent registered and is using the Domain Name with the intention to confuse Internet users looking for *bona fide* and well-known HARVEY NICHOLS products and services.

Complainant notes that it has no affiliation with Respondent, nor authorized Respondent to register or use a domain name, which includes Complainant's trademarks, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Name. Rather, Complainant contends that Respondent has acted in bad faith in acquiring and setting up the Domain Name, when Respondent clearly knew of Complainant's rights.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name was registered and is being used in bad faith.

Section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") states that failure to respond to the complainant's contentions would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true.

Thus, although in this case Respondent has failed to respond to the Complaint, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence. See, e.g., *The Knot, Inc. v. In Knot We Trust LTD*, WIPO Case No. [D2006-0340](#).

A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Complainant provided evidence of its rights in the HARVEY NICHOLS trademarks, as noted above. Complainant has also submitted evidence, which supports that the HARVEY NICHOLS trademarks are widely known and a source identifier of Complainant's products and services. Complainant has therefore proven that it has the requisite rights in the HARVEY NICHOLS trademarks.

With Complainant's rights in the HARVEY NICHOLS trademarks established, the remaining question under the first element of the Policy is whether the Domain Name, typically disregarding the Top-Level Domain ("TLD") in which it is registered (in this case, ".com"), is identical or confusingly similar to Complainant's trademark. See, e.g., *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#).

Here, the Domain Name is confusingly similar to Complainant's HARVEY NICHOLS trademarks. These trademarks are recognizable in the Domain Name. In particular, the Domain Name inclusion of Complainant's trademark HARVEY NICHOLS in its entirety, with an addition of the word "ale" following the HARVEY NICHOLS mark in the Domain Name <harveynicholsale.com> – which appears to read as "[s]ale" – does not prevent a finding of confusing similarity between the Domain Name and the HARVEY NICHOLS trademarks. See [WIPO Overview 3.0](#), section 1.8. That being said, the Domain Name could also be read as a misspelling of the trademark, omitting the "s", and thus reflecting "harvey nichol sale"; though, such interpretation is also confusingly similar regardless of the misspelling. See [WIPO Overview 3.0](#), section 1.9.

Thus, the Panel finds that Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make a *prima facie* showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with relevant evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

From the record in this case, it is evident that Respondent was, and is, aware of Complainant and its HARVEY NICHOLS trademarks, and does not have any rights or legitimate interests in the Domain Name. Complainant has confirmed that Respondent is not affiliated with Complainant, or otherwise authorized or licensed to use the HARVEY NICHOLS trademarks or to seek registration of any domain name incorporating the trademarks. Respondent is also not known to be associated with the HARVEY NICHOLS trademarks, and there is no evidence showing that Respondent has been commonly known by the Domain Name.

In addition, Respondent has not used the Domain Name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. Rather, Complainant asserts that the Domain Name resolves to a website that appears to imitate Complainant's website, including prominently displaying Complainant's trademark HARVEY NICHOLS and featuring products such as fashion products that are also offered on Complainant's website, in a display format that appeared to be an imitation of Complainant's website, sold at a discount, and without any disclaimer as to the relation (or lack thereof) between the Domain Name and the Complainant, which has not been rebutted by Respondent. Such impersonating use does not constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Name. See, e.g., *Intesa Sanpaolo S.p.A. v. Charles Duke / Oneandone Private Registration*, WIPO Case No. [D2013-0875](#).

Accordingly, Complainant has provided evidence supporting its *prima facie* claim that Respondent lacks any rights or legitimate interests in the Domain Name. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Name. Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Name and Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Respondent's actions indicate that Respondent registered and is using the Domain Name in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, namely:

"(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the 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 your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location."

The Panel finds that Complainant provided ample evidence to show that registration and use of the HARVEY NICHOLS trademarks long predate the registration of the Domain Name. Complainant is also well established and known. Indeed, the record shows that Complainant's HARVEY NICHOLS trademarks and related products and services are widely known and recognized. Therefore, Respondent was likely aware of the HARVEY NICHOLS trademarks when it registered the Domain Name, or knew or should have known

that the Domain Name was confusingly similar to Complainant's trademarks. See [WIPO Overview 3.0](#), section 3.2.2; see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

The Panel therefore finds that Respondent's awareness of Complainant's trademark rights at the time of registration suggests bad faith. See *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#); *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#).

Further, the registration of the Domain Name incorporating Complainant's HARVEY NICHOLS trademark in its entirety suggests Respondent's actual knowledge of Complainant's rights in the HARVEY NICHOLS trademarks at the time of registration of the Domain Name and its effort to opportunistically capitalize on the registration and use of the Domain Name. In addition, the Domain Name includes Complainant's trademark HARVEY NICHOLS in its entirety, directly associated with Complainant's HARVEY NICHOLS trademarks and business activities, and directly evokes Complainant's activities in the field of retail fashion products, further indicating Respondent's actual knowledge of Complainant and its trademarks, and that Respondent's registration of the Domain Name was in bad faith.

Moreover, Respondent registered and is using the Domain Name to confuse and mislead consumers looking for *bona fide* and well-known HARVEY NICHOLS products and services of Complainant or authorized partners of Complainant. The use of the HARVEY NICHOLS mark as the dominant part of the Domain Name is intended to capture Internet traffic from Internet users who are looking for Complainant's products and services. Such use and association of the Domain Name to divert users to a webpage that appears to imitate Complainant's website, could result in causing confusion with Complainant's business activities. It may confuse Internet users who are looking for Complainant's legitimate website and deceive Internet users into thinking that Respondent is somehow connected to Complainant, which is not the case. In addition, Respondent's website also provides the opportunity for Internet users to provide personal data, which may result in use of such data for malicious or fraudulent purposes.

Moreover, the Panel also notes the reputation of the HARVEY NICHOLS trademarks, Respondent's use of a privacy service, the failure of Respondent to submit a response or to provide any evidence of actual or contemplated good faith use, and the implausibility of any good faith use to which the Domain Name may be put.

Accordingly, the Panel finds that Respondent has registered and is using the Domain Name in bad faith and Complainant succeeds under the third element of paragraph 4(a) 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 Domain Name, <harveynicholsale.com>, be transferred to Complainant.

/Kimberley Chen Nobles/

Kimberley Chen Nobles

Sole Panelist

Date: January 10, 2023