

ADMINISTRATIVE PANEL DECISION

Hashkey Digital Asset Group Limited v. Un Breakable Case No. D2023-2680

1. The Parties

The Complainant is Hashkey Digital Asset Group Limited, Hong Kong, China, represented internally. The Respondent is Un Breakable, Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <hashkey.exchange> (the “Disputed Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 5, 2023. On June 22, 2023, the Center acknowledged receipt of the Complaint by email to the Complainant. On June 22, 2023 the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On June 22, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 6, 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 amended Complaint on July 6, 2023.

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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on July 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 27, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 2, 2023.

The Center appointed Rosita Li as the sole panelist in this matter on August 7, 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 a leading digital asset management and finance company. The Complainant has been offering digital asset management and financial technology services in the blockchain and fintech industries for institutions, offices, funds, and professional investors since at least 2018.

The Complainant is the owner of 10 trademarks comprising HASHKEY, which are registered in (i) the United States of America ("United States"), (ii) China, (iii) Hong Kong, China, and (iv) Singapore. The earliest registrations date back to 2019, namely:

- 1) United States Trademark Registration No. 88405831 for HASHKEY registered on November 5, 2019;
- 2) Chinese Trademark Registration No. 35776628 for HASHKEY registered on October 7, 2019;
- 3) Hong Kong, China Trademark Registration No. 304909294 for HASHKEY registered on October 10, 2019; and
- 4) Singapore Trademark Registration No. 40201909221Q for HASHKEY registered on October 16, 2019.

(together with the other trademarks of the Complainant, the "HASHKEY trademarks", each a "HASHKEY trademark").

The Complainant submitted that it has acquired rights and goodwill of the HASHKEY trademarks through widespread use, particularly in the cryptocurrency field.

- The HASHKEY trademark was used in a capital blockchain investment fund prospectus circulated to potential investors in October 2018, and on the website and pamphlet for a conference in July 2018.
- On April 28, 2022, the Complainant has been granted Approval-In-Principle license to operate virtual asset trading platform from the Securities and Futures Commission of Hong Kong.

The Complainant has registered several domain names including <hashkey.com>.

The Complainant operates its home page at "www.hashkey.com", showing information about the Complainant and the services that it offers. The HASHKEY trademarks are shown in the said home page of the Complainant.

The Disputed Domain Name was registered by the Respondent on July 6, 2022. According to the Complainant's declaration, beginning at least as early as May 5, 2023, the Disputed Domain Name directed to a webpage which shows a statement "This domain is registered at namecheap. hashkey.exchange was recently registered at Namecheap. Please check back later!"

On May 5, 2023, the Complainant sent a cease and desist letter to the Respondent, requesting the Respondent to cease and desist using the Disputed Domain Name and transfer the Disputed Domain Name to the Complainant. The Complainant did not receive a reply from the Respondent. A second cease and desist letter was sent to the Respondent on May 16, 2023. The Complainant did not receive a reply from the Respondent either.

According to the Complainant's declaration, as at the filing of the Complaint, the Disputed Domain Name directs to the same webpage as first described in the Complainant's cease and desist letter on May 5, 2023.

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. A summary of the Complainant's submission is as follows.

- (i) The Disputed Domain Name is virtually identical to the Complainant's HASHKEY trademarks. The Complainant contends that:
 - The Disputed Domain Name incorporates the HASHKEY trademarks in their entirety; and
 - The generic Top-Level Domain ("gTLD") ".exchange" may resemble financial exchange, exchange rates, exchanging one product for another, which confuses consumers into believing that the Disputed Domain Name is associated with the Complainant, which has been granted a licence to operate virtual asset trading platform by the Securities and Futures Commission of Hong Kong on April 28, 2022.
- (ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Complainant contends that:
 - The Respondent is not sponsored or endorsed by the Complainant;
 - The Complainant has never authorized or licensed the Respondent to use the HASHKEY trademarks;
 - The Respondent is not identified in the Whois record;
 - There is no evidence that the Respondent is commonly known by the Disputed Domain Name; and
 - The Disputed Domain Name directs to a parked webpage. The Respondent is not making legitimate noncommercial or fair use of the Disputed Domain Name.
- (iii) The Disputed Domain Name was registered and is being used in bad faith. The Complainant contends that:
 - The Complainant has acquired rights in the HASHKEY trademarks and are recognized internationally after years of building the digital asset management business under the HASHKEY trademarks;
 - The Respondent sought to exploit the Complainant's commercial success by registering the Disputed Domain Name after the registration of the HASHKEY trademarks in (i) the United States, (ii) China, (iii) Hong Kong, China, and (iv) Singapore;
 - The Respondent has actual knowledge of the HASHKEY trademarks when it chose the Disputed Domain Name;
 - The Respondent's registration of the Complainant's HASHKEY trademarks in its entirety indicates bad faith.
 - The addition of the gTLD ".exchange" to "HASHKEY" in the Disputed Domain Name was intentional as the Complainant received the Approval-In-Principle licence of virtual assets from the Securities and Futures Commission of Hong Kong two months prior to the registration of the Disputed Domain Name by the Respondent; and
 - The Respondent registered and used the Disputed Domain Name in bad faith in an attempt to create a likelihood of confusion with the Complainant's HASHKEY trademarks.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that a complainant must satisfy each of the following three elements in a complaint:

- (i) the disputed domain name is identical or confusingly similar to a trade mark 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. 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 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 Panel finds the entirety of the HASHKEY trademark is reproduced within the Disputed Domain Name. Accordingly, the Disputed Domain Name is identical or confusingly similar to the HASHKEY trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other term ".exchange" may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the Disputed Domain Name and the HASHKEY trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 such as those enumerated in the Policy or otherwise.

The Panel notes that the Disputed Domain Name resolved to a parked webpage and has not been used for offering any goods or services. The Disputed Domain Name was reproduced again on the parked webpage.

As at the date of this decision, the Disputed Domain Name resolved to an error page, the Panel is of the view that there is no indication that the Respondent has any plan to use the Disputed Domain Name for any *bona fide* offering of goods or services.

The Disputed Domain Name has included the Complainant's HASHKEY trademarks in their entirety and has also included a term "exchange" which is highly relevant to the Complainant's business. Given that the Disputed Domain Name is a parked page with no goods or services being offered, the Panel finds that the Respondent has not been conducting legitimate noncommercial or fair use of the Disputed Domain Name, and is of the view that the above acts are indicative of intent for commercial gain to misleadingly divert consumers of the Complainant's HASHKEY trademarks and its business.

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.

In the present case, the Panel notes that the Respondent has registered the HASHKEY trademarks prior to the registration of the Disputed Domain Name on July 6, 2022. The Complainant also provided supporting documents such as conference pamphlet, screen capture of a website, fund prospectus, and web news reports to show that the HASHKEY brand is well known and reputable amongst the general public. The Panel finds that it would not be plausible for the Respondent to claim that it was unaware of the Complainant and the HASHKEY trademarks. The Panel is prepared to infer that the Respondent knew or should have known that its registration of the Disputed Domain Name would be confusingly similar to the HASHKEY trademarks ([WIPO Overview 3.0](#), section 3.2.2.). Accordingly, the Panel finds that the Respondent registering the Disputed Domain Name, which are confusingly similar to the HASHKEY trademarks, which are well-known and registered earlier, is a clear indicator of bad faith.

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the record, the Panel finds the non-use of the Disputed Domain Name does not prevent a finding of bad faith in the circumstances of this proceeding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the Complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the Respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. [WIPO Overview 3.0](#), section 3.3. Having reviewed the record, the Panel notes the distinctiveness or reputation of the Complainant's HASHKEY trademark, and the composition of the Disputed Domain Name, and finds that in the circumstances of this case the passive holding of the Disputed Domain Name does not prevent a finding of 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 <hashkey.exchange> be transferred to the Complainant.

/Rosita Li/

Rosita Li

Sole Panelist

Date: August 21, 2023