

ADMINISTRATIVE PANEL DECISION

iHerb LLC v. Aleksandr Vasilenko, AirQode
Case No. D2023-4005

1. The Parties

The Complainant is iHerb LLC, United States of America ("United States"), represented by Dentons Europe AARPI, France.

The Respondent is Aleksandr Vasilenko, AirQode, Germany.

2. The Domain Name and Registrar

The disputed domain name <iherbus.com> is registered with GoDaddy.com, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on September 25, 2023. On September 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 26, 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 (Registration Private), and contact information in the Complaint. The Center sent an email communication to the Complainant on October 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 October 10, 2023.

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 October 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 16, 2023.

The Center appointed Anne-Virginie La Spada as the sole panelist in this matter on November 23, 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, based in the United States, operates an e-commerce platform dedicated to vitamins, minerals, and supplements, and other health and wellness products.

Among other registrations, the Complainant owns the following trademark registrations for IHERB:

- European Union trademark registration No 006999643, registered on June 8, 2009 in class 35;
- International trademark registration No 1267128, registered on July 17, 2015 in class 35.

The Complainant is the owner of various domain names containing the mark IHERB, including <iherb.com>, <iherb.us>, and <iherb.ru>.

The disputed domain name was registered on February 21, 2023.

At the time of filing of the Complaint, the disputed domain name resolved to a website in Russian offering health and wellness products for sale, and incorporating the Complainant's trademark as well as certain elements of the Complainant's graphic identity including typographic elements and colors.

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 confusingly similar to its trademark IHERB as it identically reproduces its trademark with the mere addition of the geographical term "rus", pointing towards the country code of the Russian Federation.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name for the following reasons: (i) the Respondent is not commonly known by the disputed domain name; (ii) the Respondent has not been authorized by the Complainant to use the disputed domain name; (iii) the Respondent has not used the disputed domain name in connection with any *bona fide* offering of goods or services, nor is the Respondent making any legitimate noncommercial use of the disputed domain name.

Finally, the Complainant contends that the Respondent has used and registered the disputed domain name in bad faith. According to the Complainant, the disputed domain name was intentionally used in connection with a website that conveys the misleading impression that it is the official website of the Complainant. This demonstrates, in the Complainant's eyes, an attempt to willingly and unfairly attract Internet users, for commercial gain, by creating a likelihood of confusion with the Complainant.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, a complainant must assert and prove each of the following:

- (i) the domain name registered by the respondent 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 domain name; and
- (iii) the domain name registered by the respondent 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 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 "rus", 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 mark 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.

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.

The Respondent did not file a Response to the Complaint. The Panel may draw from the lack of a Response the inferences that it considers appropriate, according to the Rules, paragraph 14(b).

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 used the disputed domain name in connection with an active website in Russian, purportedly offering health and wellness products for sale, and purporting to be an official website of the Complainant. There is no doubt accordingly that the Respondent was aware of the Complainant's trademark at the time of registration of the disputed domain name. The Panel therefore accepts that the disputed domain name was registered in bad faith.

The use of the disputed domain name by the Respondent was apt to mislead Internet users into believing that the website at the disputed domain name was the official website of the Complainant, and that they could contact the Complainant by means of the contact form available on the website.

By using the disputed domain name in such manner, the Respondent intentionally attempted to attract, for the purposes of commercial gain, Internet users to his or her website by creating a likelihood of confusion with the Complainant's mark as to the source and affiliation of this website. Such behavior constitutes use in bad faith under paragraph 4(b)(iv) of the Policy.

Based on the available record, 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 <iherbrus.com> be transferred to the Complainant.

/Anne-Virginie La Spada/

Anne-Virginie La Spada

Sole Panelist

Date: December 8, 2023