

ADMINISTRATIVE PANEL DECISION

The Keepers and Governors of the Possessions, Revenues and Goods of the Free Grammar School of John Lyon within the town of Harrow-On-The-Hill in the County of Middlesex v. Stig Anderson
Case No. D2024-0215

1. The Parties

The Complainant is The Keepers and Governors of the Possessions, Revenues and Goods of the Free Grammar School of John Lyon within the town of Harrow-On-The-Hill in the County of Middlesex, United Kingdom, represented by Withers & Rogers LLP, United Kingdom.

The Respondent is Stig Anderson, United Kingdom.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 18, 2024. On January 18, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 18, 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 (Domain Privacy Service FBO Registrant.) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 19, 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 amended Complaint on January 22, 2024.

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 January 23, 2024. In accordance with the Rules, paragraph

5, the due date for Response was February 12, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 13, 2024.

The Center appointed Antony Gold as the sole panelist in this matter on February 15, 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 the charitable organization responsible for overseeing the management and undertakings of Harrow School, which was founded in the United Kingdom in 1572 by Royal Charter. The Complainant is the owner of various registered trade marks for HARROW, including United Kingdom trade mark, registration number UK00002628243, in multiple classes, registered on June 7, 2013. The Complainant and its related entity also own the domain names <harrowschool.org.uk> and <harrowschool.ac.th>. The second of these domain names resolves to a website providing information about the Harrow International School, which is licensed by the Complainant and is located in Bangkok, Thailand.

The disputed domain name was registered on August 9, 2023. According to the original Complaint, the disputed domain name resolved to a website related to a third party education institution. At the time of this Decision, it resolves to a website containing pay-per-click ("PPC") links for "St. Johns Schools", "Norman Public Schools" and "School District".

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer to it of the disputed domain name. Notably, the Complainant contends that:

- the disputed domain name is identical or confusingly similar to a trade mark in which it has rights. The disputed domain name reproduces identically the Complainant's HARROW mark. The terms "school" and "bangkok" can be discounted from the trade mark analysis due to the fact that one term is descriptive and the other is a geographical location, meaning that the disputed domain name is effectively identical to the Complainant's mark;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has never licensed or authorized the Respondent to use its HARROW trade mark, nor has it been commonly known by a name corresponding to the disputed domain name, nor is it making either a bona fide commercial use or a legitimate noncommercial or fair use of the disputed domain name;
- the disputed domain name was registered and is being used in bad faith. The disputed domain name comprises the Complainant's HARROW mark plus additional terms that are respectively descriptive and geographic and, as such, the Complainant seeks to take unfair advantage of, and abuses, the Complainant's trade mark. The Respondent's knowledge of the Complainant's mark and intent to target it may be reasonably inferred from the Complainant's longstanding international activities. The Respondent is diverting Internet traffic intended for the Complainant for commercial gain, which arises due to the confusing similarity between the disputed domain name and the Complainant's HARROW mark.

B. Respondent

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

6. Discussion and Findings

Dealing, first, with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under, these Rules, the Panel shall be entitled to draw such inferences from this omission as it considers appropriate.

Paragraph 4(a) of the Policy requires that the Complainant proves each of the following three elements in respect of the disputed domain name in order to succeed in its 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 trade mark and the disputed domain name; see the 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 its HARROW trade mark for the purposes of the Policy; see [WIPO Overview 3.0](#), section 1.2.1. As a technical requirement of registration, the generic Top-Level Domain ("gTLD"), that is ".com" in the case of the disputed domain name, is usually disregarded when assessing confusing similarity. The Complainant's HARROW mark is reproduced in its entirety within the disputed domain name and is clearly recognizable within it. In these circumstances the additional terms within the disputed domain name, namely "school" and "bangkok", do not prevent a finding of confusing similarity between the disputed domain name and the Complainant's mark for the purposes of the Policy; see [WIPO Overview 3.0](#), section 1.8.

For the above reasons, based on the available record, the Panel finds that 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 by which the Respondent may demonstrate rights or legitimate interests in a disputed domain name. Whilst 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 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 evidence, the complainant is deemed to have satisfied the second element; see [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 evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise. In particular, 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; see paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2. It is well established under the Policy that use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with, or capitalise upon, the reputation and goodwill of a complainant's trade mark; see section 2.9 of the [WIPO Overview 3.0](#). The PPC links on the Respondent's directory page, namely "St. Johns Schools", "Norman Public Schools" and "School District", are clearly associated with the Complainant's activities and capitalize upon the Complainant's goodwill in its HARROW mark. In particular, the Respondent is using, without the Complainant's consent, the repute of its mark in order to attract Internet users to its webpage and thereby to seek to derive an unfair commercial benefit. The use which the Respondent has made of the disputed domain name does not therefore comprise a bona fide offering of goods and services. See, by way of example, *British Columbia Institute of Technology v. Whois Agent, Domain Protection Services, Inc. / Domain Vault, Domain Vault LLC*, WIPO Case No. [D2018-2336](#). The previous use of the disputed domain name for a website related to a third party education institution does not constitute a bona fide offering of goods or services either in the circumstances of this case;
- there is no evidence in the record that the Respondent has been commonly known by the disputed domain name. In this respect, see 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 trade mark or service mark at issue; see 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.

Furthermore, the Panel finds that the composition of the disputed domain name carries a risk of implied affiliation with the Complainant; see [WIPO Overview 3.0](#), section 2.5.1.

For the above reasons, 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 component parts of the disputed domain name, particularly the terms "harrow" and "school" establish, on at least a balance of probabilities, that the Respondent had the Complainant and its HARROW mark, in mind as at the date of registration of the disputed domain name. As explained at section 3.1.4 of the [WIPO Overview 3.0](#). "[p]anel has consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith". See also *Costco Wholesale Membership Inc. and Costco Wholesale Corporation v. Almantas Kakareka and Hostmaster Oneandone, 1&1 Internet, Inc.*, WIPO Case No. [D2007-1833](#). The Panel therefore finds the registration of the disputed domain name to have been in bad faith.

Paragraph 4(b) of the Policy sets out, without limitation, circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The circumstance set out in paragraph 4(b)(iv) of the Policy is if a respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website.

At the time of filing of the Complaint, the disputed domain name resolved to a website related to a third party education institution. Therefore, the Panel finds such use falls into paragraph 4(b)(iv) of the Policy.

The disputed domain name currently hosts a PPC website. Whilst the use of a domain name to point to parking pages hosting PPC sponsored links is not inherently objectionable, previous decisions under the Policy have found that such conduct can, in appropriate circumstances, constitute bad faith use. See, for example, *Yahoo! Inc. v. Hildegard Gruener*, WIPO Case No. [D2016-2491](#), in which the UDRP panel explained that “the use, to which the disputed domain names are put, namely parking pages featuring sponsored advertising links, is calculated to attract Internet users to the site in the mistaken belief that they are visiting a site of or associated with the Complainant. The object has to be commercial gain, namely pay-per-click or referral revenue achieved through the visitors to the site clicking on the sponsored advertising links. Even if visitors arriving at the websites to which the disputed domain name resolve become aware that these websites are not such of the Complainant, the operators of these websites will nonetheless have achieved commercial gain in the form of a business opportunity, namely the possibility that a proportion of those visitors will click on the sponsored links”.

The facts point to the Respondent having registered the disputed domain names in circumstances similar to those outlined in *Yahoo! Inc. v. Hildegard Gruener, supra*. The Respondent is attracting Internet users to its website, and deriving income from the PPC links on it, because of the confusing similarity between the disputed domain name and the Complainant’s HARROW mark. Such conduct falls within the example of bad faith registration and use set out at paragraph 4(b)(iv) of the Policy.

For the above reasons, the Panel finds that the disputed domain name was both registered and is being used in bad faith.

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 <harrowschoolbangkok.com> be transferred to the Complainant.

/Antony Gold/

Antony Gold

Sole Panelist

Date: February 23, 2024