



CANADIAN INTERNATIONAL INTERNET DISPUTE RESOLUTION CENTRE
DOMAIN NAME DISPUTE
ADMINISTRATIVE PANEL
DECISION

CIIDRC case number:	20448-UDRP	Decision date: April 16, 2023
Domain Name:	<ehealth.org>	
Panel:	María Alejandra López G.	
Complainant:	Life Extension Institute, Inc.	
Complainant's representative:	Daniel M. Anthony of Smart & Biggar	
Respondent:	Nicole Pelham / ehealth	

1. PROCEDURAL HISTORY

The Complainant was filed electronically with the CANADIAN INTERNATIONAL INTERNET DISPUTE RESOLUTION CENTRE ("CIIDRC") on March 9, 2023.

On March 10, 2023, CIIDRC transmitted by email to the Registrar Google, LLC, a request for registrar verification in connection with the disputed domain name. On March 10, 2023, the Registrar transmitted by email to CIIDRC its verification response advising of the identity of the Respondent and providing the following contact details for the disputed domain name, being Nicole Pelham, ehealth, 8300 Greensboro Dr Tysons, VA 22102, United States, +1 202-949-3937, 'admin@sirbiifitness.com', as the Registrant, administrative, and technical contact of the disputed domain name, and confirmed that the disputed domain name was placed on a Registrar LOCK.

CIIDRC verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy") adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN") on August 26, 1999 and approved by ICANN on October 24, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the "UDRP Rules") approved by ICANN on September 28, 2013, and in effect as of July 31, 2015, and the CIIDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules") in effect as of May 9, 2018.

In accordance with the UDRP Rules, paragraphs 2 and 4, CIIDRC formally notified via email to the Respondent, and to the corresponding postmaster's email address by e-mail, including a Written Notice, a copy of the Complaint (and Annexes) to the Respondent. A copy was not mailed as no valid address was provided in the Registrar information (lack of a unit number in a large commercial building). The proceedings commenced on March 10, 2023. In accordance with the UDRP Rules, paragraph 5, the due date for the Response was March 30, 2023. The Respondent failed to file its response by the due date, or any response on or before March 30, 2023.

On April 12, 2023, pursuant to the Complainant's request to have the dispute decided by a single-member Panel, CIIDRC appointed María Alejandra López García as Panelist. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by CIIDRC to ensure compliance with the UDRP Rules, paragraph 7.

Having reviewed CIIDRC's records, this Administrative Panel ("the Panel") finds that CIIDRC has discharged its responsibility under paragraph 2(a) of the UDRP Rules "to employ reasonably available means calculated to achieve actual notice to Respondent" through submission of electronic and Written Notices, as defined in the UDRP Rules paragraph 2(a)(i) and (ii). Therefore, the Panel may issue its decision based on the documents submitted and in accordance with the Policy, the UDRP Rules and the CIIDRC Supplemental Rules and any rules and principles of law that the Panel deems applicable.

2. FACTS ALLEGED BY THE PARTIES

Life Extension Institute, Inc. ("EHE Health"), (the "Complainant"), founded in 1913, is a very well-known preventative health care company. The Complainant has offered its services in association with the coined Trademark EHE HEALTH in the United States for many years. The Complainant alleges that the Respondent has no authorization, rights, or legitimate interests in respect of the disputed domain name, which resolves to an inactive website. The Complainant alleges that the Respondent unequivocally registered the disputed domain name in bad faith, namely, to sell back to the Complainant, or to attract Internet traffic for commercial gain by creating a likelihood of confusion with the Complainant's well-known Trademarks EHE HEALTH and EHE. The Complainant requests that the disputed domain name be transferred to the Complainant.

The disputed domain name <**ehehealth.org**> was registered on **May 12, 2022** and by the time of this Decision resolves to an inactive website with no content.

3. CONTENTIONS OF THE PARTIES

- **Complainant**

The Complainant asserts that EHE Health operates one of the most technologically sophisticated companies in health-care in the United States, specializing in screening and preventative medicine for over a century. That

EHE Health is a national healthcare provider network in preventative health and primary care, and partners with mid-to large-sized employers to give their employees and beneficiaries an entry point to health care. Founded in 1913, EHE Health is headquartered in New York City and operates with over 200 contracts with health clinics across the United States. That EHE Health is an innovator and industry leader in personalized preventative care and offers its services through “EHE Health”.

The Complainant asserts that owns over 10 applications and registrations, including its iconic EHE HEALTH word Trademark registered in the United States, being EHE HEALTH, U.S. Registration No. 6209480, registered on December 1, 2020, in association with healthcare, lifestyle wellness and medical services, including providing medical services and testing services and EHE, U.S. Registration No. 6209481, registered on December 1, 2020, in association with healthcare, lifestyle wellness and medical services, including providing medical services and testing services.

The Complainant contends that the disputed domain name <ehealth.org> is confusingly similar to the Complainant’s trademarks EHE and EHE HEALTH, as well as the Complainant’s own domain name “ehealth”.

That the Respondent has simply taken “ehealth” whole cloth and added “.org”, a generic Top-Level domain (“gTLD”) commonly used for organizations, which adds no distinctiveness to the disputed domain name. That the most prominent and distinctive portion of the domain name “EHE Health” is identical to the Complainant’s trademark EHE HEALTH and its primary website address of ehealth.

That “EHE” is an invented word, accordingly, “EHE HEALTH” is not a phrase that traders would legitimately choose unless seeking to create an impression of association with the Complainant. The Trademark EHE HEALTH is a strong mark and is the distinctive feature of the disputed domain name, to which “.org” adds nothing that would serve to distinguish the disputed domain name. That indeed, the average consumer will immediately assume that the disputed domain name is associated with or authorized by the Complainant.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name, due to there is no evidence of Respondent’s uses of, or demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services. That the Respondent is not connected with the Complainant but is improperly using the Complainant’s Trademark EHE HEALTH within the disputed domain name with an intention to derive advantage from user confusion; that there is no evidence that the Respondent has been commonly known by the disputed domain name. Indeed, all evidence supports a contrary conclusion. That moreover, the Respondent is engaged in passive holding of the disputed domain name, since the disputed domain name does not resolve to a web site or other on-line presence, where such lack of use is a strong indication of lack of rights or legitimate interest in the disputed domain name; and that the Respondent is making an illegitimate use of the disputed domain name by preventing the Complainant from owning it or presumably seeking to sell it for profit based solely on the presence of the Complainant’s well-known mark within the disputed domain name.

The Complainant contends that in accordance to paragraph 4(b)(i) of the Policy, the Respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring it to the Complainant, for valuable consideration in excess of your documented out-of-pocket expenses directly related to the disputed domain name; that the Respondent has engaged in passive holding, constituting bad faith, in accordance with the principle set out in *Telstra Corporation Limited v Nuclear Marshmallows*, WIPO Case No. D2000-0003, and Section 3.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”); and that in relation to the non-use as an indication of bad faith citing “*Dr. Martens International Trading GmbH and “Dr. Maertens” Marketing GmbH v Godaddy.com, Inc.*, WIPO Case No. D2017-0246.

The Complainant finally contends that for more than 100 years, EHE Health has been an industry leader in preventative medicine; that EHE Health has a legacy of involvement in improving global understanding of the impact of good diet, smoking, and physical examination, such as the full body scan. That even, throughout the COVID-19 pandemic, EHE Health provided public updates and clinical guidance in the United States. That EHE Health has is media frequent presence with interviews on popular news broadcasts, such as Fox 32 Chicago and Good Day New York, as well as features in several prolific news articles from Forbes, Fortune Magazine, and Business Wire. That also, throughout the pandemic, EHE Health supported Fortune 500 companies with bespoke preventative health programs to meet the unique needs of each workforce. That today, EHE Health has a national network, present in 40 states across America, dedicated to helping leading employers improve the health and wellbeing of their workforce, establish with it that EHE Health is a well-known Trademark.

- **Respondent**

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

- **Remedy Sought**

The Complainant requests the disputed domain name <**ehehealth.org**> be transferred to it.

4. DISCUSSION AND FINDINGS

4.1 Requirements

In accordance with Paragraph 4 of the Policy, the onus is on the Complainant to prove:

1. That the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
2. That the Respondent has no rights or legitimate interests in respect of the domain name; and
3. That the domain name has been registered and is being used in bad faith.

The Panel will consider each of these requirements in turn.

4.2 Analysis

4.2.1 The Domain Name is Identical or Confusingly Similar to a Trademark or Service Mark in which the Complainant has Rights

The Complainant has sufficiently proved before the Panel that owns registered Trademark Rights over the terms EHE HEALTH and EHE, being:

- EHE HEALTH, U.S. Registration No. 6209480, filed on March 31, 2023, registered on December 1, 2020, and in force initially until December 1, 2026, in IC 44, in association with healthcare, lifestyle wellness and medical services, including providing medical services and testing services and
- EHE, U.S. Registration No. 6209481, filed on March 31, 2020, registered on December 1, 2020, and in force initially until December 1, 2026, in IC 44, in association with healthcare, lifestyle wellness and medical services, including providing medical services and testing services.

In relation to the test for identity or confusing similarity under the First UDRP Element, the Section 1.7 of the WIPO Overview 3.0, states that:

“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.

This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. (This may also include recognizability by technological means such as search engine algorithms.) In some cases, such assessment may also entail a more holistic aural or phonetic comparison of the complainant’s trademark and the disputed domain name to ascertain confusing similarity. (...).”

In relation to the gTLD, in the present Dispute an “.org”, which is commonly used for organizations, which adds no distinctiveness to the disputed domain name, it is well established that such element may typically be disregarded when assessing whether a domain name is identical or confusingly similar to a trademark (see Section 1.11.1 of the WIPO Overview 3.0).

To this Panel, it is very clear that Complainant’s Trademark EHE HEALTH it is exactly reproduced in the disputed domain name, finding it identical to Complainant’s Trademark EHE HEALTH (see *Shopify Inc. v. Cogan Broll*, CIIDRC Case No. 18542-UDRP). Therefore, the Complainant has satisfied the first element under paragraph 4(a)(i) of the Policy.

4.2.2 The Respondent has No Rights or Legitimate Interests in respect of the Domain Name

It has been well established by the Domain Name Jurisprudence, that in UDRP proceedings proving a negative fact it is often an impossible task for a complainant, especially because most of the evidence is under control of the respondent, therefore once a complainant has made out its *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to present its evidence and rebutting the arguments (see Section 2.1 of the WIPO Overview 3.0).

Paragraph 4(c) of the Policy, provides the following list of non-exclusive defenses:

- (i) before any notice of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Nothing in the submitted evidence before this Panel, suggests that the Respondent's uses of, or demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services. As the Complainant contends, all the evidence supports a contrary conclusion. Also, this Panel finds that the Respondent is not connected, associated, or affiliated with, or that it has been authorized or licensed by the Complainant, but instead it is improperly using the Complainant's Trademark EHE HEALTH within the disputed domain name; and furthermore, that there is no evidence that supports that the Respondent has been commonly known by the disputed domain name.

According to the evidence, the Respondent is passively holding the disputed domain name, which resolves to an inactive website, where such lack of use represents strong indication of its lacks of rights or legitimate interests in respect of the disputed domain name (see, e.g.: "*Dr. Martens*" *International Trading GmbH* and "*Dr. Maertens*" *Marketing GmbH v. Godaddy.com, Inc.*, WIPO Case No. D2017-0246).

Therefore, based on Complainant's assertions, the evidence submitted, the lack of Response and on the "balance of probabilities" (see Section 2.1 and Section 4.2 of the WIPO Overview 3.0), this Panel, determines that the Complainant has made out its *prima facie* case, and concludes that the Respondent has no rights or legitimate interests in the disputed domain name. Thus, the Complainant has satisfied the second element under paragraph 4(a)(ii) of the Policy.

4.2.3 The Respondent has Registered and is Being Used the Domain Name in Bad Faith

Bad Faith Registration:

Domain Name: ehehealth.org
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According to the evidence, the Complainant has been a preventive healthcare company for more than 100 years (founded in 1913), and acquired its registered Trademark Rights in the US on December 1, 2020. Also, based on the evidence, this Panel notes that the Complainant has done an extensive use and has had an active Internet presence of its Trademarks EHE HEALTH and EHE, including in media, well before the registration date of the disputed domain name, meaning May 12, 2022.

No explanation has been provided by the Respondent towards the motives of its registration, in fact, the Respondent has remained in silence during the entire proceeding. Silence, that might be interpreted by this Panelist as a tacit confirmation of Complainant's assertions.

The Complainant contends that in accordance to paragraph 4(b)(i) of the Policy, "the Respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring it to the Complainant, for valuable consideration in excess of your documented out-of-pocket expenses directly related to the disputed domain name". Paragraph 4(b)(i) of the Policy, may involve inaction, however, nothing in the evidence proves a material offer nor in excess of the disputed domain name by the Respondent to the Complainant.

According to the *Telstra* case:

"7.7 Has the Complainant proved that the domain name "has been registered in bad faith" by the Respondent? (...) Given the Complainant's numerous trademark registrations for, and its wide reputation in, the word <TELSTRA>, as evidenced by the facts established in paragraphs 4.2 to 4.5, it is not possible to conceive of a plausible circumstance in which the Respondent could legitimately use the domain name <telstra.org>. It is also not possible to conceive of a plausible situation in which the Respondent would have been unaware of this fact at the time of registration. These findings, together with the finding in paragraph 7.2 that the Respondent has no rights or interests in the domain name, lead the Administrative Panel to conclude that the domain name <telstra.org> has been **registered by the Respondent in bad faith.** (...)

7.10 This understanding of paragraph 4(a)(iii) is supported by the actual provisions of the Uniform Policy. Paragraph 4(b) of the Uniform Policy identifies, without limitation, circumstances that "shall be evidence of the registration and use of a domain name in bad faith", for the purposes of paragraph 4(a)(iii). Only one of these circumstances (paragraph 4(b)(iv)), by necessity, involves a positive action post-registration undertaken in relation to the domain name (using the name to attract custom to a web site or other on-line location). The other three circumstances contemplate either a positive action or inaction in relation to the domain name. That is to say, the circumstances identified in paragraphs 4(b)(i), (ii) and (iii) can be found in a situation involving a passive holding of the domain name registration. **Of course, these three paragraphs require additional facts (an intention to sell, rent or transfer the registration, for paragraph 4(b)(i) (...)).**

Given that, this Panel, instead, based on the following additional bad faith factors present in this case, as a) the nature of the disputed domain name, meaning that it is identical to the well-known Complainant's Trademark EHE HEALTH, b) the use of a privacy shield, c) the fact that the Respondent has had more than sufficient time and resources to learn about Complainant's business activity, and of its Trademark's value (the timing), d) the lack of rights or legitimate interests and e) furthermore, the inactive use of it (see Section 3.2.1 and Section 3.2.2 of the WIPO Overview 3.0), concludes, that the Respondent registered the disputed domain name with Complainant's Trademark EHE HEALTH on mind, and that therefore, it has done in bad faith.

Bad Faith Use:

As described along this Decision, and according to the assertions and evidence submitted by the Complainant, the Respondent has engaged in passive holding of the disputed domain name, which in certain circumstances can constitute bad faith use (see, e.g.: *Telstra Corporation Limited v Nuclear Marshmallows*, WIPO Case No. D2000-0003; *Compagnie Générale des Etablissements Michelin v. Jaime Paternina*, WIPO Case No. D2022-0171).

Section 3.3 of the WIPO Overview 3.0, states that:

“From the inception of the UDRP, panelists 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.

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.”

In the present case, a) the Complainant's Trademark is distinctive and widely-known, including in the United States, where the Respondent is located, b) the Respondent has not provided any Response, c) the Respondent has made use of a privacy service, and has not provided a complete mail address, and d) no good faith use has been possible to infer or to proof.

Finally, and in support of Complainant's view concerning the potential complex scenario that the Complainant could face, including the risk of a potential/eventual Respondent disputed domain name's offer, this Panel cites:

“(…) The very act of having acquired [the domain name] raises the probability of Respondent using [it] in a manner that is contrary to Complainant's legal rights and legitimate interests. [...] To argue that Complainant should have to wait for some future use of the disputed domain names to occur in order to demonstrate Respondent's bad faith use is to render intellectual property law into an instrument of abuse

by the Respondent. The result would be the likelihood of the accumulation and use of disputed domain names for the implicit, if not explicit, purpose of misappropriating or otherwise unlawfully undermining Complainant's goodwill and business. The fact that this misappropriation may occur in any as yet undetermined manner at an uncertain future date does not negate Respondent's bad faith. On the contrary, it raises the specter of continuing bad faith abuse by Respondent of Complainant's Mark, name and related rights and legitimate business interests" (see *Comerica Inc. v. Horoshiy, Inc.*, WIPO Case No. D2004-0615).

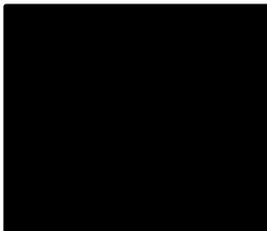
Given that the circumstances of the present case are sufficiently similar to those listed in *Telstra*, this Panel concludes that, the Respondent has engaged in bad faith passive holding, and therefore the disputed domain name is being used in faith as well. Thus, the Complainant has satisfied the third element under paragraph 4(a)(iii) of the Policy.

4 DECISION and ORDER

For the above reasons, in accordance with Paragraph 4 of the Policy, Paragraph 15 of the Rules, and Rule 10 of the Supplemental Rules, the Panel orders that: the disputed domain name <**ehehealth.org**> be **TRANSFERRED** to the Complainant.

Made as of **April 16, 2023**

SIGNATURE OF PANEL



María Alejandra López G.

