



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

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| Case No. | HK-2101543 |
| Complainant: | Evercare Health Limited |
| Respondent: | Steve Dahl / HaloHealthcare |
| Disputed Domain Name(s): | <evercare.health> |

1. The Parties and Contested Domain Name

The Complainant is Evercare Health Limited of Room 603, 4/F Reception, Lee Garden Three, 1 Sunning Road, Causeway Bay, Hong Kong.

The Respondent is Steven Dahl / HaloHealthcare, of 102 Richmond St. Gordon Park, Queensland, 4031, Australia.

The domain name at issue is <evercare.health>, registered by the Respondent with GoDaddy.com, LLC, of 14455 North Hayden Road Suite 219 Scottsdale, AZ 85260 United States.

2. Procedural History

On September 21, 2021, pursuant to the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”) and the Rules for the Uniform Domain Name Dispute Resolution Policy (the “Rules”), the Complainant submitted a Complaint to the Hong Kong Office (“HK Office”) of the ADNDRC (“ADNDRC”). On the same day, the HK Office sent to the Complainant by email an acknowledgment of the receipt of the Complaint and reviewed the format of the Complaint for compliance with the Policy, the Rules and the ADNDRC Supplemental Rules. The HK Office also notified the Registrar of the Complaint by email.

On September 22, 2021, the Registrar replied to the HK Office.

On September 24, 2021, the HK Office informed the Complainant that the information of the Respondent in the Complaint was different from the WHOIS information provided by the Registrar. The Complainant filed an amended Complaint on September 24, 2021. On the same date, the HK Office informed the Complainant that the Complaint is in administrative compliance with the Policy and forwarded the Complaint to the Respondent. The due date of the Response was October 14, 2021.

On October 14, 2021, the Respondent submitted a Response to the HK Office. On October 15, 2021, the HK Office confirmed receipt of the Response and appointed Francine Tan as the sole panelist in this matter.

3. Factual background

The Complainant, Evercare Health Limited, with its headquarters in Hong Kong, was established in 2016. The Complainant states that it is a well-known service provider of home healthcare services, with numerous healthcare professionals providing cancer care, stroke care, dementia care and post-hospitalization rehabilitation.

The Complainant states that it started to use the EVERCARE trade mark since 2016. It is



the registered proprietor of the trade mark in Hong Kong (Registration No. 304070268, registered on March 8, 2017).

The Complainant also owns the domain <yourevercare.com> which it uses for its website. The domain name was registered October 14, 2016.

The disputed domain name was registered on July 29, 2020. At the time the Complaint was filed, it resolved to a GoDaddy parking page with links to “Healthcare Plans”, “Rehab Facilities Nearby”, “Senior Care”, among others.

The Respondent filed a Response identifying itself as Evercare Health Pty Ltd. It stated that:

1. Evercare Health Pty Ltd is an Australian Proprietary Limited company registered on July 30, 2020, and that it is actively engaged in early-stage development of primary healthcare technology businesses/assets in Australia.
2. It was contacted by the Complainant in October and November 2020, requesting to purchase the disputed domain name. The Respondent informed the Complainant that the disputed domain name was not for sale and that the company was “actively working on a legitimate primary healthcare business”.
3. The Respondent filed a trademark application for EVERCARE with IP Australia in August 2020.

No supporting evidence was submitted by the Respondent.

4. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

- i. The disputed domain name is identical and/or confusingly similar to the Complainant's EVERCARE trade mark in which it has rights;
- ii. The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant never licensed or authorized the Respondent to use the EVERCARE trade mark or to register the disputed domain name. To the best of the Complainant's knowledge, the Respondent does not hold any trademark rights in the term "Evercare".
- iii. The Respondent registered and is using the disputed domain name in bad faith. The Respondent does not appear to be running a functioning business and is merely squatting on the disputed domain name. The disputed domain name appears to be available for purchase.

B. Respondent

The Respondent's contentions may be summarized as follows:

- i. It has never attempted to pass itself off as the Complainant nor had it sought to benefit financially or otherwise from an implied association or connection with the Complainant.
- ii. It intends to use the disputed domain name commercially in Australia.

5. Findings

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent's domain name is identical or confusingly similar to a trade mark 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. Respondent's domain name has been registered and is being used in bad faith.

A) Identical / Confusingly Similar

The Complainant has provided evidence of its registration for the EVERCARE (figurative) mark and use of the mark EVERCARE in relation to its business since 2016.

On the issue of whether the disputed domain name <evercare.health> is identical or confusingly similar to the EVERCARE (figurative) mark, the Panel draws guidance from the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), which states at section 1.10 that:

"...trademark registrations with design elements would prima facie satisfy the requirement that the complainant show 'rights in a mark' for further assessment as to confusing similarity.

However where design elements comprise the dominant portion of the relevant mark such that they effectively overtake the textual elements in prominence, or where the trademark registration entirely disclaims the textual elements (i.e., the scope of protection afforded to the mark is effectively limited to its stylized elements), panels may find that the complainant’s trademark registration is insufficient by itself to support standing under the UDRP.”

The design element in the Complainant’s registered figurative mark



is not a dominant portion of the mark and does not effectively overtake the textual elements in prominence. Hence, the Panel concludes that the disputed domain name is confusingly similar to the figurative mark in which the Complainant has registered rights. The textual element “EVERCARE” has been incorporated in its entirety in the disputed domain name. Additionally, the Complainant has rights in the trade mark EVERCARE, having used it in relation to its various services since 2016. The Panel therefore finds that the disputed domain name is identical to the Complainant’s EVERCARE mark. The fact that the generic Top-Level Domain in this case is “.health” adds to the confusing similarity, in view of the nature of the Complainant’s services.

The first element of paragraph 4(a) of the Policy has been satisfied.

B) Rights and Legitimate Interests

The Panel finds that the Complainant has presented a *prima facie* case that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. The Respondent was not authorised or licensed to use the EVERCARE trade mark or to register a domain name incorporating the EVERCARE trade mark.

Once a complainant has established a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect of the disputed domain name. (See WIPO Overview 3.0, section 2.1.) Paragraph 4(c) of the Policy states that there are a few (non-exhaustive) ways in which a respondent can demonstrate it has rights or legitimate interests in a domain name:

- (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.

Although the Respondent submitted a Response, no supporting evidence was proffered by the Respondent. The Panel is unable to make a determination on bare assertions alone, in the absence of any supporting evidence. In this case the Respondent, Steven Dahl/ HaloHealthcare failed to show it has trademark rights in EVERCARE. The Respondent also failed to clarify and produce evidence showing the nexus between the Respondent and Evercare Health Pty Ltd. Additionally, none of the above-mentioned elements under paragraph 4(c) of the Policy has been demonstrated with supporting evidence, to apply to the Respondent.

The Respondent has failed to rebut the *prima facie* case established by the Complainant. The Panel accordingly concludes that the Respondent has no rights or legitimate interest in respect of the disputed domain name.

The second element of paragraph 4(a) of the Policy has been satisfied.

C) Bad Faith

A complainant has the burden of proving that the respondent registered and is using the disputed domain name in bad faith. Paragraph 4(a)(iii) of the Policy states that:

“[T]he following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that [the respondent has] registered or [the respondent has] 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) [the respondent has] 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 [the respondent has] engaged in a pattern of such conduct; or
- (iii) [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [its] web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] web site or location or of a product or service on [the respondent's] web site or location.”

The circumstances of this case do not appear to fit into any of the above-mentioned scenarios. Indeed, these enumerated circumstances are not exhaustive but illustrative. However, the evidence presented by the Complainant is, in essence, somewhat lacking in supporting a claim of bad faith registration and use on the Respondent's part. The Complainant is based in Hong Kong and the Respondent in Australia. While the EVERCARE mark has been in use for several years in Hong Kong and the Complainant has a trademark registration for the figurative version of the mark in Hong Kong, there is no evidence or a combination of facts which demonstrate that the Respondent has sought to take unfair advantage of, abuse, or otherwise engage in behaviour detrimental to the Complainant's trade mark". Generally speaking, the consensus amongst panels is that the mere fact that someone registers a domain name which is later resold for a profit does not, by itself, support a claim that the respondent registered the domain name in bad faith with the ultimate purpose of selling it to a trademark owner or competitor. (See sections 3.1 and 3.1.1 of the WIPO Overview 3.0.)

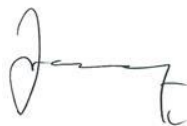
Hence, the Complainant's argument that the Respondent seems to be squatting on the disputed domain name and that the domain name appears to be available for purchase is, in itself, inadequate to meet the requirement under paragraph 4(a)(iii) of the Policy. The Complainant has not shown, on a preponderance of the evidence, that the Respondent had likely knowledge of the Complainant's rights and had targeted its EVERCARE trade mark. The Complainant has not provided evidence that the EVERCARE mark is particularly famous, to the extent that it was more likely than not that the Respondent would have known of the Complainant and its EVERCARE mark. Moreover, there were no circumstances from which the Panel could draw any adverse inference against the Respondent, e.g. a pattern of abusive registrations or an offer by the Respondent to sell the disputed domain name for a disproportionate amount of money.

The Policy is clear on the requirement that the Complainant has to prove each of the elements of paragraph 4(a). The Panel therefore finds itself unable to conclude that the disputed domain name was registered and is being used in bad faith.

The third element of paragraph 4(a) of the Policy has not been satisfied.

6. 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 <evercare.health> remain with the Respondent.



Francine Tan
Panelist

Dated: October 20, 2021