

ADMINISTRATIVE PANEL DECISION

Utz Quality Foods, LLC v. zhangte te
Case No. D2022-3241

1. The Parties

The Complainant is Utz Quality Foods, LLC, United States of America, represented by Cozen O'Connor, United States of America (the "United States").

The Respondent is zhangte te, China.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 31, 2022. On September 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 1, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on September 1, 2022 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 September 5, 2022.

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 September 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 26, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 27, 2022.

The Center appointed Taras Kyslyy as the sole panelist in this matter on October 10, 2022. 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 snack food company operating in the United States since at least as early as 1921 and is known as a provider of snack foods, including but not limited to its UTZ snack foods, popcorn, potato chips, and pretzels. The Complainant produces over 3.5 million pounds of snacks per week while operating over 1,800 direct store delivery routes and direct to warehouse operations. The Complainant is also a snack supplier to warehouse clubs and mass merchandisers and is publicly traded on the NYSE as "UTZ".

The Complainant owns a number of registrations for its UTZ trademark, including for instance the United States trademark registration No. 0,878,317, registered on October 7, 1969.

The Complainant's main website can be found at its <utzsnacks.com> registered on October 1, 1996.

The disputed domain name was registered on June 7, 2022 and resolved to a website with banners containing links to gambling and pornography websites. At the time of this decision the disputed domain name does not resolve to any active website.

5. Parties' Contentions

A. Complainant

The disputed domain name is identical or confusingly similar to the Complainant's trademark. The disputed domain name prominently incorporates the Complainant's trademark as the first element in the disputed domain name, and the Respondent is attempting to cause consumers to believe the disputed domain name will be used in connection with identical goods or is somehow affiliated with the Complainant. While the disputed domain name includes the element "pmea", this element fails to distinguish the disputed domain name from the Complainant's trademark. Upon viewing the disputed domain name, consumers will first see the "utz" element, assume the domain will provide information or content related to the Complainant, and that the disputed domain name is affiliated, associated with or somehow approved by the Complainant when in fact it is not.

The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not affiliated with the Complainant, and there is no evidence to suggest that the Respondent has registered the disputed domain name to advance legitimate interests or for the *bona fide* offering of legitimate goods or services. The Respondent has anonymously registered the disputed domain name in an effort to evade the consequences of registering a domain name for which it has no rights or legitimate interests. The Respondent cannot claim to be commonly known by the disputed domain name, since the website located at the disputed domain name contains gambling references and pornographic content as well as numerous links to gambling services and pornography. The entirety of the evidence demonstrates the Respondent's illegitimate purpose to register and use the disputed domain name in an apparent attempt to syphon off of the Complainant's goodwill in its trademark.

The disputed domain name was registered and is being used in bad faith. Through registering the disputed domain name which includes the Complainant's trademark as the dominant element, the Respondent is, in bad faith, attempting to redirect traffic to its website featuring unsavory pornographic content. The Respondent has incorporated the Complainant's trademark in its disputed domain name to cause initial interest confusion, deliberately diverting unsuspecting Internet users to the disputed domain name believing it to be connected to the Complainant. The Respondent's use of pornographic content displayed on the website at the disputed domain name constitutes trademark tarnishment. The Respondent registered the disputed domain name for what appears to be an attempt to syphon the goodwill and reputation from the Complainant and its trademark, to drive innocent Internet traffic to its pornographic website, and to commercially gain and to profit from the resulting consumer confusion.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

According to section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the "[WIPO Overview 3.0](#)") the applicable generic Top-Level Domain ("gTLD") in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. Thus, the Panel disregards gTLD ".com" for the purposes of the confusing similarity test.

According to section 1.7 of the [WIPO Overview 3.0](#) in cases where a domain name incorporates the entirety of a trademark the domain name will normally be considered identical or confusingly similar to that mark for purposes of UDRP standing. The Panel finds that in the present case the disputed domain name incorporates the entirety of the Complainant's trademark.

According to section 1.8 of the [WIPO Overview 3.0](#) where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The Panel finds that in the present case the Complainant's trademark is recognizable within the disputed domain name and the addition of the term "pmea" would not prevent a finding of confusing similarity of the disputed domain name and the Complainant's trademark.

Considering the above the Panel finds the disputed domain name is confusingly similar to the Complainant's trademark, therefore, the Complainant has established its case under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant has established *prima facie* that the Respondent has no rights or legitimate interests in the disputed domain name.

Furthermore, the Respondent provided no evidence that it holds rights or legitimate interests in the disputed domain name.

The available evidence confirms that the Respondent is not commonly known by the disputed domain name, which could demonstrate its rights or legitimate interests (see, e.g., *World Natural Bodybuilding Federation, Inc. v. Daniel Jones, TheDotCafe*, WIPO Case No. [D2008-0642](#)).

The Complainant did not license or otherwise agree for use of its prior registered trademarks by the Respondent, thus no actual or contemplated *bona fide* or legitimate use of the disputed domain name could be reasonably claimed (see, e.g., *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#)).

Considering the above, and further findings below, the Panel finds the Respondent does not have rights or legitimate interests in the disputed domain name. Therefore, the Complainant has established its case under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to section 3.2.2 of the [WIPO Overview 3.0](#) noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant's mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant's mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent's claim not to have been aware of the complainant's mark. Here the Panel notes that the disputed domain name consists of the Complainant's trademark UTZ, and to what appears to this Panel to be a meaningless term "pmea". The Panel finds that the disputed domain name incorporating the Complainant's trademark, which has no common meaning and has been widely used by the Complainant for decades, on the balance of probabilities confirms that the Respondent had in mind and targeted the Complainant and its trademark when registering the disputed domain name. This is corroborated by the lack of Response in this matter, and the change of content of the Respondent's website upon notice of this proceeding.

According to paragraph 4(b)(iv) of the Policy the 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: by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location. In this case, the disputed domain name was used to offer links to gambling and pornography websites, seemingly providing financial gain to the Respondent. This Panel is of the view that the fact that the website at the disputed domain name provided adult sexually explicit content with pornography elements indicates that the domain name has been registered and used in bad faith (see, e.g., *Six Continents Hotels, Inc. v. Seweryn Nowak*, WIPO Case No. [D2003-0022](#), *Miroglio S.p.A. v. Mr. Alexander Albert W. Gore*, WIPO Case No. [D2003-0557](#)).

Although at the time of this decision the disputed domain name resolves to an inactive webpage, the Panel finds that its previous use, and lack of explanation by the Respondent of the choice of the disputed domain name (incorporating the Complainant's trademark UTZ) to offer gambling and pornography content, further suggest bad faith registration and use of the disputed domain name. The current passive holding of the disputed domain name does not prevent a finding of bad faith (see, e.g., *Abbott Diabetes Care Inc. v. Privacy Protection, Hosting Ukraine LLC / Виталий Броцман (Vitalii Brocman)*, WIPO Case No. [DPW2017-0003](#)).

Considering the totality of circumstances of this case, and the lack of Response by the Respondent, the Panel finds on the balance of probabilities that the disputed domain name was registered and is being used in bad faith. Therefore, the Complainant has established its case under paragraph 4(a)(iii) 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 <utzpmea.com> be transferred to the Complainant.

/Taras Kyslyy/

Taras Kyslyy

Sole Panelist

Date: October 24, 2022