

ADMINISTRATIVE PANEL DECISION

Trader Joe's Company v. Jessica Sumner
Case No. D2022-4332

1. The Parties

Complainant is Trader Joe's Company, United States of America ("United States"), represented by O'Melveny & Myers LLP, United States.

Respondent is Jessica Sumner, United States.

2. The Domain Name and Registrar

The disputed domain name <traderjoes.life> is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 15, 2022. On November 15, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 15, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on November 16, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on November 17, 2022.

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 Respondent of the Complaint, and the proceedings commenced on November 18, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 8, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on December 9, 2022.

The Center appointed Brian J. Winterfeldt as the sole panelist in this matter on December 20, 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

Complainant Trader Joe's Company ("Complainant" or "Trader Joe's") is an American company founded in 1967 by Joe Coulombe in Pasadena, California. Complainant is the registered owner of numerous trademark registrations for TRADER JOE'S. Complainant operates many grocery stores under the TRADER JOE'S mark and continues to expand across the United States in numerous locations.

Complainant is the owner of hundreds of national and international trademark registrations worldwide comprising TRADER JOE'S (the "Mark") for use in connection with products and services in the food industry, with sample registration details as follows:

- TRADER JOE'S, United States Reg. No. 1420628, registered on December 9, 1986;
- TRADER JOE'S, United States Reg. No. 1424176, registered on January 6, 1987;
- TRADER JOE'S, United States Reg. No. 2171157, registered on July 7, 1998.

The disputed domain name was registered on November 2, 2022. The disputed domain name currently resolves to a parked page featuring grocery-related third-party pay-per-click links.

5. Parties' Contentions

A. Complainant

According to Complainant, the disputed domain name is identical or confusingly similar to Complainant's TRADER JOE'S trademark in which Complainant has rights as demonstrated through its cited registrations. The Mark was adopted and has been continuously used since at least as early as 1967 in connection with various grocery goods and services. Complainant maintains its online presence through its website hosted at its domain name <traderjoes.com>, created on November 22, 1995.

Complainant argues that the disputed domain name fully incorporates the Mark. Complainant also argues that the addition of the generic Top-Level Domain ".life" to the Mark does not distinguish the disputed domain name.

Complainant asserts that Respondent lacks any rights or legitimate interests in the disputed domain name. According to Complainant, Respondent does not have any trademark rights to the Mark. Complainant alleges that Respondent is not using the disputed domain name in connection with any legitimate noncommercial or fair use without intent for commercial gain. Complainant argues that Respondent's use of the disputed domain name to direct Internet users to a parked pay-per-click webpage featuring grocery-related third-party links clearly shows that Respondent is intentionally using the Mark to redirect potential customers away from Complainant's website. Complainant also asserts that it has not granted Respondent, by license or otherwise, permission to use the Mark in any way. Complainant asserts that it has never had any contractual relationship with Respondent. Complainant argues that the disputed domain name was registered by Respondent without Complainant's consent.

Complainant argues that Respondent both registered and is using the disputed domain name in bad faith. According to Complainant, Respondent registered and is using the disputed domain name intentionally in an attempt to attract Internet users to its website by creating a likelihood of confusion with Complainant's trademark. Complainant argues that Respondent intends to attract Internet users and consumers looking for legitimate goods and services offered by Complainant and/or authorized partners to Respondent's own

webpage. Complainant argues that Respondent could not have been unaware of the existence of Complainant's famous trademarks and company name when registering the disputed domain name. Complainant also argues that the mere fact that Respondent has registered the disputed domain name which incorporates the famous TRADER JOE'S trademark is alone sufficient to give rise to an inference of bad faith. Complainant further argues that the content and use of Respondent's website also evidences bad faith on account of the parked pay-per-click webpage. Complainant argues that such actions clearly show the disputed domain name was registered and is being used in bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Under paragraphs 5(f) and 14(a) of the Rules, the effect of a default by a respondent is that, in the absence of exceptional circumstances, the panel shall proceed to a decision on the basis of the complaint.

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

A respondent's default does not by itself satisfy a complainant's burden of proof and is not necessarily an admission that the complainant's allegations are true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). Thus, even though Respondent has failed to address Complainant's contentions, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence. See, e.g., *The Knot, Inc. v. In Knot We Trust LTD*, WIPO Case No. [D2006-0340](#).

A. Identical or Confusingly Similar

A national or international trademark registration is *prima facie* evidence that the holder has the requisite rights in the registered mark for purposes of paragraph 4(a)(i) of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Complainant has provided evidence that it owns multiple trademark registrations for the TRADER JOE'S trademark as referenced above. Therefore, Complainant has established that it has rights in the Mark.

The remaining question under the first element of the Policy is whether the disputed domain name (typically disregarding the Top-Level Domain ("TLD") in which the domain name is registered) is identical or confusingly similar to Complainant's mark. It is well accepted that the first element functions primarily as a standing requirement and that the threshold test for confusing similarity involves a "reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name". [WIPO Overview 3.0](#), section 1.7. 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. *Id.*

Here, the disputed domain name is identical to and incorporates the entirety of the Mark. A side-by-side comparison of the Mark and the disputed domain name reveals that the Mark is easily identifiable within the disputed domain name.

Therefore, the Panel finds that Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in establishing its trademark rights and showing that the disputed domain name is confusingly similar to its TRADER JOE'S mark.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, Complainant must make at least a *prima facie* showing that Respondent possesses no rights or legitimate interests in the disputed domain name. See [WIPO Overview 3.0](#), section 2.1. Once Complainant makes such a *prima facie* showing, the burden of production shifts to Respondent, though the burden of proof always remains on Complainant. If Respondent fails to come forward with evidence showing rights or legitimate interests, Complainant will have sustained its burden under the second element of the UDRP.

Paragraph 4(c) of the Policy lists the ways that Respondent may demonstrate rights or legitimate interests in the disputed domain name:

- (i) before any notice of the dispute, Respondent's use of, or 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; or
- (ii) Respondent (as an individual, business or other organization) has been commonly known by the disputed domain name, even if it has acquired no trademark or service mark rights; or
- (iii) Respondent is 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 trademark or service mark at issue.

Here, Complainant has alleged that Respondent has no rights or legitimate interests in the disputed domain name. Respondent has failed to come forward with any evidence showing rights or legitimate interests. Respondent has not submitted any arguments or evidence to rebut Complainant's contention that Respondent is not an assignee or licensee of Complainant and that Respondent has no other business relationship with Complainant. Complainant has contended that Respondent is not commonly known by the disputed domain name and that there is no evidence that Respondent has established trademark rights in the disputed domain name. Again, Respondent has not provided any evidence or arguments to demonstrate that it has such rights. Lastly, Complainant has alleged that use of the disputed domain name, wholly incorporating the Mark, to resolve to pay-per-click links competing with or capitalizing on the Mark does not constitute a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use.

Accordingly, Complainant has put forward a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name, which has not been rebutted by Respondent. Moreover, the identical nature of the disputed domain name to Complainant's Mark carries a high risk of implied affiliation. See [WIPO Overview 3.0](#), section 2.5.1.

Accordingly, the Panel finds that Respondent does not have any rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Bad faith is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. Paragraph 4(b) of the Policy provides that any one of the following non-exclusive scenarios constitutes evidence of a respondent's bad faith:

- (i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name 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 the respondent's 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 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 the respondent's website or location or of a product or service on the respondent's website or location.

Here, Respondent's actions align with 4(b)(iv) of the Policy. The disputed domain name contains the entirety of the TRADER JOE'S mark; in fact, the disputed domain name is identical to the Mark. Due to the well-known nature of Complainant's brand, evidenced by its numerous trademark registrations for TRADER JOE'S, along with the unauthorized and exact use of the Mark in the disputed domain name, Respondent was undoubtedly aware of Complainant and the Mark when it registered the disputed domain name. Further, the use of Respondent's website, which is a parked page featuring competing pay-per-click third-party links, can only serve to create a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of Respondent's website for commercial gain. Respondent's use of the Mark in the disputed domain name in connection with Respondent's website clearly evidences bad faith on the part of Respondent in the registration and use of the disputed domain name.

This Panel therefore finds that Respondent acted in bad faith by its registration and use of the disputed domain name, intentionally creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of Respondent's website with the purpose of attracting Internet users for commercial gain as per paragraph 4(b)(iv) 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 <traderjoes.life> be transferred to Complainant.

/Brian J. Winterfeldt/

Brian J. Winterfeldt

Sole Panelist

Date: January 3, 2023