

ADMINISTRATIVE PANEL DECISION

Tyson Foods, Inc. v. Yuyu Wei
Case No. D2023-1467

1. The Parties

The Complainant is Tyson Foods, Inc., United States of America (“United States”), represented by Reed Smith LLP, United States.

The Respondent is Yuyu Wei, China.

2. The Domain Name and Registrar

The disputed domain name <tysoncorp.com> is registered with Hong Kong Juming Network Technology Co., Ltd (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 4, 2023. On April 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 6, 2023, 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 (Guang Xi) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 6, 2023, 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 April 11, 2023.

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 April 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 10, 2023.

The Center appointed Manuel Moreno-Torres as the sole panelist in this matter on May 16, 2023. 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 one of the largest food production companies based in the United States and is member of the S&P 500. The Complainant has more than 142,000 employees at facilities and offices around the world.

The Complainant owns different registrations for TYSON trademark in a number of jurisdictions. By way of example:

- United States Trademark and Patent Office for TYSON with registration number 1,748,683 and registered on January 26, 1993.
- United States Trademark and Patent Office for TYSON with registration number 2,810,231 and registered on February 3, 2004

The Complainant is the owner of different domain names. As such, <tyson.com>, <tysonfoods.com>, <tysonfoodservice.com>, <tysonfoodsusa.com> and <tysonfoods-usa.com>.

The disputed domain name was registered on March 6, 2023. While the disputed domain name currently resolves to an inactive webpage, there is evidence that previously it was directing to a pornographic site.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name incorporates the TYSON trademark in its entirety and as such, it creates confusing similarity between the mark and the disputed domain name.

The addition of a generic term, namely, "corp" may actually increase the likelihood of confusion since it refers to the Complainant's business.

Additionally, says the Complainant, the generic Top-Level Domain ("gTLD") ".com" in the disputed domain name is viewed as a standard registration requirement and as such disregarded in the analysis under the first element of the confusing similarity test.

The Complainant alleges that the Respondent has no rights or legitimate interest in the disputed domain based on the following: The Respondent is not related to, or affiliated or connected with the Complainant in any way. Further, the Complainant has never licensed or authorized the Respondent to use the TYSON trademark, or to register any domain name incorporating the TYSON trademark.

The Complainant avers that the Respondent has exclusively used the disputed domain name to divert traffic to a pornographic website and therefore, there is no *bona fide* offering of goods or services and it is not making a legitimate noncommercial or fair use of the disputed domain name within the meaning of Paragraph 4(c)(i) or (iii) of the Policy.

Besides, the Complainant affirms that there is no evidence the Respondent is or has ever been known by the names "Tyson," "Tyson Foods," or "tysoncorp". For such, the Complainant refers to the Whois information, which provides no evidence in indicating that the Respondent was commonly known by the disputed domain name, as well as for the lack of any website associated to the disputed domain name and the Respondent.

The Complainant contends that the disputed domain name has been registered and is being used by the Respondent in bad faith. Indeed, alleges the Complainant, the mere registration of a domain name that is confusingly similar to a famous trademark by an unaffiliated entity can by itself create a presumption of bad faith. Further, the Respondent knew of the Complainant's rights in the TYSON trademark prior to the registration of the disputed domain name. Moreover, says the Complainant, the Respondent is using the disputed domain name for the sole purpose of directing traffic to a pornographic website.

The Complainant also notes that the current inactivity of the disputed domain name supports a finding of bad faith use and registration based on the passive holding doctrine.

B. Respondent

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

6. Discussion and Findings

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

- (i) the disputed domain name is identical or confusingly similar to a trademark 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 was registered and is being used in bad faith.

There are no exceptional circumstances within paragraph 5(f) of the Rules to prevent the Panel from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a Response. Under paragraph 14(a) of the Rules in the event of such a "default" the Panel is still required "[to] proceed to a decision on the complaint", whilst under paragraph 14(b) it "shall draw such inferences therefrom as it considers appropriate". This dispute resolution procedure is accepted by the domain name registrant as a condition of registration.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy provides that the Complainant must establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

As set out above, the Complainant owns trademark registrations for TYSON. It is well established that generic terms added to a trademark in a domain name do not avoid the confusing similarity. See *Tetra Laval Holdings & Finance S.A. v. Trupper Mexico, trupper Mexico*, WIPO Case No. [D2022-3489](#).

The gTLD ".com" can be disregarded under this element (see section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Accordingly, and applying a side-by-side comparison the disputed domain name is confusingly similar to the disputed domain name since TYSON trademark is fully reproduced in the disputed domain name.

Therefore, the first requirement is met under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out non-exclusive examples in which the Respondent may establish rights or legitimate interests in the disputed domain name, by demonstrating any of the following:

- (i) before any notice to it 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) that the Respondent has been commonly known by the domain name, even if it 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.

As set out in the [WIPO Overview 3.0](#) section 2.1.: "While 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 often-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."

In consequence, has the Complainant made out a *prima facie* case that the Respondent lacks rights or legitimate interests? The Panel finds that according to the evidence in the records the Respondent is not related or affiliated to the Complainant, nor has ever been licensed or authorized to use TYSON trademark in a corresponding domain name. Besides, it seems apparent that the disputed domain name has been used to divert traffic to a pornographic website which is not equivalent to have rights or legitimate interest in the disputed domain name. This does not constitute use of the disputed domain name in connection with a *bona fide* offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy. Nor there is evidence in the records as to consider the Respondent commonly known by the disputed domain name.

The Panel finds that the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name.

The failure of the Respondent to rebut the Complainant's allegations limit the assessment of the case to the current evidence and allegations of the records.

In light of the above, the Panel finds that the Complainant has satisfied the requirement of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that the Complainant must establish that the Respondent registered and subsequently used the disputed domain name in bad faith.

Noting section 3.1.4 of [WIPO Overview 3.0](#) where: "Panels have 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". The Panel finds that this scenario matches that of the file.

As set out above, the reproduction of TYSON trademark in the disputed domain name is apparent, the mark is well-known and the Respondent is unaffiliated to the Complainant. These circumstances support a finding that the Respondent knew or should have known about TYSON trademark at the moment of the registration of the disputed domain name.

The use of the disputed domain name is connected to a pornographic site, which leads the Panel to conclude that there is an attempt to bait and catch internet users into the Respondent's website. That is to

say, the Respondent targeted the Complainant's mark and the circumstances of the case fall in paragraph 4 (b)(iv) of the Policy: "by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your web site or location or of a product or service on your web site or location". Accordingly, the Panel finds that the Respondent registered the disputed domain name to trade off the Complainant's mark reputation through the creation of internet user confusion. See *OSRAM GmbH. v. Mohammed Rafi/Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org*, WIPO Case No. [D2015-1149](#).

The Panel also notes that the disputed domain name does not currently resolve to an active website. However, this do not affect the above findings due to the lack of use. Indeed, the Panel considers that it applies the doctrine of passive use to qualify it as bad faith. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

Accordingly, the Panel finds that the Complainant has satisfied the requirements of 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, <tysoncorp.com> be transferred to the Complainant.

/Manuel Moreno-Torres/

Manuel Moreno-Torres

Sole Panelist

Date: May 30, 2023