

## **ADMINISTRATIVE PANEL DECISION**

The Pink Pig SA v. John Deleo  
Case No. D2023-2244

### **1. The Parties**

The Complainant is The Pink Pig SA, Spain, represented by Integra, Spain.

The Respondent is John Deleo, United States of America.

### **2. The Domain Name and Registrar**

The disputed domain name <thepinkpig-sa.com> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in Spanish with the WIPO Arbitration and Mediation Center (the “Center”) on May 24, 2023. On May 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 24, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 25, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On the same date, the Center transmitted an email communication to the Parties regarding the language of the proceeding. The Complainant filed an amended Complaint in English on May 27, 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 May 31, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 20, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 21, 2023.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on June 23, 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 a Spanish company dedicated to the sale of fresh, chilled, and frozen meat, and meat products. The Complainant is part of Grupo Jorge<sup>1</sup>, a group of Spanish entities formed by the Complainant, Fortune Pig S.L., and Le Porc Gourmet S.L., among others.

The Complainant relies on the European Union trademark THE PINK PIG GRUPO JORGE, registration No. 018021517, registered on October 28, 2020, in classes 29, 35, and 39.

The Complainant main website group is available at “www.jorgesl.com”. The Complainant’s domain name <thepinkpig.es> redirects to the main website of the group.

The disputed domain name was registered on November 18, 2021. The disputed domain name resolves to a website where it displays content that purports to be an official website of the Complainant.

In addition, the disputed domain name was used to perpetrate a fraud, offering products to consumers pretending to be the Complainant. The Respondent used the disputed domain name to send emails with pre-invoices, invoices, and orders to customers, using the Complainant’s trademark and with email accounts associated with the disputed domain name.

The Complainant has already obtained two favorable decisions of cancellation of two Spanish domain names (<thepinkpigs.es> and <leporcgourmet.es>) at the Spanish registry Red.es. In addition the Complainant has detected several other domain names used for similar scams containing its trademark or tradenames with similar pattern and has contacted law enforcement.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that:

- the disputed domain name is confusingly similar to its trademarks;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name;
- the Respondent has registered and is using the disputed domain name in bad faith.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

Paragraph 4(a) of the Policy lists three elements, which a complainant must satisfy in order to succeed. The Complainant must satisfy that:

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<sup>1</sup> As part of the general powers of the Panel, as articulated, *inter alia*, in paragraph 10 of the Rules, the Panel has corroborated the relationship between the Complainant and Grupo Jorge through an Internet search.

- (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 has been registered and is being used in bad faith.

#### **A. Identical or Confusingly Similar**

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. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights, through a related company, in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of "-sa" may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

#### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

The Panel considers that the record of this case reflects that:

Before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made 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. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.

The Respondent (as an individual, business, or other organization) has not been commonly known by the disputed domain name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.

The Respondent is not 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. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.

The record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

In the present case the disputed domain name was used for a scam.

Based on the available record, the Panel finds the second element of the Policy has been established.

### **C. Registered and Used in Bad Faith**

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Panel considers that the record of this case reflects that:

- The disputed domain name contains the most prominent part of the mark of the Complainant as well as the complete corporate name of the Complainant with the addition of the term “-sa” which is the abbreviation of “sociedad anonima”, in Spanish.
- The disputed domain name was use to commit fraud.
- The Panel visited the disputed domain name and was able to verify that the website looks like an official web page of the Complainant.

The Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website 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 website or location or of a product or service on the Respondent’s website or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent’s registration and use of the disputed domain name constitutes bad faith under the Policy.

In the present case, the Panel further notes that the Respondent created a web page that imitates the Complainant products and that was used to deceive customers into fraud.

Based on the available record, the Panel finds the third element of the Policy has been established.

## 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, <thepinkpig-sa.com> be transferred to the Complainant.

*/Pablo A. Palazzi/*

**Pablo A. Palazzi**

Sole Panelist

Date: July 7, 2023