

ADMINISTRATIVE PANEL DECISION

Tyson Foods, Inc. v. Mwengeus Gislanus
Case No. D2023-3835

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 Mwengeus Gislanus, South Africa.

2. The Domain Name and Registrar

The disputed domain name <tysonmeat.com> (the “Disputed Domain Name”) is registered with Registrar of Domain Names REG.RU LLC (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on September 14, 2023. On September 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On September 18, 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 (Protection of Private Person) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 29, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. Also, on September 29, 2023, the Center sent an email communication to the Parties, in English and Russian, regarding the language of the proceeding. The Complainant filed an amended Complaint on October 2, 2023, and requested English to be the language of the proceeding.

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 in both English and Russian, and the proceedings commenced on October 5, 2023.

In accordance with the Rules, paragraph 5, the due date for Response was October 25, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 26, 2023.

The Center appointed Mariia Koval as the sole panelist in this matter on October 31, 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, founded in 1935, is an American multinational corporation and one of the largest food production companies in the world and the second largest processor and marketer of chicken, beef, and pork in the world. The Complainant contends that it has had more than USD 53 billion in sales in 2022, is a member of the stock index "S&P 500", having more than 124,000 employees at facilities and offices in the United States and around the world. The Complainant also ranked No. 79 in the "2020 Fortune 500 list" of the largest United States corporations by total revenue. The Complainant has been using the TYSON trademark (the "TYSON Trademark") in connection with its food products since at least as early as 1958 in respect of various food products and related products and services.

The Complainant owns numerous registrations for the TYSON Trademark in the United States and globally, among which are:

- United States Trademark Registration No. 1205623, registered on August 17, 1982, in respect of goods in International Class 29;
- United States Trademark Registration No. 1748683, registered on January 26, 1993, in respect of goods in International Classes 29 and 30;
- International Registration No. 931628, registered on July 18, 2007, in respect of goods in International Class 18.

The Complainant has built up a considerable online presence and operates domain names <tyson.com>, <tysonfoods.com>, <tysonfreshmeats.com> and many others for sale and promotion of its goods and services. The Complainant also established a social media presence and uses the TYSON Trademark to promote its goods and services on social media platforms such as Facebook, Instagram, LinkedIn, X and YouTube.

The Disputed Domain Name was registered on June 26, 2023. Since the filing of the Complaint, the Disputed Domain Name redirects to one of the Complainant's domain names <tysonfreshmeats.com>, where the Complainant supports its retail and foodservice industry partners and promotes its food supply operations.

5. Parties' Contentions

A. Complainant

The Complainant asserts that it has spent significant sums advertising and promoting its name and TYSON Trademark. As a result of the Complainant's extensive marketing efforts and sales success, the Complainant has developed significant goodwill in the TYSON Trademark.

The Complainant claims that that the Disputed Domain Name is confusingly similar to the Complainant's TYSON Trademark. The Disputed Domain Name fully incorporates the Complainant's TYSON Trademark with addition of the dictionary term "meat."

The Complainant further asserts that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Respondent is not related to or affiliated or connected with the Complainant in any way. The Complainant also has never licensed or authorized the Respondent to use its name or TYSON Trademark, or to register any domain name incorporating its name or TYSON Trademark. In the absence of any license or permission from the Complainant to use its well-known name or TYSON Trademark, no actual or contemplated *bona fide* or legitimate use of the Disputed Domain Name could reasonably be claimed. There is also no evidence that the Respondent has ever been known by the names “Tyson” or “Tyson Foods”.

The Complainant contends that the Respondent has registered and is using the Disputed Domain Name in bad faith in view of the following:

- the Disputed Domain Name is confusingly similar to the famous TYSON Trademark;
- the Respondent knew about the Complainant and its rights in the TYSON Trademark prior to its registration of the Disputed Domain Name: The Respondent’s knowledge of the Complainant and its rights can be inferred from the fact that the Respondent selected a domain name which incorporates the TYSON Trademark and redirects to one of the Complainant’s websites;
- the Respondent employs a privacy service merely to avoid being notified of a UDRP proceeding filed against it,
- even if the Respondent was to argue that he was somehow unaware of the Complainant and its rights in the TYSON Trademark, had the Respondent conducted even a cursory search, it would have found the Complainant’s various TYSON Trademark registrations, websites associated with the Complainant, and numerous additional references in commerce, on the Internet, and in publications, evidencing the Complainant’s existence and use of its TYSON Trademark.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, a complainant to succeed 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) 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.

6.1. Preliminary Issue: Language of the Proceeding

The Complaint was submitted in English. The Registrar confirmed that the language of the Registration Agreement for the Disputed Domain Name is Russian.

Paragraph 11(a) of the Rules provides that “unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding”. The Panel may also order that any documents submitted in a language other than that of the proceeding be translated.

The Complainant has filed the Complaint in English and requests that English to be the language of this proceeding due to the following reasons:

- no prejudice will result from conducting this proceeding in English;
- the Disputed Domain Name is registered in English;
- all the content of the website to which the Disputed Domain Name redirects is also written in English.
- the Complainant does not speak Russian;
- the Respondent has not commented (or object) on the language of the proceeding;
- translating the Complaint would cause an unnecessary burden and delay.

The Complainant and its representative are American companies. Accordingly, neither the Complainant nor its representative are able to understand and to communicate in Russian. Forcing the Complainant to translate the Complaint and annexes thereto, would result in unfair additional expenses for the Complainant and would delay this UDRP proceeding.

The Disputed Domain Name and generic Top-Level Domain (“gTLD”), both are in Latin characters and not Cyrillic characters.

Paragraph 10(c) of the Rules sets out that the Panel shall ensure that the administrative proceeding takes place with due expedition.

Having considered all circumstances of this case, the Panel concludes under paragraph 11(a) of the Rules that English shall be the language of the proceeding.

6.2. Substantive Issues

A. Identical or Confusingly Similar

The Complainant has properly asserted its rights in the TYSON Trademark due to the long use and registrations worldwide.

The Disputed Domain Name resembles the Complainant’s registered TYSON Trademark in its entirety with addition of the term “meat” and and the gTLD “.com”. According to section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[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. Also, in accordance with the [WIPO Overview 3.0](#), section 1.8, 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 view of the fact that the Disputed Domain Name incorporates the entirety of the Complainant’s TYSON Trademark, the addition of the term “meat” does not in any case prevent a finding of confusing similarity between the Disputed Domain Name and the Complainant’s Trademark. On the contrary, inclusion of the term “meat” in the Disputed Domain Name affirms a finding of confusing similarity in view of the Complainant operates another domain name <tysonfreshmeats.com> with use of the term “meat”.

It is also well established that the gTLD, in this case “.com”, is disregarded for the purpose of determining identity or confusing similarity under the first element.

In light of the above, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant’s TYSON, and that the Complainant has established the first condition of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

In the Panel's opinion, the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Respondent did not respond to the Complaint, and did not participate in this proceeding, respectively, the Respondent did not present any evidence for supporting any rights or legitimate interests in the Disputed Domain Name.

There is no evidence that the Complainant has licensed or otherwise permitted the Respondent to use its TYSON Trademark or to register the Disputed Domain Name which is confusingly similar to the TYSON Trademark. 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 TYSON Trademark of the Complainant.

The Respondent registered the Disputed Domain Name more than 35 years after the TYSON Trademark had been registered. There is no evidence that the Respondent owns any "TYSON" trademark, nor that it is commonly known by the Disputed Domain Name. Moreover, the Respondent has failed to come forward with any evidence to rebut such *prima facie* case.

Further, the Panel also accepts that the use of the Disputed Domain Name does not constitute a legitimate noncommercial or fair use. The Disputed Domain Name redirects to one of the Complainant's websites. Such use of the Disputed Domain Name implies that the Disputed Domain Name can send and receive emails, and it seems probable that the Respondent may be using the Disputed Domain Name to create a phishing campaign. Therefore, the Panel cannot consider such use of the Disputed Domain Name as *bona fide* offering goods or services, or a legitimate noncommercial or fair use.

With respect to the circumstances of this case, the Panel considers that it is obvious that the Respondent registered the Disputed Domain Name with good awareness of the Complainant and with the sole intention of commercial gain by creating a likelihood of confusion with the Complainant's TYSON Trademark as to the source of the email communication sent using the Disputed Domain Name.

Moreover, given the fact that the Disputed Domain Name contains the term "meat", which refers to the staple food product which the Complainant sells, the construction of the Disputed Domain Name is likely to mislead or cause confusion, which was likely the main intent of the Respondent when registering the Disputed Domain Name, which cannot amount to fair use nor confer rights or legitimate interests upon the Respondent.

In view of the foregoing, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and that the Complainant succeeds under the second element of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Panel comes to the conclusion that the Disputed Domain Name was registered and is being used in bad faith in view of the following. Taking into consideration that the TYSON Trademark have been in use more than 50 years and that the Complainant has spent huge amounts and efforts for promotion of its TYSON Trademark, the Panel considers it is clear that the Respondent was well aware of the Complainant and its TYSON Trademark at the time of registration of the Disputed Domain Name. Moreover, the Disputed Domain Name, incorporating the Complainant's TYSON Trademark in its entirety with addition of the term "meat" (the product that is the backbone of the Complainant's business), is clearly deceptive for Internet users.

The Disputed Domain Name automatically redirects to one of the Complainant's websites and it is plausible that the Respondent is using or intends to use the Disputed Domain Name to create a phishing campaign aimed at the Complainant's customers or impersonating the Complainant in email communications.

Use of the Disputed Domain Name incorporating the TYSON Trademark by an unauthorized third party to redirect Internet users to either the Complainant's or a competitor's website is evidence of bad faith under paragraph 4(b)(iv) of the Policy. According to section 3.1.4 of the [WIPO Overview 3.0](#), prior UDRP panels have moreover found the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark: [...] redirecting the domain name to the complainant's (or a competitor's) website [...]. The Respondent redirecting the Disputed Domain Name to the Complainant's websites can establish bad faith insofar as the Respondent retains control over the redirection thus creating a real or implied ongoing threat to the Complainant. See e.g. *Ann Summers Limited v. Domains By Proxy, LLC / Mingchun Chen*, WIPO Case No. [D2018-0625](#).

Taking into account the Respondent's use of the Disputed Domain Name to redirect to the Complainant's website, in the furtherance of a possible fraudulent email scheme, such Respondent's behavior cannot be in any way considered as a good faith.

In addition, the Panel is of the opinion that it is clear that the Respondent, having registered and used the Disputed Domain Name, which is confusingly similar to the Complainant's famous TYSON Trademark, intended to disrupt the Complainant's business and confuse Internet users seeking for or expecting the Complainant. In view of the absence of any evidence to the contrary and that the Respondent did not file any response to claim otherwise, the Panel concludes that the Respondent has registered and is using the Disputed Domain Name in bad faith.

Therefore, having examined all the circumstances of the case the Panel finds that the Respondent registered and is using the Disputed Domain Name in bad faith, and accordingly that the paragraph 4(a)(iii) of the Policy has been satisfied by the Complainant.

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, <tysonmeat.com>, be transferred to the Complainant.

/Mariia Koval/

Mariia Koval

Sole Panelist

Date: November 14, 2023