

ADMINISTRATIVE PANEL DECISION

Syngenta Participations AG v. dawin gzel, logaco ltd
Case No. D2023-4676

1. The Parties

The Complainant is Syngenta Participations AG, Switzerland, internally represented.

The Respondent is dawin gzel, logaco ltd, Holy See.

2. The Domain Name and Registrar

The disputed domain name <syngerta.com> 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 10, 2023. On November 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 10, 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 November 13, 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 November 15, 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 November 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 18, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 4, 2023.

The Center appointed Fabrizio Bedarida as the sole panelist in this matter on January 11, 2024. 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 in this administrative proceeding is Syngenta Participations AG, a Swiss Corporation headquartered in Basel, Switzerland. The Complainant is a global, science-based agritech company with 30,000 employees in 100 countries dedicated to bringing plant potential to life. The Complainant's products include agrochemicals for crop protection as well as vegetable and flower seeds.

The Complainant is, *inter alia*, the owner of:

- International trademark SYNGENTA (word), registration number 732663, registered on March 8, 2000, designating numerous country; and
- United States of America trademark SYNGENTA (word), registration number 3036058, registered on December 27, 2005.

The Complainant also affirms that it is the holder of many domain names including <syngenta.com>, <syngenta.biz>, <syngenta.org>, <syngenta.co.uk>, <syngenta.co>, <syngenta.cn>, <syngenta-us.com>, <syngenta.fr>, <syngenta.de>, <syngenta.ru>, and <syngenta.vn>.

The disputed domain name was registered on August 14, 2023.

The Complainant sent a cease and desist letter to the Respondent, which remains unanswered.

Currently the disputed domain name resolves to an inactive website, while according to the Complainant's unrebutted assertion and evidence, previously the disputed domain name resolved to a pay-per-click site, and the mail exchanger ("MX") records have been set up for the disputed domain name.

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 the Complainant's SYNGENTA prior trademarks, domain names and company name, the only difference between the Complainant's trademark and the disputed domain name being the substitution of the letter "n" with the letter "r" in the second syllable; that the Respondent has no rights or legitimate interests in the disputed domain name; and, in particular, that the presence of MX records raises the possibility that the disputed domain name may be used for fraudulent email communications. The Complainant further asserts that bad faith based on a zone file containing MX records has already been affirmed in previous cases.

B. Respondent

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

6. Discussion and Findings

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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.

The Complainant has shown rights 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 confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The disputed domain name contains the Complainant's SYNGENTA trademark with the substitution of the letter "n" with the letter "r" in the second syllable and the generic Top-Level Domain ("gTLD") ".com". In this sense, [WIPO Overview 3.0](#), section 1.9 states: "A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element". The gTLD suffix is generally disregarded under the test for confusing similarity for the purposes of the Policy as it is viewed as a standard registration requirement. [WIPO Overview 3.0](#), section 1.11.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available 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 the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel notes that the Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's trademark due to the Respondent's previous use of the disputed domain name to resolve to a pay-per-click website. The Panel further notes that the fact that the MX records have been set up for the disputed domain name, and the fact that the Respondent apparently supplied inaccurate information for the Whois record in addition to utilizing a privacy service, all combined together are clear inference of bad faith registration and use of the disputed domain name.

Furthermore, panels have consistently found that the mere registration of a domain name that is almost identical (particularly domain names comprising typos) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4.

The disputed domain name is currently inactive. Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the current non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes that in the circumstances of this case the current passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

In the present case, the Panel notes that the Respondent's failure to respond to the Complainant's cease-and-desist letter, and to contest the Complainant's assertions made in this proceeding regarding its bad faith in registering and using the disputed domain name is inference of bad faith use and registration of the disputed domain name.

The Panel finds that the Complainant has established the third element 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 <syngerta.com> be transferred to the Complainant.

/Fabrizio Bedarida/

Fabrizio Bedarida

Sole Panelist

Date: January 22, 2024