

ADMINISTRATIVE PANEL DECISION

Dawn Foods, Inc. v. The Trustee for San Pramalen Family Trust
Case No. DAU2024-0010

1. The Parties

The Complainant is Dawn Foods, Inc., United States of America (“United States”), represented by AJ Park Law Limited, New Zealand.

The Respondent is The Trustee for San Pramalen Family Trust, Australia, self-represented.

2. The Domain Name and Registrar

The disputed domain name <dawnfoods.com.au> is registered with Web Address Registration Pty Ltd.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 27, 2024. On March 28, 2024, the Center transmitted by email to Web Address Registration Pty Ltd a request for registrar verification in connection with the disputed domain name. On March 29, 2024, Web Address Registration Pty Ltd transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the .au Dispute Resolution Policy (the “Policy”), the Rules for .au Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .au Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on April 4, 2024. In accordance with the Rules, paragraph 5(a), the due date for Response was April 24, 2024. The Response was filed with the Center on April 24, 2024.

The Center appointed John Swinson as the sole panelist in this matter on April 29, 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 is a corporation based in Michigan, United States. The Complainant is a family-owned wholesale manufacturer and distributor of bakery ingredients and products.

The Complainant was founded more than 100 years ago as “Century Bakery”. In 1925, its name was changed to the “Dawn Donut Company”. The trademark DAWN is an allusion to the fact that bakers start their workday in the very early hours of the morning. In 1978, Dawn Donut Company was renamed “Dawn Food Products”. In 1998, Dawn Food Products was renamed “Dawn Foods, Inc.”

The Complainant has several authorised Australian distributors, including Frutex Australia, Polava Pty Limited, and Eustralis Food Co. These distributors sell the Complainant’s DAWN branded products within Australia to various Australian consumers.

The Complainant owns a portfolio of trademark registrations in various countries, including Australia. For example, the Complainant owns Australian Trademark Registration No. 746461 for DAWN that is registered in classes 29 and 30, with a filing date of October 16, 1997, and a registration date of April 13, 1999.

The Complainant’s website is located at the domain name <dawnfoods.com>.

The disputed domain name was registered on August 27, 2022, by either SNE Holdings Trust T/A Hampton Laundrette or Suresh Subasinghe. The record is unclear on this.

The disputed domain name was transferred to the Respondent by Suresh Subasinghe on November 1, 2022.

The Respondent is the trustee for a family trust. According to the Respondent, although it is not entirely clear, it appears that the San Pramalen Family Trust owns an Australian corporation named Dawn Foods Pty Ltd.

Dawn Foods Pty Ltd was incorporated on April 14, 2021. Dawn Foods Pty Ltd is not registered for GST purposes and does not have an active Australian Business Number (ABN).

According to the Response, the “sole purpose for establishing Dawn Foods Pty Ltd was to use my own experience working in food industries to come up with local food products / solutions and support local community and businesses.”

At the present time, the disputed domain name resolves to a website titled “Dawn Foods” that advertises food products and services including bakery products. The logo displayed on the website at the disputed domain name is different to the Complainant’s logo. The website at the disputed domain name states that:

“The founders of Dawn Foods team have great experience gained in world’s top multi national FMCG companies together collectively for more than 60 years in both liquid & dry powder’s blending & packaging manufacturing environment. The Dawn Foods team has great experience in setting up blending & packaging lines high OEE, minimum unscheduled hours & Quality defects and are able to adapt production procedures to contract packing. The Dawn Foods team have expertise in the below projects and manufacturing process which makes them the ideal partner for contract packaging projects...” and “We work with partners to custom made products to suit various segments of the food industry and in particular the café industry”.

The Panelist cannot see any company name, ABN or Australian Company Number on this website.

On January 8, 2024, the Complainant’s representatives sent a letter to the Respondent by email to complain of trademark infringement and to ask that the Respondent immediately cease using the disputed domain name. The Complainant’s representatives asked for a response by January 22, 2024. The Respondent did not reply to this letter or to follow up correspondence.

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 Respondent has registering and is using the disputed domain name to redirect Internet users to a website which sells a range of goods including baking products of the kind manufactured and distributed by the Complainant.

The Complainant also contends that the Respondent was aware of the Complainant's DAWN trademark and trade name when the disputed domain name was chosen and registered, which was well after the Complainant's lengthy and worldwide use of the DAWN trademark and trade name.

B. Respondent

The Response was filed by Lenin Vickramasingapuram Devendran who claims to own and maintain the disputed domain name. According to the publicly-available WhoIs, as well as the information disclosed by the Registrar, Lenin Vickramasingapuram Devendran is identified as the "Registrant Contact" for the Respondent.

The Response asserts that the disputed domain name is intended for Australian customers and that the Respondent does not have affiliations with any other companies.

The Response also states that the Dawn Foods Pty Ltd is a family-owned Australian Registered Proprietary company and is not a competitor and has no intention to compete with or profit from any company similarly named or in existence within Australia or other countries.

6. Discussion and Findings

Paragraph 4(a) of the auDRP provides that a complainant must prove each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to a name, 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 or subsequently used in bad faith.

The burden of proof of each element is borne by the Complainant.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that the Panel deems applicable.

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's name, trademark or service mark.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a name or mark at the date the Complaint was filed and, if so, the disputed domain name must be identical or confusingly similar to the name or mark.

For present purposes, the Complainant has proven that it owns registered trademarks for DAWN as discussed in section 4 above.

The Panel finds the entirety of the DAWN mark is reproduced within the disputed domain name. The addition of the term “foods” does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy.

Accordingly, the disputed domain name is confusingly similar to the Complainant’s DAWN trademark.

The Complainant succeeds on the first element of the Policy.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances may be situations in which a respondent has rights or legitimate interests in a disputed domain name:

(i) before any notice to the respondent of the subject matter of the dispute, the respondent’s bona fide use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with an offering of goods or services (not being the offering of domain names that you have acquired for the purpose of selling, renting or otherwise transferring); or

(ii) the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent 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.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant. Previous panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a prima facie case against the respondent under this head and the burden of production will shift to the respondent to rebut that prima facie case. The ultimate burden of proof, however, remains with the Complainant. See, e.g., *GlobalCenter Pty Ltd v. Global Domain Hosting Pty Ltd*, WIPO Case No. [DAU2002-0001](#). Based on the materials provided in the Complaint, the Complainant has met this onus and has established a prima facie case against the Respondent.

The Respondent refers to a corporation Dawn Foods Pty Ltd and states (as best the Panel can determine) that this corporation is owned by the San Pramalen Family Trust. The Respondent also suggests that Dawn Foods Pty Ltd is a trading entity and that operates the website at the disputed domain name. However, there are several issues with the Respondent’s assertions. There is no evidence before the Panel connecting the Respondent with Dawn Foods Pty Ltd. There is no evidence before the Panel that Dawn Foods Pty Ltd is a trading entity, and this seems unlikely because Dawn Foods Pty Ltd does not have an ABN. There is no evidence connecting Dawn Foods Pty Ltd with the website at the disputed domain name; moreover, that website does not include the name “Dawn Foods Pty Ltd” or its Australian Company Number anywhere on the website.

It is also unclear the exact identity of the Respondent. The Respondent is identified as “The Trustee for San Pramalen Family Trust” but the Response does not identify the name of the trustee or provide a copy of the trust deed. Confusingly, the Response (which has been filed by Lenin Vickramasingapuram Devendran)

states “Dawn Foods Pty Ltd, the Australian proprietary company and its domain (<dawnfoods.com.au>), are fully and legally owned by me.” This contradicts other statements in the Response that suggest that Dawn Foods Pty Ltd is owned by the San Pramalen Family Trust. It also contradicts the Whois details and the information provided by the Registrar, that shows that Lenin Vickramasingapuram Devendran is the “Registrant Contact” for the disputed domain name, but that that the registrant is the Respondent (namely, The Trustee for San Pramalen Family Trust).

The Respondent provides no evidence of any sales by the Respondent or by Dawn Foods Pty Ltd. There is no evidence that the Respondent or Dawn Foods Pty Ltd have any customers. There is no evidence of any advertising by or reputation of the Respondent or Dawn Foods Pty Ltd. There is no evidence of any website traffic to the website at the disputed domain name.

Thus, there is no evidence that the Respondent or Dawn Foods Pty Ltd have been commonly known by the disputed domain name.

The Respondent has provided no evidence of the Respondent’s bona fide use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with an offering of goods or services. In the Panel’s view, for the reasons set out above, the website at the disputed domain name is not sufficient in the present circumstances to establish such bona fide use in the connection with an offering of goods or services. Additionally, the website at the disputed domain name is most likely misleading and deceptive, contrary to the Australian Consumer Law, and such misleading use cannot be bona fide use of the disputed domain name in the present circumstances.

The Respondent has not rebutted the Complainant’s prima facie case.

The Complainant succeeds on the second element of the Policy.

C. Registered or Subsequently Used in Bad Faith

Unlike the Uniform Domain Name Dispute Resolution Policy (the UDRP), the requirements that the disputed domain name be registered or used in bad faith are disjunctive in the auDRP. That is, it is sufficient for the Complainant to show either that the disputed domain name was registered in bad faith or has been used in bad faith.

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered or is using the disputed domain name to take advantage of its significance as a trademark owned by the complainant.

The Complainant provided evidence that the Complainant is long standing and well known in the food industry, including in Australia.

The Respondent’s website states that the Respondent’s founders have substantial experience in the food industry.

The Respondent did not provide evidence of why the Respondent selected the name “Dawn Foods” or why the Respondent acquired the disputed domain name in November 2022 (which is approximately 18 months after the Respondent states that it commenced business). The Respondent does not state that the Respondent was not aware of the Complainant at the time the Respondent acquired the disputed domain name. The disputed domain name is substantially identical to the Complainant’s corporate name since it comprises the Complainant’s mark in its entirety with the additional term “foods” and, because “foods” is part of the Complainant’s name, this potentially increases the likelihood of confusion between the disputed domain name and the Complainant. In the Panel’s view, this is more than a coincidence. The Panel finds that the Respondent was more likely than not aware of the Complainant when the Respondent acquired the disputed domain name and did so because of the Complainant’s reputation.

The website at the disputed domain name is also evidence of bad faith use. As stated above, the website at the disputed domain name is most likely misleading and deceptive, contrary to the Australian Consumer Law. The website will unfairly attract customers looking for the Complainant or could give the impression that it is operated by or associated with the Complainant.

The Complainant succeeds on the third element of the Policy.

7. Decision

For all 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 <dawnfoods.com.au> be transferred to the Complainant.

/John Swinson/

John Swinson

Sole Panelist

Date: May 13, 2024