

## ADMINISTRATIVE PANEL DECISION

Tyson Foods, Inc. v. Privacy Service Provided by Withheld for Privacy ehf /  
Name Redacted<sup>1</sup>

Case No. D2022-2528

### 1. The Parties

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

Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / Name Redacted, US.

### 2. The Domain Name and Registrar

The disputed domain name <tysonfoodincorp.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 July 11, 2022. On July 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 13, 2022, 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 and contact information in the Complaint. The Center sent an email communication to Complainant on July 13, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on July 19, 2022. The Center sent an email communication to Complainant to confirm the Mutual Jurisdiction clause on July 20, 2022. Complainant filed a second amended Complaint on July 25, 2022.

The Center verified that the Complaint together with the amended Complaints 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”).

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<sup>1</sup> The Respondent appears to have used the name of a former employee of the Complainant when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on July 26, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 15, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on August 16, 2022.

The Center appointed Timothy D. Casey as the sole panelist in this matter on August 26, 2022. 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

Complainant is one of the largest food production companies in the world with more than USD 43 billion in sales in 2020. Complainant has used TYSON as a trademark in connection with food products since 1958. Complainant owns a number of trademark registrations globally that comprise or include TYSON including the following representative marks (the "TYSON Marks") registered in the United States:

Mark	International Class(es)	Registration No.	Registration Date
TYSON (DESIGN)	29	1,205,623	August 17, 1982
TYSON (DESIGN)	29	5,776,218	June 11, 2019
T TYSON (DESIGN)	29	5,978,684	February 04, 2020
TYSON	29	1,748,683	January 26, 1993
TYSON	29	2,810,231	February 3, 2004
TYSON	29	2,833,874	April 20, 2004
TYSON	29	2,868,632	August 3, 2004
TYSON	29, 30	3,204,061	January 30, 2007
TYSON	30	3,998,293	July 19, 2011

Complainant owns numerous domain names that include "tyson" or "tyson foods" in various combinations and features information about Complainant and its various products through a number of websites associated with one or more of these domain names.

The disputed domain name was registered on April 15, 2022. The disputed domain name has been used for emails representing Respondent or someone associated with Respondent as an employee or otherwise associated with Complainant.

#### 5. Parties' Contentions

##### A. Complainant

Complainant contends that the disputed domain name, which includes "tyson," "food" (instead of "foods") and the abbreviation "incorp" (for "incorporation"), is confusingly similar to the TYSON Marks. Complainant contends that the disputed domain name contains a purposeful misspelling of Complainant's corporate name and fully incorporates one or more of the TYSON Marks, which is sufficient to render the disputed domain name confusingly similar to the TYSON Marks. Complainant contends that the missing letter "s" after "food" is not sufficient to escape a finding of similarity as it does not change the overall impression of the disputed domain name being connected to the TYSON Marks. Complainant further contends that the addition of the

generic abbreviation “incorp” actually increase the likelihood of confusion as it is an apt term for Complainant’s business. Finally, Complainant notes that the addition of the generic Top Level Domain (“gTLD”), “.com” is a standard registration requirement and should be disregarded in the analysis.

Complainant provided copies of emails using the disputed domain name that were sent between May 18, 2022 and June 27, 2022 in which Respondent or someone associated with Respondent impersonated an employee of Complainant and attempted to solicit product supply quotations and to submit a fraudulent credit application.

Complainant further contends that Respondent cannot show any fact that establishes Respondent’s rights to or legitimate interest in the disputed domain name. Complainant has not licensed or authorized Respondent to use the TYSON Marks or to register the disputed domain name. Complainant is unaware of any prior adoption and use by Respondent of the TYSON Marks. Complainant asserts there is no evidence that Respondent is using or preparing to use the disputed domain name in connection with a *bona fide* offering of goods or services or to make a legitimate noncommercial or fair use of the disputed domain name. Complainant provided evidence that the disputed domain name is currently parked at a website providing links to businesses competitive with Complainant’s business and asserts that the passive holding of a domain name is not a *bona fide* offering of goods or services, a legitimate noncommercial use, or a fair use. Complainant likewise asserts that Respondent’s use of email addresses associated with the disputed domain name to impersonate one or Complainant’s employees and to disseminate fraudulent information is also insufficient to establish any rights or legitimate interests. Complainant further contends that Respondent is not and has never been known by any name associated with the TYSON Marks

Complainant believes Respondent registered and is using the disputed domain name in bad faith because: (1) the mere registration of a confusingly similar domain name to a known trademark by an unaffiliated entity creates a presumption of bad faith; (2) Respondent had to of know of Complainant’s rights in the TYSON Marks prior to registration of the disputed domain name; and (3) Respondent has used the disputed domain name to impersonate one of Complainant’s employees and to disseminate fraudulent credit applications and solicitations.

## **B. Respondent**

Respondent did not reply to Complainant’s contentions.

## **6. Discussion and Findings**

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

Complainant’s use of the TYSON Marks as early as 1958, more than 60 years prior to registration of the disputed domain name, and Complainant’s registration of many TYSON Marks since then, are more than sufficient to establish that Complainant has trademark rights in the TYSON Marks.

Complainant contends that the disputed domain name is confusingly similar to the TYSON Marks. Complainant contends that the removal of the letter “s” after “food” and the addition of the term “incorp” does not prevent a finding of confusing similarity to Complainant’s TYSON Marks.

The Panel agrees and finds that the disputed domain name is confusingly similar to the TYSON Marks.

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

The Panel finds that Respondent has no rights or legitimate interests in the disputed domain name. Respondent does not appear to be commonly known by the disputed domain name or the TYSON Marks. Complainant has not licensed or authorized Respondent to use or register the disputed domain name. Regardless of what Respondent’s true intention may have been in contacting third parties under false

pretenses using the disputed domain name, use of the disputed domain name to impersonate one of Complainant's employees in this manner alone is sufficient to support the Panel's conclusion that Respondent's use was not a legitimate noncommercial or fair use and does not constitute a *bona fide* offering of goods or services. Respondent has not rebutted Complainant's *prima facie* case and has provided no arguments or evidence showing potential rights or legitimate interests in the disputed domain name.

Furthermore, the nature of the disputed domain name, comprising substantially all of at least some of the TYSON Marks, a missing letter "s," and an added generic descriptor of Complainant's company, carries a risk of implied affiliation with Complainant as it effectively impersonates or suggests sponsorship or endorsement by Complainant, and accordingly cannot constitute a fair use in these circumstances. See *Banque et Caisse d'Epargne de l'Etat, Luxembourg, v. Domain Admin, Whoisprotection.cc / hans larsson*, WIPO Case No. [D2022-1505](#) ("the Panel finds that subtle misspellings of a complainant's mark in a domain name can also impersonate the complainant, as there is a risk that Internet users will not notice the difference between such misspelling and the complainant's mark"). See also section 2.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Finally, Complainant has provided evidence that the disputed domain name is being used in connection with a potentially fraudulent scheme via emails; such use can never confer rights or legitimate interests on Respondent. See in this regard [WIPO Overview 3.0](#), section 2.13.

Likewise, simply parking the disputed domain name at a website does nothing to confer rights or legitimate interests to Respondent.

For these reasons, the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name.

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

Given i) the timing of Complainant's first use and first registration of the TYSON Marks and Complainant's use of the TYSON Marks in association with the noted goods, ii) the nature of the disputed domain name in combination with fraudulent emails that appear designed to trick third party's into believing some affiliation with Complainant, iii) the subsequent timing of the registration of the disputed domain name, iv) Complainant's prior trademark rights in the United States and abroad, and v) evidence of Respondent's subsequent usage, the Panel finds that Respondent clearly knew of the TYSON Marks at the time of registration of the disputed domain name. Respondent's registration of the disputed domain name was therefore in bad faith.

In addition, the Panel finds the subsequent apparently fraudulent usage of the disputed domain name and the sending of email communications impersonating an employee of Complainant, to constitute use in bad faith consistent with paragraph 4(b)(iv) of the Policy.

The Panel concludes that the disputed domain name was registered and is being used in bad faith.

## **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, <tysonfoodincorp.com> be transferred to Complainant.

*/Timothy D. Casey/*

**Timothy D. Casey**

Sole Panelist

Date: September 9, 2022