

## **ADMINISTRATIVE PANEL DECISION**

Margra Lamb Pty Ltd, Tattykeel Pty Ltd v. ryan singlehurst  
Case No. D2023-0415

### **1. The Parties**

The Complainants are Margra Lamb Pty Ltd and Tattykeel Pty Ltd, Australia, represented by BSA Ahmad Ben Hezeem & Associates LLP, United Arab Emirates.

The Respondent is ryan singlehurst, United Arab Emirates.

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

The disputed domain name <margamlamb.shop> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 30, 2023. On January 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 31, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. On February 1, 2023, the Center notified the Complainants that the Complaint exceeded the word limit specified in WIPO Supplemental Rules for UDRP, paragraph 11(a). On February 6, 2023, the Complainants submitted a word-count compliant Complaint.

The Center verified that the 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 February 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 8, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 9, 2023.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on March 16, 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 Complainants are two affiliated companies incorporated in Australia by a family of sheep farmers named Gilmore. The first company, Tattykeel Pty Ltd, was established in 1978. In 2011, the Gilmore family developed a new breed of sheep known as the “Australian White” or “Aussie White”, certain lines of which are described as being of exceptional culinary quality. The second company, Margra Lamb Pty Ltd, was established in 2019 as the “culinary brand” of the Tattykeel sheep studs. It markets selected Tattykeel Australian White sheep products under the MARGRA brand and trademark, and via the domain name <margralamb.com>, registered on November 11, 2019. The Complainants have established brand guidelines for the marketing of the various MARGRA branded products.

Margra Lamb Pty Ltd is the owner of various registered trademarks for the MARGRA mark, including Australian Registered Trademark No. 2058290 for the word mark MARGRA, registered on August 3, 2020 in Classes 18 and 29, and United Arab Emirates Registered Trademark No. 329639 for the word MARGRA plus device, said device consisting of two partially superimposed and partially adjacent rounded letters “m” placed above the word, registered on August 3, 2020 in Class 29.

The Respondent appears to be a private individual with an address in Dubai, United Arab Emirates. The Complainants allege that, following contact with them initiated by the Respondent in August 2020, the Complainants and the Respondent’s nominated legal entities engaged in negotiations and subsequent legal relations for the purpose of breeding “Australian White” sheep and the importation to various territories in the Middle East of products under the Complainants’ MARGRA mark. Said negotiations and legal relations proceeded under the auspices of Tattykeel Pty Ltd and Margra Lamb Pty Ltd on the Complainants’ side, and United Arab Emirates entities named MGRA DMCC and Verticroft Green Houses & Equipment Trading LLC on the Respondent’s side. A Memorandum of Understanding between Tattykeel Pty Ltd and Verticroft Green Houses & Equipment Trading LLC was entered into on October 21, 2020 and was later terminated. A Distribution Agreement was entered into between Margra Lamb Pty Ltd and MGRA DMCC on November 21, 2020, whereby *inter alia*, MGRA DMCC would have the non-exclusive right to use the MARGRA trademark for one year with effect from December 1, 2020. Said agreement reached its term on November 20, 2021 and was not renewed.

The disputed domain name was registered on January 24, 2022 and points to a website which promotes lamb said to be farmed in the desert of Margam, Dubai, United Arab Emirates. Said website uses a background color of purple, which the Complainants say is a color in their brand guidelines. Said website mainly refers to the brand promoted there using the capitalized words “MARGAM LAMB”, the logo for which is a sheep’s head, underneath which is the word “MARGAM” in large letters, below which is the word “LAMB” in smaller letters.

The Complainants provide side-by-side comparisons in connection with their assertion that the Respondent’s website contains marked similarities and identical materials to those belonging to the Complainants. The Complainants’ logo for “MARGRA LAMB” and the Respondent’s logo for “MARGAM LAMB” have the following similarities: there is a device at the top of each; in the Complainants’ logo, the device is two undulating lines suggestive of the heads of a flock of sheep; in the Respondent’s logo, the device is a line drawing of a sheep’s head. In both logos, the words beneath the device are capitalized and colored gold, set against a solid background with the first word above and larger than the second, all in a similar typeface.

The Respondent’s website features an image of two sheep which the Complainants say has been taken from the Complainants’ original image of a single Tattykeel Australian White sheep as contained in its brand guidelines. The Complainants produce the original image, which appears to have been duplicated in the Respondent’s image to give two sheep and is reproduced in an adjusted form, namely removal of the background, a change of aspect ratio, and insertion of superimposed grass of a different color.

The Respondent’s website also displays images of lamb in its raw and cooked state which the Complainants say feature the Complainants’ MARGRA lamb and are also taken from their brand guidelines. The Complainants note that the images are being passed off as the Respondent’s product, and produce side-by-

side comparisons with identical images used by the Complainants.

Finally, the Complainants produce side-by-side images of a quotation from a chef praising the Complainants' lamb product, which was originally posted to the Complainants' Instagram page, and an image of the same quotation on the Respondent's said website with the capitalized term "MARGAM LAMB" substituted for the Complainant's MARGRA trademark.

## **5. Parties' Contentions**

### **A. Complainant**

In summary, the Complainants contend as follows:

#### **Identical or confusingly similar**

The Complainants have evidenced that they have registered rights in the MARGRA trademark, including in the United Arab Emirates, and unregistered rights, all of which predate the date of creation of the disputed domain name. The dominant part of the disputed domain name, "margam", is confusingly similar to the MARGRA trademark, coinciding in five letters and differing only in one. The substitution of one letter does not prevent a finding of confusing similarity either aurally, visually or conceptually, and the Respondent's website content serves to affirm a finding of confusing similarity. The insertion of the dictionary word "lamb" in the disputed domain name does not prevent a finding of confusing similarity.

The word "margam" in the disputed domain name is an intentional misspelling of the Complainants' mark. The Parties' past business relationship and the aspects and elements of the Complainants' brand incorporated in the Respondent's website demonstrate that the Respondent intentionally misspelled such mark. The disputed domain name is also confusingly similar to the Complainants' own domain name <margralamb.com>. The addition of the Top-Level Domain ".shop" to the disputed domain name may be disregarded for the purposes of comparison.

#### **Rights or legitimate interests**

The Respondent was authorized to use the Complainants' trademarks in accordance with the Distribution Agreement but this did not authorize the Respondent to create the disputed domain name or to use said trademarks in a domain name. Said agreement did not authorize the Respondent to make any alteration of the Complainants' mark or brand assets, to use a confusingly similar mark or to register the disputed domain name. Several clauses obliged MARGRA DMCC and its owner to respect the Complainants' intellectual property rights whether during its term or afterwards. The disputed domain name was created on January 24, 2022, after the Distribution Agreement expired, and the Complainants issued a formal Cease and Desist letter to the Respondent on May 9, 2022. Whether the Respondent has rights or legitimate interests is determined at the time the Complaint is filed. The Respondent has never been authorized by the Complainants to register the disputed domain name.

Use of the disputed domain name cannot be considered to be a use in connection with a *bona fide* offering of goods or services. The Respondent is not selling the Complainants' lamb products, supply of which ceased upon expiration of the Distribution Agreement. The Respondent is offering alternative products under a confusingly similar trademark. The Respondent is using different elements from the Complainants' brand assets and materials despite being requested to cease unauthorized use. The associated website does not disclose the Respondent's relationship with the Complainants. The Respondent has never been known as "MARGAM" or "margam". According to a search by the Complainants' counsel, the Respondent holds no trademark registrations relating thereto in the relevant classes in the United Arab Emirates. The Respondent's sole purpose in registering the disputed domain name with a misspelling of the Complainants' mark is to take advantage of the Complainants' goodwill, reputation and recognition by operating a website offering identical goods and services to those offered by the Complainants. Such use in competition with the Complainants after the expiration of any business relationship cannot be regarded as a legitimate

noncommercial or fair use, especially given the deliberate misspelling of the Complainants' mark.

### **Registered and used in bad faith**

The registration of the disputed domain name was never authorized by the Complainants within the terms of the Distribution Agreement or otherwise. The trademark license granted to MGRA DMCC did not permit the registration of the disputed domain name. The disputed domain name was registered in bad faith in the knowledge of the Complainants' rights and with the Complainants in mind after the expiration of the said agreement. Said registration (including intentional typosquatting) was made to attract Internet users, for commercial gain, to the Respondent's website by creating a likelihood of confusion with the Complainants' marks.

The Respondent is not authorized to use the Complainants' marks following the expiration of the Distribution Agreement and was never allowed to use a mark that is identical or confusingly similar thereto. Said disputed domain name targets the Complainants' registered and unregistered rights. The Complainants made repeated attempts to have the Respondent cease using the disputed domain name but the Respondent has not complied. The Respondent's continuous use of the disputed domain name amounts to bad faith and is intended to capitalize on Internet users' confusion as to whether the Respondent is still a distributor of or associated with the Complainants' product. The use of identical or similar content on the related website is a form of competition with the Complainants and supports the argument that the disputed domain name has been used in bad faith.

### **B. Respondent**

The Respondent did not reply to the Complainants' contentions.

## **6. Discussion and Findings**

To succeed, the Complainants must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainants have rights;
- (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. Preliminary matter: Consolidation of Complainants and identity of the Respondent**

The Complaint listed two entities as the Complainant in this case. The Complainants did not however request consolidation of their respective complaints against the Respondent. Nevertheless, the Complaint describes the relationship between these two entities and their roles in some detail, noting that Tattykeel Pty Ltd was established in 1978 by the Gilmore family, who developed a new breed of sheep launched in 2011, while Margra Lamb Pty Ltd was established in 2019 to market lamb products under the "Margra Lamb" trade name, and is the owner of the MARGRA registered trademarks. As far as the Panel can tell, the relationship between the two is that Margra Lamb Pty Ltd is effectively the custodian of the "culinary brand" of the Tattykeel sheep studs operated by Tattykeel Pty Ltd.

Section 4.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") deals with the issue of multiple complainants filing a single complaint against a respondent and notes that, in examining this issue, panels look at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation.

In the present case, the Panel is content to consolidate the complaints of both of the Complainants against

the Respondent. The Respondent is alleged to have registered and used a domain name that is confusingly similar to the MARGRA trademark. This strikes at the commercial interests of both of the Complainants. Furthermore, the registration and use of such a domain name, in the manner alleged in the Complaint, constitutes common conduct that affects the Complainants in a similar fashion. The Respondent has not participated in the proceeding and thus has raised no objection to the consolidation of the Complainants' respective complaints against it. Finally, the Panel considers that it would be equitable and procedurally efficient to permit consolidation in this particular case and has identified no facts or circumstances to the contrary.

### **B. Preliminary matter: Identity of the Respondent**

The Complaint listed five parties as the Respondent in this case but did not expressly request their consolidation. Only the fifth of these entities, ryan singlehurst [not capitalized], is the registrant of the disputed domain name as verified by the Registrar. The first entity, being described in the Complaint only as "the holder of the disputed domain name", effectively became redundant when the Registrar verification was received, identifying said fifth entity as the holder of the disputed domain name. The remaining three entities named as respondent are companies that are part of the factual background to the case, with which the respondent may or may not have had a connection.

The UDRP Rules give the Panel discretion to conduct the administrative proceeding in such manner as it considers appropriate, in accordance with the Rules and the Policy. In the Panel's opinion, this allows it to determine the correct respondent in the present case. The UDRP Rules define the respondent as "the holder of a domain name registration against which a complaint is initiated". While the Panel retains discretion to substitute or join another entity as a respondent by way of its general powers in the Rules, there is no need to do so in the present case. The holder of the disputed domain name has been identified by the Registrar and has been listed as a respondent in the Complaint. Accordingly, the Panel determines that the correct Respondent is ryan singlehurst. Insofar as the listing of multiple respondents in the Complaint constitutes a request to consolidate same, such request is denied. The additional entities may have relevance to the factual background and this will be noted where appropriate.

### **C. Identical or Confusingly Similar**

The first element under the Policy is typically assessed in two stages. First, the Complainants must demonstrate that they have UDRP-relevant rights in a trademark. Secondly, such trademark is compared to the disputed domain name, usually on a straightforward side-by-side comparison, to determine identity or confusing similarity. The Top-Level Domain of the domain name concerned (in this case ".shop") may be disregarded for the purpose of this comparison exercise, on the basis that it is merely a technical requirement of registration. If, when compared, the trademark is alphanumerically identical to the disputed domain name, identity will generally be found. If the trademark is not so identical but is otherwise recognizable in the disputed domain name, confusing similarity will usually be found.

In the present case, the Panel finds that the Complainants have UDRP-relevant rights in the MARGRA registered trademarks registered to Margra Lamb Pty Ltd as outlined in the factual background section above. It is therefore unnecessary for the Panel to assess the Complainants' claim to unregistered trademark rights in this context. Turning to the comparison exercise, it may be noted that the Second-Level Domain of the disputed domain name falls into two elements, namely "margam" and "lamb". The first of these, "margam" bears considerably more than a passing resemblance to the Complainants' MARGRA trademark. The first four letters of each are identical, and they are expressed in an identical order. One of the last two letters, the second letter "a" and second vowel in both cases, appears as the last letter of the Complainants' mark and as the second last letter of the disputed domain name. The remaining letter is a letter "r" in the Complainants' mark and a letter "m" in the disputed domain name. The first syllable "mar" is pronounced identically in each. The second syllable begins with the same consonant, "g".

On the whole, the Panel finds that the similarities between the Complainants' mark and the first element of the disputed domain name far exceed the differences. While they are not identical, they are visually very similar and, due to the identical first four letters, and the identically or similarly pronounced syllables, they

have a degree of aural similarity. On the basis of this analysis, therefore, the Panel finds that the Complainants' mark is recognizable in the disputed domain name. Turning to the second part of the disputed domain name, this is the word "lamb". As is noted in section 1.8 of the [WIPO Overview 3.0](#), 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.

In all of these circumstances, the Panel finds that the disputed domain name is confusingly similar to the Complainants' trademark and accordingly that the Complainants have carried their burden with regard to paragraph 4(a)(i) of the Policy.

#### **D. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy lists several ways in which the Respondent may demonstrate rights or legitimate interests in the disputed domain name:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are 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".

The consensus of previous decisions under the Policy is that a complainant may establish this element by making out a *prima facie* case, not rebutted by the respondent, that the respondent has no rights or legitimate interests in a domain name. Where the panel finds that a complainant has made out such a *prima facie* case, the burden of production of evidence shifts to the respondent to bring forward evidence of such rights or legitimate interests.

In the present case, the Panel's starting point is those rights which the companies connected to the Respondent may have had in connection with the Complainants' mark. It is important to note that it was not the Respondent, a private individual, who received any authority from the Complainants to use the MARGRA trademark but rather certain companies with which the Respondent may have been connected. As far as the Panel is aware, no such authority was conferred on the Respondent in its personal capacity, nor is there any suggestion before the Panel that the Respondent's various legal entities have any beneficial interest in the disputed domain name.

In any event, even if such authority could be held to extend to the Respondent, or if such beneficial interest existed, both the Distribution Agreement and the Memorandum of Understanding have expired. Furthermore, even if either of those documents could be read as containing any continuing entitlement to use the mark, and to do so in a personal capacity at that, this is not what the Respondent has done by registering and using the disputed domain name.

The Complainants show that the Respondent is not using the Complainants' MARGRA trademark but rather has selected a name for its third party lamb meat product, the capitalized word "MARGAM", which is confusingly similar to that mark. The similarity is notable, bearing in mind the Respondent's prior dealings with the Complainants and knowledge of the Complainants' rights. This could not be regarded as a mere coincidental choice of name on the Respondent's part. Even if there is a "Margam" desert in which sheep are being raised by the Respondent, the selection of the name seems to have been made deliberately

because of its similarity to the Complainants' mark and not because of any geographic connection. Furthermore, the Respondent has deployed a similar logo to that of the Complainants, has used imagery taken from the Complainants' brand guidelines, and has reproduced and modified a third party endorsement taken from the Complainants' social media. This suggests to the Panel that, in registering and using the disputed domain name, the Respondent has deliberately set out to create confusion between its "MARGAM" brand/products and the Complainants' MARGRA mark, in a way that could neither be described as a *bona fide* offering of goods and services, nor could be considered to confer any rights or legitimate interests upon it.

The Panel is satisfied that the Complainants' submissions and evidence are sufficient to establish the requisite *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. In these circumstances, the burden of production shifts to the Respondent to set forth evidence of any rights or legitimate interests which it might have therein. The Respondent has not participated in the proceeding and has therefore remained silent in the face of the Complainants' allegations and supporting evidence. Based on the Complainants' uncontested evidence outlined above, the Panel considers it reasonable to infer that the disputed domain name has been selected due to its similarity with the Complainants' mark and related domain name, and notes that the Respondent has used this in connection with a website which contains features taken from the Complainants' materials together with a logo very similar to that used by the Complainants in respect of similar products. Such apparently deliberate mimicking of the Complainants' brand could not be regarded as conferring any rights or legitimate interests upon the Respondent in the circumstances of this case, whether in terms of paragraph 4(c)(i) of the Policy or otherwise.

In all of these circumstances, the Panel finds that the Respondent has failed to rebut the Complainants' *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name, and accordingly that the Complainant has carried its burden in terms of paragraph 4(a)(ii) of the Policy.

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

Paragraph 4(b) of the Policy provides four, non-exclusive, circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- “(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out of pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location”.

UDRP panels have typically determined that for bad faith registration and use to be made out there must be a degree of targeting of a complainant or its mark, or at the very least that a respondent must have had the complainant or its trademark in mind when selecting the disputed domain name. In the present case, the Panel finds these matters to be established on the Complainants' evidence and submissions. The Parties' prior commercial relationship affirms the Respondent's prior knowledge of the Complainants' rights in the MARGRA trademark. The facts and circumstances of the case strongly indicate to the Panel that the Respondent intentionally selected a name that is confusingly similar to the Complainants' said mark for the

disputed domain name and for the brand used on the related website in order to benefit commercially from such confusion. There is evidence before the Panel suggesting that the Respondent went on to duplicate and modify certain of the Complainants' own marketing materials on the related website to enhance the potential for confusion. The Panel considers that the facts and circumstances of the case support the Complainants' submission in terms of paragraph 4(b)(iv) of the Policy that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainants' mark as to the source, sponsorship, affiliation, or endorsement of such website. Furthermore, insofar as the Respondent may be supplying the lamb products described on the website associated with the disputed domain name, there is evidence suggesting that the Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor in terms of paragraph 4(b)(iii) of the Policy.

The Respondent has not sought to answer the case raised by the Complainants' allegations and evidence on this topic in any way, and has neither attempted to refute the allegations, nor to challenge or counter the evidence put forward. Given the Respondent's prior knowledge of the Complainants' rights, as established by the evidence, its selection and use of a domain name that is confusingly similar to the Complainants' mark together with identical copies or variants of the Complainants' marketing materials could not be described as merely coincidental. Furthermore, in the absence of any contribution from the Respondent to the proceeding, the Panel has not been able to identify any possible good faith motivation that the Respondent might have had concerning the registration and use of the disputed domain name.

In all of the above circumstances, the Panel finds that the disputed domain name has been registered and is being used in bad faith and therefore that the Complainant has carried its burden in terms of paragraph 4(a)(iii) 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 <margamlamb.shop> be transferred to the Complainants.

*/Andrew D. S. Lothian/*

**Andrew D. S. Lothian**

Sole Panelist

Date: March 30, 2023