

ADMINISTRATIVE PANEL DECISION

Tyson Foods, Inc. v. Wenza Brown
Case No. D2023-0925

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 Wenza Brown, United States.

2. The Domain Name and Registrar

The disputed domain name <tsyson.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 March 1, 2023. On March 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 2, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 3, 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 March 8, 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 March 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 6, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 12, 2023.

The Center appointed Angela Fox as the sole panelist in this matter on April 28, 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 is one of the largest food production companies in the world and the second largest processor and marketer of chicken, beef, and pork. The Complainant realized USD 53 Billion in sales in 2022, is a member of the S&P 500, and as of October 1, 2022, had more than 142,000 employees at facilities and offices in the United States and around the world. The Complainant was founded in 1935 and has been operating its business under the name TYSON FOODS for many decades, and as a publicly traded company since 1963. It has been using the trademark TYSON in connection with its food products since at least as early as 1958.

The Complainant owns numerous trademark registrations for TYSON in plain and stylized form. Annexed to the Complaint were details of numerous trademark registrations including United States trademark registration no. 1205623 for TYSON Logo in Class 29 registered on August 17, 1982 and United States trademark registration no. 1748683 for TYSON in Class 29 registered on January 26, 1993.

The Complainant also owns many domain names incorporating TYSON including, but not limited to, <tyson.com>, <tysonfoods.com>, <tysonfoodservice.com>, <tysonfoodsusa.com> and <tysonfoods-usa.com>. Details of these were also annexed to the Complaint.

The disputed domain name was registered on January 23, 2023. It does not link to an active website. However, annexed to the Complaint were print-outs of an email chain showing that the disputed domain name was used on January 23, 2023 and January 24, 2023, and therefore immediately upon its registration, to impersonate an employee of the Complainant in emails attaching a fraudulent invoice for payment, in what appears to be a phishing scam.

5. Parties' Contentions

A. Complainant

The Complainant submits that the disputed domain name is confusingly similar to its registered trademark TYSON in word and logo form. The Complainant submits that the disputed domain name is merely a typosquatting variation of the Complainant's TYSON trademark, which is likely to be confused with that mark.

The Complainant further submits that the Respondent has no rights or legitimate interests in the disputed domain name. There is no evidence that Respondent is or has ever been known by a name corresponding to the disputed domain name. The Respondent is not related to, or affiliated or connected with the Complainant in any way, and the Complainant has not licensed or authorized the Respondent to use its registered trademark, or to register any domain name incorporating it. There is no evidence that the Respondent is using or preparing to use the disputed domain name or a name corresponding to it in connection with a *bona fide* offering of goods or services or making a legitimate non-commercial or fair use of it within the meaning of paragraph 4(c)(i) or (iii) of the Policy. The Complainant contends that the Respondent's use of email addresses associated with the disputed domain name to impersonate the Complainant's employees, disseminate fraudulent invoices and carry out a phishing scheme is also insufficient to establish rights or legitimate interests in the disputed domain name.

Finally, the Complainant submits that the disputed domain name was registered and has been used in bad faith. The Complainant argues that the mere registration of a domain name that is confusingly similar to a famous trademark by an unaffiliated entity can by itself create a presumption of bad faith. It further argues that the Respondent knew of the Complainant's rights in the TYSON trademark prior to the registration of the disputed domain name, and is using it to impersonate the Complainant's employees, disseminate fraudulent

invoices, and deceive consumers into disclosing sensitive information or transferring funds under false pretenses.

B. Respondent

The Respondent did not reply to the Complainant's contentions and is in default. No exceptional circumstances explaining the default have been put forward. Therefore, in accordance with paragraphs 14 (a) and (b) of the Rules, the Panel will decide the Complaint and shall draw such inferences, as it considers appropriate from the Respondent's default.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the panel finds that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

All three elements must be present before a complainant can succeed in an administrative proceeding under the Policy.

A. Identical or Confusingly Similar

The Complainant has proved that it owns registered trademark rights in TYSON and trademarks including TYSON.

The relevant comparison is between the Complainant's marks and the second-level portion of the domain name ("tsyson"). The top-level domain name suffix ".com" may be disregarded for this purpose ([WIPO Overview 3.0](#), section 1.11). "Tsyson" differs from the Complainant's trademark TYSON only in an additional "s" appearing after the initial letter "T". This appears to be an obvious or intentional misspelling of TYSON and the difference is only likely to be noted on careful scrutiny.

[WIPO Overview 3.0](#), para 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 Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Complainant has never authorized the Respondent to use its trademarks, nor is there any evidence that the Respondent has ever been commonly known by the disputed domain name or has acquired any trademark rights in it.

The Complainant has provided evidence that the Respondent has used the disputed domain name in connection with fraudulent impersonation of employees of the Complainant seeking the payment of fraudulent invoices. [WIPO Overview 3.0](#), section 2.13.1 states, "Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing,

distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent”.

The evidence shows that the Respondent has used the domain name in connection with deliberate acts of deception, and the Respondent has made no effort to rebut the Complainant’s assertions in this regard.

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

The Complainant has shown evidence that the Respondent used the disputed domain name on the day of its registration and the day after, in connection with the sending of phishing emails purporting to emanate from employees of the Complainant and seeking payment of a fraudulent invoice. The Respondent has made no effort to respond to this evidence or to the Complainant’s assertions generally.

[WIPO Overview 3.0](#), section 3.1.4, states that “the use of a domain name for per se illegitimate activity such as... phishing... is manifestly considered evidence of bad faith”. In addition, [WIPO Overview 3.0](#), section 3.4, states that “use of a domain name for purposes other than to host a website may constitute bad faith”, such as “sending email [or] phishing,” especially where “the respondent’s use of the domain name [is] to send deceptive emails” for purposes such as “to solicit payment of fraudulent invoices by the complainant’s actual or prospective customers”.

[WIPO Overview 3.0](#), para. 1.9 states, “panels will normally find that employing a misspelling in this way signals an intention on the part of the respondent (typically corroborated by infringing website content) to confuse users seeking or expecting the complainant”. That this was the case here is manifestly evident, since the phishing emails sent by the Respondent and exhibited to the Complaint show that the Respondent not only used typosquatted iterations of the Complainants’ employees’ email addresses, but also included their names and contact information. In addition, the Complainant’s actual name, address, and phone number appeared on the fraudulent invoices.

The Panel finds that the disputed domain name was registered and has been 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, <tsyson.com> be transferred to the Complainant.

/Angela Fox/

Angela Fox

Sole Panelist

Date: May 12, 2023