

ADMINISTRATIVE PANEL DECISION

GP Hellenic Soil Limited v. STAMATIS FERGADIS Case No. D2023-2042

1. The Parties

The Complainant is GP Hellenic Soil Limited, Cyprus, represented by Konstantinos Papazoglou, Greece.

The Respondent is STAMATIS FERGADIS, Greece.

2. The Domain Name and Registrar

The disputed domain name <superfoodshellas.com> is registered with Papaki Ltd (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 5, 2023. On May 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 9, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant contact information for the disputed domain name which differed from the contract detail for the named Respondent in the Complaint. The Center sent an email communication to the Complainant on June 2, 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 amendment to the Complaint on June 6, 2023.

The Center verified that the Complaint together with the amendment to 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 June 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 3, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 6, 2023.

The Center appointed John Swinson as the sole panelist in this matter on July 12, 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 has its principal business address in Cyprus and has a branch in Greece. The Complainant markets and sells natural food supplements and edible products in Greece, the European Union, and worldwide, via a website at the domain name <superfoods.eu>.

The Complainant owns a registered trademark for SUPER FOODS. This trademark registration is with the Greek Trademark Office and has Registration Number D194710. It was registered on May 19, 2009. The Complainant has been marketing its products under the SUPER FOODS trademark since 2009, including a sports sponsorship deal where its mark was displayed at a sports stadium of the biggest Basketball Corporation in Greece and on player's jerseys, etc.

The Complainant also owns other Greek and European Union trademark registrations including for SUPERFOOD NATURE'S BEST that includes an "S" logo.

The Respondent is in Greece and is a competitor of the Complainant. The Respondent sells food supplements via a website located at <bioshop.gr>.

The Complainant and the Respondent have been involved in prior domain name and other legal disputes.

The Respondent was unsuccessful in a long running series of legal proceedings to delete the Complainant's SUPERFOODS trademark registrations. These proceedings started in 2014 and ended in 2022.

The Respondent registered the domain name <super-food.gr>. A decision from 2017 of the Hellenic Telecommunications and Post Commission ruled that this domain name be transferred to the Complainant. Shortly after this decision, the Respondent registered the domain name <superfoodshellas.gr>. The Complainant then filed another complaint with the Hellenic Telecommunications and Post Commission regarding <superfoodshellas.gr>, and in April 2021, this domain name was ordered to be transferred to the Complainant (Decision (989/12/2021)).

The disputed domain name was registered on June 7, 2021, which was shortly after the decision against the Respondent regarding <superfoodshellas.gr>.

On September 27, 2021, the Complainant filed legal proceedings against the Respondent in a Greek court, the Court of First Instance of Athens. This court issued a decision, being decision number 953/2023 on March 16, 2023, which required the Respondent to, amongst other things, cease using the disputed domain name in Greece and other member States of the European Union, as well as any other indications, verbal or pictorial consisting of a combination of words and visual representations, which contain the SUPERFOODS trademarks. Additionally, the court decision ruled that WIPO was the competent authority for the resolution of disputes arising between the domain name owner and any third party regarding the deletion or transfer of the disputed domain name. The Complainant states that this decision has not been appealed and is now a final decision.

At one time, the website at the disputed domain name was titled "Superfoods Hellas" and advertised products in competition with the Complainant. At the present time, the website at the disputed domain name is a WordPress website that lists the disputed domain name for sale and invites offers 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 due to prior legal proceedings, the Respondent was clearly aware of the Complainant when the disputed domain name was registered, and the Respondent's entire actions are an endless effort to exploit the reputation and distinctive power of the Complainant's trademark in order to procure for his own a financial gain. Furthermore, there is a clear intention by the Respondent to take unfair advantage of confusion between the Complainant's trademark by using the disputed domain name or draw Internet users to his website.

B. Respondent

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

6. Discussion and Findings

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

- (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 respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and are being used in bad faith.

The *onus* of proving these elements is on 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 it deems applicable.

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.

Based on the available record, the Panel finds 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 entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms, here, "hellas", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8. Based on the available record, 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.

While 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 often-impossible 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. 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 record as set out above, 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.

The Panel considers that the record of this case reflects that a Greek court has ordered the Respondent to cease use of the disputed domain name. In such circumstances, the Respondent lacks rights or legitimate interests in the disputed domain name.

Based on the available record, 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.

The Panel considers that the record of this case reflects that:

- the Respondent has registered the disputed domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, and the Respondent has engaged in a pattern of such conduct. Paragraph 4(b)(ii) of the Policy, and [WIPO Overview 3.0](#), section 3.1.2.
- the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location or of a product or service on the Respondent's web site or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

In the present case, the Panel further notes that the Respondent, a competitor of the Complainant, registered the disputed domain name shortly after the Respondent was unsuccessful in proceedings regarding a similar domain name with the ".gr" country code Top-Level Domain. This coupled with the Respondent's failed attempt to cancel the Complainant's trademark registrations is evidence of bad faith. (Had the cancellation proceedings gone in the Respondent's favor, that would have presented a different set of overall facts.) A Greek court thereafter ruled that the Respondent must cease use of the disputed domain name. The present case is a clear example of bad faith cybersquatting under 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 <superfoodshellas.com> be transferred to the Complainant.

/John Swinson/
John Swinson
Sole Panelist
Date: July 26, 2023