

ADMINISTRATIVE PANEL DECISION

Trader Joe's Company v. Dan Williams, Timax Inc
Case No. D2023-2411

1. The Parties

Complainant is Trader Joe's Company, United States of America ("U.S."), represented by Byron Raphael LLP, U.S.

Respondent is Dan Williams, Timax Inc, U.S.

2. The Domain Name and Registrar

The disputed domain name <traderjoes.com> is registered with eNom, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 2, 2023. On June 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 5, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name that differed from the named Respondent (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to Complainant on June 7, 2023 providing the registrant and contact information disclosed by the Registrar and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on June 26, 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 Respondent of the Complaint and the proceedings commenced on June 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 16, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on July 18, 2023.

The Center appointed Jeffrey D. Steinhardt as sole panelist in this matter on July 20, 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

Complainant has operated grocery stores in the United States since the 1960's under the TRADER JOE'S brand. Complainant owns several registrations for its TRADER JOE'S marks in the U.S. and abroad including, for example, United States Trademark Registration No. 1,420,628 (service mark), registered in Class 42 on December 9, 1986 with a first use in commerce date of August 1967.

The disputed domain name was registered August 1, 2022 and does not resolve to an active webpage.

5. Parties' Contentions

A. Complainant

Complainant avers that it has used the TRADER JOE'S mark for its grocery stores and services since 1967.

Complainant contends that while the disputed domain name does not presently route to an active webpage, Respondent could easily enable the disputed domain name to be used for pay-per-click advertising, which would not be fair or legitimate noncommercial use under applicable authorities.

Summarizing its legal contentions, Complainant alleges that (1) the disputed domain name is confusingly similar to Complainant's trademark, (2) Respondent has no rights or legitimate interests in the disputed domain name, and (3) the disputed domain name was registered and is being used in bad faith, all in violation of the Policy.

Complainant seeks transfer.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

For Complainant to prevail under the Policy, it must be established that (1) the disputed domain name is identical or confusingly similar to Complainant's TRADER JOE'S trademarks, (2) Respondent has no rights or legitimate interests in the disputed domain name, and (3) the disputed domain name was registered and is being used in bad faith. Policy, paragraph 4(a).

The fact that Respondent has not provided any Response does not, by itself, mean that Complainant prevails. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3. In the absence of a Response, however, the Panel may also accept as true reasonable factual allegations in the Complaint. See, e.g., *ThyssenKrupp USA, Inc. v. Richard Giardini*, WIPO Case No. [D2001-1425](#) (citing *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#)).

A. Identical or Confusingly Similar

The Panel agrees with Complainant's allegation that the disputed domain name is confusingly similar to Complainant's TRADER JOE'S mark.

UDRP panels commonly disregard Top-Level Domains ("TLDs") in determining whether a disputed domain name is identical or similar to a complainant's marks. [WIPO Overview 3.0](#), section 1.11.1. Omitting the ".com" TLD, the Panel notes that Complainant's entire TRADER JOE'S mark is included in the disputed domain name, omitting only an apostrophe and inserting only an additional letter "d." The Panel finds that these minor modifications to Complainant's mark do not prevent a finding of confusing similarity. See, e.g.,

[WIPO Overview 3.0](#), section 1.9 (UDRP panels consider domain names which consist of a common, obvious, or intentional misspelling of a trademark are considered to be confusingly similar).

The Panel therefore finds that the disputed domain name is confusingly similar to Complainant's mark and concludes that the first element of paragraph 4(a) of the Policy is established.

B. Rights or Legitimate Interests

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

The Policy contains a non-exhaustive list of circumstances that may demonstrate when a respondent has rights or legitimate interests in a domain name. The list includes: (1) using the domain name in connection with a *bona fide* offering of goods and services; (2) being commonly known by the domain name; or (3) making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers. Policy, paragraphs 4(c)(i) – (iii).

A complainant must show a *prima facie* case that a respondent lacks rights or legitimate interests in a disputed domain name, after which the burden of rebuttal passes to the respondent. See, e.g., *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#). The absence of rights or legitimate interests is established if a complainant makes out a *prima facie* case and the respondent enters no response. *Id.*, (citing *De Agostini S.p.A. v. Marco Cialone*, WIPO Case No. [DTV2002-0005](#)).

Complainant alleges that Respondent has no rights or legitimate interests in the disputed domain name and avers that Respondent does not make use of the disputed domain name.

The Panel accepts Complainant's allegations that Respondent has no relevant trademark rights, authorization or license to use Complainant's trademarks in the disputed domain name. The Panel also accepts Complainant's averment that Respondent is not commonly known by the disputed domain name.

The record shows that the disputed domain name does not route to an active webpage and there is no evidence of preparations by Respondent to make a *bona fide* offering under the disputed domain name. The Panel therefore finds that Respondent is not making *bona fide* use of the disputed domain name.

In light of the evidence, the Panel holds that Respondent is not making a legitimate or fair use of the disputed domain name and that a *prima facie* case is established. Omitting to submit a response, Respondent has neither contested nor rebutted that *prima facie* case.

The Panel holds, therefore, that Respondent has no rights or legitimate interests in use of the disputed domain name and that the second element of Policy paragraph 4(a) is established.

C. Registered and Used in Bad Faith

The Panel finds that the third element of paragraph 4(a) of the Policy, bad faith registration and bad faith use, is also established, as elaborated below.

Respondent registered the disputed domain name following Complainant's use of the TRADER JOE'S trademark for more than fifty years.

It appears beyond dispute that Respondent was aware of Complainant's well-known mark and sought to exploit it through registration of the confusingly similar disputed domain name.

The Panel further finds that a presumption of bad faith is created by Respondent's mere registration of a domain name which is confusingly similar to Complainant's well-known TRADER JOE'S marks. [WIPO Overview 3.0](#), section 3.1.4. Respondent has submitted no evidence to contradict this presumption. The

Panel holds therefore that Respondent registered the disputed domain name in bad faith. *E.g.*, [WIPO Overview 3.0](#) Sections 3.2.1 and 3.3.

The Panel also finds that Respondent's passive holding of the disputed domain name evidences Respondent's use of the disputed domain name in bad faith. *E.g.*, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); [WIPO Overview 3.0](#) Section 3.3.

Respondent's failure to submit a response to the amended Complaint and the failure to provide accurate contact details as required by the Registrar are further evidence of use in bad faith.¹ [WIPO Overview 3.0](#), section 3.3.

The Panel holds, therefore, that the third element of Policy paragraph 4(a) is also established.

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 <tradderjoes.com> be transferred to Complainant.

/Jeffrey D. Steinhardt/
Jeffrey D. Steinhardt
Sole Panelist
Date: August 3, 2023

¹Courier notification to Respondent of the Complaint was not possible using registrant address details provided by Respondent.