

ADMINISTRATIVE PANEL DECISION

Urban Fresh Systems LLC dba The Feedery v. Sandra Schuler
Case No. D2023-2489

1. The Parties

Complainant is Urban Fresh Systems LLC dba The Feedery, United States of America (“United States” or “U.S.”), represented by Messner Reeves LLP, United States.

Respondent is Sandra Schuler, United States.

2. The Domain Name and Registrar

The disputed domain name <thefeedery.com> is registered with Squarespace Domains LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 8, 2023. On June 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 9, 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 (THEFEEDERY.COM, THE FEEDERY) and contact information in the Complaint. The Center sent an email communication to Complainant on June 12, 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 13, 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 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 5, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on July 11, 2023.

The Center appointed Scott R. Austin as the sole panelist in this matter on July 18, 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 is the holder of the following registered trademark: United States Reg. No. 6,449,349 for THE FEEDERY, registered on August 10, 2021, for “[c]afé and restaurant services” in International Class 43, claiming a first use date of December 12, 2019 (the “THE FEEDERY Mark”).

Complainant is also the holder of the domain name <feedery.com>, incorporating the dominant portion of THE FEEDERY Mark, which it uses to access its official website at “www.feedery.com” (the “Official THE FEEDERY Mark Website”). The Panel’s review of the Internet Archive shows the Official THE FEEDERY Website to promote Complainant’s restaurant services was active at least as early as May 20, 2020 using the THE FEEDERY Mark, but with no trademark symbol such as “TM” or a circle R applied to its registered mark that would provide notice that it treats the use of this term as its trademark.

The disputed domain name was registered on January 12, 2023. As of the date of the filing of the Complaint, the disputed domain resolved to a website featuring Complainant’s THE FEEDERY Mark and “coming soon” with a stylized picture of a restaurant, but currently resolves to an inactive site that states “Website Expired”.

5. Parties’ Contentions

A. Complainant

Complainant contends that the disputed domain name is identical or confusingly similar to Complainant’s trademark; that Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

The *onus* is on Complainant to make out its case and it is apparent from the terms of the Policy that Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are administrative, the standard of proof under the Policy is often expressed as the “balance of the probabilities” or “preponderance of the evidence” standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true. See, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.2.

Thus, for Complainant to succeed it must prove within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

1. The disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
2. Respondent has no rights or legitimate interests in respect of the disputed domain name; and
3. The disputed domain name has been registered and is being used in bad faith.

The Panel will deal with each of these requirements in turn.

A. Identical or Confusingly Similar

The first element inquiry under the Policy has two strands. First, the Panel considers whether Complainant has demonstrated that it has UDRP-relevant rights in a trademark. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#). Secondly, the trademark concerned is compared to the disputed domain name, typically in a straightforward side-by-side comparison in order to determine whether the former is recognizable in the latter. During the comparison process, the generic Top-Level Domain (in this case, “.com”) is usually disregarded as being required for technical purposes only. See, *Research in Motion Limited v Thamer Ahmed Alfarshooti*, WIPO Case No. [D2012-1146](#).

In the present case, the Panel is satisfied that Complainant has rights in its THE FEEDERY Mark as registered. The details of its relevant trademark registration are noted in the factual background section above and a copy of the registration issued to Complainant is in one of the annexes attached to its Complaint. Comparing its registration for the word mark to the Second-Level of the disputed domain name, the Panel finds this to be alphanumerically identical. Complainant’s mark is therefore clearly recognizable in the disputed domain name.

In all of these circumstances, the Panel finds that the disputed domain name is identical to Complainant’s mark and therefore that Complainant has carried its burden in terms of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists several ways in which 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 prior UDRP panel 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. [WIPO Overview 3.0](#), section 2.1. See also, *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#).

In the present case, the Panel finds that Complainant has established the requisite *prima facie* case based on its submissions that Respondent is not commonly known by the disputed domain name, has received no permission or license to use Complainant’s mark therein, is not using the disputed domain name in connection with a *bona fide* offering of goods or services, and that the disputed domain name refers to a copycat website featuring Complainant’s mark used for restaurant services in competition with Complainant, which in part references Complainant’s line of business. In these circumstances, the burden of production shifts to Respondent to bring forward evidence of its rights and legitimate interests in the disputed domain name.

Respondent has failed to file any Response in this administrative proceeding and has put forward no submissions or evidence demonstrating any rights or legitimate interests in the disputed domain name.

There is no evidence before the Panel indicating that any of the items in paragraph 4(c) of the Policy might be relevant in the circumstances of this case.

In particular, given the distinctive nature of Complainant's THE FEEDERY trademark, there is no suggestion that Respondent could be making a *bona fide* offering of goods and services or be commonly known by the disputed domain name. See *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Equally, the use of the disputed domain name in connection with a website which copies Complainant's THE FEEDERY Mark and offers competing restaurant services, which relates to Complainant's line of business, could not be regarded as a legitimate noncommercial or fair use in this case. See *Accor v. Eren Atesmen*, WIPO Case No. [D2009-0701](#).

In these circumstances, the Panel finds that Respondent has failed to rebut Complainant's *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name. The second element under the Policy has been established.

C. Registered and Used in Bad Faith

For the reasons discussed under the previous ground, the Panel finds that Respondent registered and used the disputed domain name in bad faith. This finding is supported by the following circumstances. First, under these particular circumstances, given Respondent has concealed its identity by using fraudulent contact information. Second, the Panel agrees with Complainant's supported allegation that Respondent has sought to pass itself off as Complainant for purposes of pursuing a fraudulent scheme on unsuspecting consumers by using Complainant's THE FEEDERY name and mark featured on the landing page of Respondent's website and as signage on the graphic representation of the restaurant building featured on Respondent's website, registering a domain name that is identical to Complainant's THE FEEDERY Mark which makes it clear that Respondent has targeted Complainant.

Given the above, the Panel finds that Respondent must have known of Complainant and its business activities and registered and is using the disputed domain name to take bad faith advantage of Complainant's Mark.

The Panel thus finds that Complainant has met the third limb 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 <thefeedy.com> be transferred to Complainant.

/Scott R. Austin/

Scott R. Austin

Sole Panelist

Date: August 1, 2023