

ADMINISTRATIVE PANEL DECISION

Paraway Pastoral Company Limited v. Artem Gerashchenko
Case No. D2023-2684

1. The Parties

The Complainant is Paraway Pastoral Company Limited, Australia, represented by Wrays, Australia.

The Respondent is Artem Gerashchenko, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <pooginook.com> is registered with DropCatch.com 839 LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 22, 2023. On June 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 22, 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 (Private Registration) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 27, 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 June 28, 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 July 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 27, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 1, 2023.

The Center appointed Assen Alexiev as the sole panelist in this matter on August 14, 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 an Australian public company, incorporated in 2006. It owns and operates large-scale sheep and cattle enterprises across Australia and is one of the largest pastoral land owner/operators in the country, with a total combined land holding of over 4.4 million hectares. In 2007, the Complainant purchased the historic Riverina sheep stud "Pooginook" and registered the Australian business name POOGINOOK MERINO.

The Complainant is the owner of the Australian trademark POOGINOOK with registration No. 788672, registered on March 19, 1999 for goods and services in International Classes 5, 22, 25, and 31 (the "POOGINOOK trademark").

The Complainant is also the owner of the domain name <pooginook.com.au>, which resolves to its official website.

According to the Complainant, it was the registrant of the disputed domain name until 2020 and used it for its official website, following which it inadvertently let the registration of the disputed domain name to lapse. The disputed domain name was registered by the Respondent on August 3, 2021. It currently resolves to a website with various content relating to sheep and other unrelated topics. The website includes the header "Pooginook Merino Stud Sheep and Ram Sales" and the copyright notice "© Copyright 2023 Pooginook Merino Stud Sheep and Ram Sales".

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.

The Complainant explains that Pooginook is the name of a merino and poll stud based in Jerilderie, New South Wales, Australia, which was first named in 1937 as Pooginook Sheep Stud. The Complainant states that it purchased Pooginook Sheep Stud in 2007, after which it has continuously and extensively used the POOGINOOK trademark in connection with the Pooginook Sheep Stud. The Complainant maintains that as a result of its extensive use of the POOGINOOK trademark, it has developed common law rights with respect to the POOGINOOK trademark.

The Complainant states that the disputed domain name is confusingly similar to the POOGINOOK trademark, because it incorporates the trademark in its entirety.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it is not commonly known by the disputed domain name. The Complainant adds that apart from using the POOGINOOK trademark as part of an email address and in the header and copyright notice footer of the website at the disputed domain name, there appears to be no other use of the same trademark. The Complainant points out that the majority of the posts on the website at the disputed domain name are nonsensical questions and answers seemingly relating to eating and breeding animals and sheep, amongst other things, but often referencing TV programs and computer games such as "Phatome Pain" [sic] and "Minecraft", suggesting that the Respondent may be using the disputed domain name with the intention of either disrupting the Complainant's business or taking advantage of the Complainant's reputation by diverting traffic towards the website at the disputed domain name through use of words relating to "sheep".

According to the Complainant, the POOGINOOK trademark has no value apart from its association with the Complainant.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to it, the Respondent has registered and is using the disputed domain name intentionally attempting to attract Internet users to the associated website for commercial gain by creating a likelihood of confusion with the Complainant's POOGINOOK trademark as to the source, sponsorship, affiliation, or endorsement of the website at the disputed domain name.

The Complainant states that the disputed domain name was used by the Complainant and its predecessors in title to operate the Complainant's original website from at least 2001 until early 2020. Since the registration of the disputed domain name was allowed to lapse in early 2020, it was registered by the Respondent using a heading very similar in color and style to those used by the Complainant and its predecessors in title. According to the Complainant, given the long period of use of the POOGINOOK trademark and the prior registration of the disputed domain name by the Complainant and its predecessor in title, the Respondent must have been aware of the Complainant, its original website and the POOGINOOK trademark when registering the disputed domain name. According to the Complainant, the disputed domain name and the POOGINOOK trademark are connected with the Complainant and there is no credible explanation for the Respondent's choice of the disputed domain name.

The Complainant states that the Respondent has no connection to the Complainant and has registered the disputed domain name primarily for the purpose of disrupting the business of the Complainant by intentionally diverting traffic to the website at the disputed domain name. According to the Complainant, the Respondent's use of the disputed domain name has the potential to create confusion and embarrassment to the Complainant amongst the Complainant's consumers, and those who attempt to visit the website at the disputed domain name thinking it belongs to the Complainant.

B. Respondent

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

6. Discussion and Findings

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 the POOGINOOK trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the POOGINOOK trademark is reproduced within the disputed domain name without the addition of any other elements. Accordingly, the disputed domain name is identical to this trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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, 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 such as those enumerated in the Policy or otherwise.

The disputed domain name is identical to the POOGINOOK trademark of the Complainant and was used by the Complainant for many years as its official website. There is no evidence that "Pooginook" has any meaning unrelated to the Complainant's trademark and to the sheep breed known and marketed under it by the Complainant and protected by the POOGINOOK trademark. As a result of all this, there is a high risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

The Respondent does not appear to be commonly known under this name or to be affiliated with the Complainant. It has not described the reasons why it chose to register the disputed domain name after its registration by the Complainant lapsed, and has provided no description of the plans for its use. The evidence shows that the disputed domain name is being used for a website that contains the header "Pooginook Merino Stud Sheep and Ram Sales" and the copyright notice "© Copyright 2023 Pooginook Merino Stud Sheep and Ram Sales". This creates an impression that the website offers Pooginook studs for sale and that the Respondent has registered and uses the disputed domain name for a commercial activity using the Complainant's trademark.

In the absence of any evidence to the contrary, all this taken together supports the conclusion that it is more likely than not that the Respondent had knowledge of the Complainant's POOGINOOK trademark when it registered the disputed domain name and has registered and used it due to it being identical to this trademark to confuse and attract visitors for commercial gain. Such conduct cannot give rise to rights or legitimate interests of the Respondent 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.

As discussed in the section on rights and legitimate interests, the evidence supports a finding that it is more likely than not that the Respondent has registered and used the disputed domain name with knowledge of and targeting the POOGINOOK trademark to confuse and attract visitors to the associated website for commercial gain. This supports a finding of bad faith under paragraph 4(b)(iv) of the Policy.

Based on the available record, the Panel finds the third element of the Policy has been 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 <pooginook.com> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: August 28, 2023