

ADMINISTRATIVE PANEL DECISION

Syngenta Participations AG v. Marie Ana Farzana
Case No. D2023-3567

1. The Parties

The Complainant is Syngenta Participations AG, Switzerland, represented by Syngenta Group, Switzerland.

The Respondent is Marie Ana Farzana, United States of America.

2. The Domain Name and Registrar

The disputed domain name <syngenta.com> is registered with GMO Internet, Inc. d/b/a <Discount-Domain.com> and <Onamae.com> (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on August 24, 2023. On August 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 25, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On August 25, 2023, the Center transmitted an email communication to the Parties in both English and Japanese regarding the language of the proceeding. On August 30, 2023, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

The Center verified that 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, both in English and Japanese, and the proceedings commenced on August 31, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 20, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 21, 2023.

The Center appointed Teruo Kato as the sole panelist in this matter on September 27, 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

According to the Complaint, the Complainant is a global, science-based agtech company with 30,000 employees in 90 countries dedicated to the purpose of bringing plant potential to life. The Complainant contends that through worldclass science, global reach and commitment to our customers it helps to increase crop productivity, protect the environment and improve health and quality of life and that its products include agrochemicals for crop protection as well as vegetable and flower seeds.

The Complainant contends that it owns, among others, International Trademark registration No. 732663, registered on March 8, 2000, in classes 1, 2, 5, 7, 8, 9, 10, 16, 29, 30, 31, 32, 35, 36, 41 and 42; Japanese trademark registration No. 1533804 (international registration number), registered on April 15, 2020, in classes 9, 16, 20 and 42; and United States of America trademark No. 3036058, registered on December 27, 2005, and renewed on August 19, 2015, in classes 1, 5, 16, 31, 35, 36, 41 and 42.

The disputed domain name was registered on June 8, 2023, and does not resolve to any active website.

The Respondent is Marie Ana Farzana of United States of America.

The Complainant requests that the disputed domain name be transferred to the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant contends that it is the owner of the SYNGENTA trademark.

The Complainant also contends that the disputed domain name is confusingly similar to the Complainant's SYNGENTA trademark. In the present case the Complainant contends that "[t]he domain name in question, <Symgenta.com>, is confusingly similar to our global trademark SYNGENTA as it is a misspelling varying from our brand by one letter. In fact, 'Symgenta' is almost identical to our brand, save for the use of the letter 'm' instead of the letter 'n', ..." and "[w]ith the mere substitution of the letter 'n', Symgenta remains very similar to Syngenta optically and in terms of pronunciation."

The Complainant further contends that the Respondent has no affiliation with the Complainant nor is the Respondent authorized to use the Complainant's registered trademark.

The Complainant also contends that the Respondent has registered and is using the disputed domain name in bad faith. The Complainant contends that "<Symgenta.com> does not resolve to a website. ... It appears to be a passive holding. Although the domain name does not resolve to content, it is potentially causing damage to our reputation because the public could reasonably assume that <Symgenta.com> is an official Syngenta domain name resolving to a defunct website. In this way, the respondent is trading on the reputation of Syngenta and the likelihood of confusion to drive traffic to an inoperative site."

The Complainant also contends that "In addition, we found that the domain name contains MX-records which could be used to send and receive emails. The presence of MX records raises the possibility that the Domain Name may be used for fraudulent email communication."

The Complainant further contends that “we sent a cease and desist email to the Respondent at [xxx@xxx]. We received a response from that email address, but the correspondent identified themselves as [xxx xxx], a name which is not listed in the Whois record. The domain name is registered to “Maria Ana Farzana.”

In addition, the Complainant contends that “there are apparent inconsistencies in the Whois information. The Registrant’s address is listed as Arizona (AZ), but the area code of the phone number (903) is for Texas. A Google search of the Registrant’s address shows a trucking business which additionally casts doubt on the authenticity of the Whois information.”

B. Respondent

The Respondent did not reply to the Complainant’s contentions. Whilst the Respondent has not filed its Reply, the Panel notes that, according to the Complainant, the Respondent stated in its email exchange with the Complainant that “My company name is Syngenta Consultants. And with all due respect, there is a difference in “Syngenta”, and “Symgenta” and “my company name, SYMGENTA is not an exact duplicate of SYNGENTA, like you stated in your earlier email. And should not be mistaken by anyone who knows who he/she is addressing.” and “I have not received any complaints from my own clients about them making such mistakes, or addressing correspondence meant for SYMGENTA CONSULTANTS, to SYNGETA.”

Furthermore, the Respondent stated, “[a]s it stands now, I have put in my resources into developing my brand name, amongst other things”. Lastly, the Respondent also stated, “[b]ut all the same, I am open to suggestions on how to resolve this amicably, because I had to pay to acquire this domain name for my company.” and “I would be interested in a possible settlement with your company, provided it is favourable to both sides. I am open to suggestions from you.” and “All the same, I am open to suggestions on how to resolve this name issue amicably.”

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

Pursuant to paragraph 11(a) of the Rules, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the panel to determine otherwise having regard to the circumstances of the administrative proceeding. The Panel notes that in the present case the Registrar has confirmed that the language of the Registration Agreement is Japanese.

The Complainant has filed the Complaint in English and requests that the language of the proceeding be English on the following grounds:

- (a) The Complainant sent a cease and desist email to the Respondent, to which the Respondent replied in English, as well as the remainder of their discussions were in English, which, the Complainant contends, means that the Respondent appears to be familiar with the English language; and
- (b) The disputed domain name is not in Japanese script as the Respondent used Latin character, and the generic Top-Level Domains (“gTLD”) used is “.com” which stands for “commercial” and not local “.JP” extensions

The Panel notes and accepts the Complainant’s contention (a) above, in respect of the apparent familiarity of the Respondent with English, but the Panel does not find that the view that the Complainant’s contention (b) above, relating to the gTLD, would warrant that English be the language of proceedings in the present case.

In this connection, the Panel notes the somewhat limited submissions by the Complainant regarding the language of proceedings, which would prompt the Panel to exercise its authority to deviate from the default language provision. For example, the Complaint contains no particular assertion relating to subparagraph (vi) of section 4.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the “[WIPO Overview 3.0](#)”), which cites “potential unfairness or unwarranted delay in ordering the

complainant to translate the complaint”.

The Panel is, however, mindful of the overriding requirements as contemplated in paragraphs 10(b) and 10(c) of the Rules that the parties are treated equally, that each party is given a fair opportunity to present its case and that the proceeding takes place with due expedition.

In this regard the Panel is satisfied that, because the disputed domain name does not resolve to any website, it is not being used to display anything Japanese. Further, the Panel notes that the Whois information provided by the Complainant shows nothing Japanese in terms of language, geography or otherwise, except that its Registrar is GMO of Japan, which the Panel understands offers its services both in Japanese and English. Accordingly, the Panel finds no particular indication that the Respondent is conversant with the Japanese language.

The Panel also notes from the records that on August 25, 2023 the Respondent was invited by the Center, in both Japanese and English, to indicate any objection to the proceeding being conducted in English by August 30, 2023, and that the Respondent did not respond to this by this deadline nor later.

Further, on August 30, 2023, the Center informed the Respondent, in both Japanese and English, that the Center has decided, under the circumstances of this case, to: “1) accept the Complaint as filed in English; 2) accept a Response in either English or Japanese; 3) appoint a Panel familiar with both languages mentioned above, if available.” Accordingly, the Panel would have accepted a response in Japanese, but no reply was submitted by the Respondent.

These facts and findings suggest to the Panel that there would be no practical and meaningful benefits to be gained by the Panel’s ordering the Complainant to submit the Japanese translation of the Complaint.

In the circumstances, in accordance with paragraph 11(a) of the Rules, the Panel decides that English be the language of the proceeding. The Panel further finds that such determination would not cause any prejudice to either Party and would ensure that the proceeding takes place with due expedition.

6.2 Substantive Issues

A. Identical or Confusingly Similar

The Panel must determine whether (a) the Complainant has a trademark or service mark; and (b) whether the disputed domain name is identical or confusingly similar to that trademark or service mark.

The Complainant submitted evidence of trademark registrations and the Panel is satisfied that the Complainant is the owner of, among others,

- International Trademark registration No. 732663, SYNGENTA, registered on March 8, 2000, in classes 1, 2, 5, 7, 8, 9, 10, 16, 29, 30, 31, 32, 35, 36, 41 and 42;
- Japanese trademark registration No. 1533804 (international registration number), SYNGENTA, registered on April 15, 2020, in classes 9, 16, 20 and 42; and
- United States of America trademark No. 3036058, SYNGENTA, registered on December 27, 2005, and renewed on August 19, 2015, in classes 1, 5, 16, 31, 35, 36, 41 and 42.

As to the confusingly similar element for the purposes of the Policy, the Panel has proceeded to compare the disputed domain name to the trademark rights which have been proved as above.

Section 1.11.1 of the [WIPO Overview 3.0](#) states that “[t]he applicable Top Level Domain (‘TLD’) in a domain name (e.g., ‘info’, ‘.com’, ‘.club’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test”, and the Panel finds no reason why this established practice should not be applied to the present case.

Apart from the generic Top-Level Domain (being “.com”), the Panel notes that the disputed domain name contains its trademark SYNGENTA in its entirety, except that its third letter is “M”, instead of “N”.

In this connection, the Panel notes section 1.7 of the [WIPO Overview 3.0](#) which states that “[w]hile each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing”.

Similarly, the Panel notes section 1.9 of the [WIPO Overview 3.0](#), which states that “[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 notes that the letters “n” and “m” are not totally dissimilar in their written appearances and spoken sounds. The Panel also notes that in most computer keyboards designed for posting Latin alphabet scripts, both of the letters “n” and “m” are usually assigned to the right hand index finger, and as such the Panel is of a view that the likelihood of misspelling is higher than other cases.

In this connection the Panel has consulted with one of the leading internet search engines and, where “symgenta” is used as a keyword, it has automatically returned its search results based on “syngenta”, with an accompanying note stating, in effect, that “the original search keyword: symgenta”.

In the circumstances, the Panel holds that the disputed domain name is confusingly similar to the Complainant’s trademarks. Accordingly, the Panel finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, any of the following circumstances, if found by the Panel, may demonstrate a respondent’s rights or legitimate interests in a domain name:

- (i) before any notice to it of the dispute, the respondent’s 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) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent is 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 view of UDRP panels is that the burden of proof in establishing no rights or legitimate interests in respect of a domain name rests with the complainant in making out a *prima facie* case that the respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the burden of production 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. (see section 2.1 of the [WIPO Overview 3.0](#)).

In the present case, however, the submissions made by the Complainant under the heading of “B. The Respondent has no rights or legitimate interests in respect of the domain name(s); (Policy, Paragraph 4(a)(ii); Rules, Paragraph 3(b)(ix)(2))” were limited to:

“The Respondent has no affiliation with the Complainant nor is the Respondent authorized to use Complainant’s registered trademark. The Domain Name is currently not resolving.”

In the circumstances the Panel does not find that the Complainant has sufficiently made a *prima face* case as contemplated in section 2.1 of the [WIPO Overview 3.0](#) above.

However, the Panel notes that, in this particular case, the disputed domain name is not resolving to any pages. Further, although the Respondent asserted that its company name is “Symgenta Consultants”, the Respondent did not provide the Complainant with any information on the Respondent, such as its address and other contact details, which would allow the Complainant to investigate further.

In the circumstances, the Panel considers that it was not feasible for the Complainant to make a *prima facie* case in this particular instance. Further, the Panel notes that section 2.1 of the [WIPO Overview 3.0](#), as quoted above, does not state the above mentioned “*prima facie*” route be mandatory. In fact, the said section states as follows:

“The UDRP Rules in principle provide only for a single round of pleadings, and do not contemplate discovery as such. Accordingly, a panel’s assessment will normally be made on the basis of the evidence presented in the complaint and any filed response. The panel may draw inferences from the absence of a response as it considers appropriate, but will weigh all available evidence irrespective of whether a response is filed.”

According to the Complainant, in its email exchange between the Complainant and the Respondent as reflected above, the Respondent asserted the alleged development of its brand name.

The Panel therefore notes that it was open to the Respondent, and the Panel is inclined to think that it would be in the Respondent’s own interest to advance its case in the present proceedings. The Respondent, however, has not pursued this course of action.

Further, the Panel notes that the Respondent reflected an intent to settle the dispute, offering the disputed domain name to the Complainant so long as the outcome was “favourable to both sides”.

However, the Panel notes that the Respondent did not respond to the email sent by the Center to the Parties on August 31, 2023, which offered the Parties the opportunity to suspend the proceeding for purposes of settlement negotiations.

The applicable standard of proof in UDRP cases is the “balance of probabilities” (See section 4.2 of the [WIPO Overview 3.0](#)). Having carefully considered all the evidence available to the Panel, the Panel concludes that it is more likely than not that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

To fulfill the third requirement, the Complainant must prove that the disputed domain name was registered and is being used in bad faith.

As reflected above, the Complainant has pointed to the inherent misleading nature of the typosquatting disputed domain name, the threat presented by active MX records, and that the present non-use does not prevent a finding of bad faith given the totality of circumstances. No counter-argument has been submitted to the Panel by the Respondent. While the Panel notes that the Respondent has alleged that none of its clients have been confused, no evidence has been made available to the Panel to verify such interpretation or even the existence of the Respondent’s alleged “symgenta consultants”.

Further, the Panel notes that a cursory Internet search for the Respondent and the disputed domain name or “Symgenta consultants” only yields results reflecting the Complainant, casting further doubt as to the genuine nature of the alleged consultancy and thus, generally, the Respondent’s allegations. Given the Respondent’s alleged operations in the United States, where the Complainant is also located and has had registered trademarks predating the Respondent’s registration of the disputed domain name by over 17 years, it is more likely than not that the Respondent knew of, and purposefully targeted, the Complainant

when registering the one-letter, typographical variation, of the Complainant's trademark.

The Panel finds that the existence of the MX arrangement would not, by itself, be a strong evidence of fraudulent email communication, and the Panel is of a view that there are many users of MX arrangement who use it for their legitimate purposes.

The Panel, however, takes note of the possible inconsistent information provided by the Respondent to the Registrar on the name and address of the Respondent, as contended by the Complainant. In this connection the Panel notes in the case file that the international courier arranged by the Center which was addressed to the name and location given by the Respondent in Whois did not reach its destination. The Panel is also aware that the Respondent was given an opportunity to advance its position in the present proceeding in order to protect its interest, but it has not done this.

The Panel also takes note of section 3.3 of the [WIPO Overview 3.0](#), relating to the "passive holding" or non-user of a domain name, which states:

While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.

Taking all matters into careful consideration, the Panel holds that it is more likely than not that the Respondent registered and is using the disputed domain name in bad faith. The Panel therefore concludes that the third requirement of the Policy has been met.

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, <symgenta.com>, be transferred to the Complainant.

/Teruo Kato/

Teruo Kato

Sole Panelist

Date: October 11, 2023