

ADMINISTRATIVE PANEL DECISION

Syngenta Participations AG v. Flynn Nicki USWB
Case No. D2023-4763

1. The Parties

The Complainant is Syngenta Participations AG, Switzerland, internally represented.

The Respondent is Flynn Nicki USWB, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <syngenta.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 15, 2023. On November 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 16, 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 (Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 8, 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 December 8, 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 December 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 31, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 3, 2024.

The Center appointed Angelica Lodigiani as the sole panelist in this matter on January 18, 2024. 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 a global agricultural company employing 30,000 people in more than 90 countries worldwide. The Complainant's products help to increase crop productivity, protect the environment, and improve health and quality of life. The Complainant's products include agrochemicals for crop protection as well as vegetable and flower seeds. In 2022, the Complainant generated USD 33,4 billion global sales, USD 16,3 billion in crop protection sales, and USD 4,7 billion seeds sales.

The Complainant is the owner of the trademark SYNGENTA in many jurisdictions worldwide. Among its various registrations, the Complainant is the owner of the following:

- SYNGENTA, International registration No. 732663 in classes 1, 2, 5, 7, 8, 9, 10, 16, 29, 30, 31, 32, 35, 36, 41 and 42, registered on March 8, 2000, with designations in Great Britain, France, Germany, China, the Russian Federation and Vietnam, among many others.

- SYNGENTA, United States registration No. 3036058, registered on December 27, 2005, and claiming a first use in commerce since January 12, 1999, in classes 1, 5, 16, 31, 35, 36, 41 and 42.

The disputed domain name was registered on November 4, 2023, and resolves to a parked page of the Registrar containing sponsored pay-per click ("PPC") links to third parties' websites. The Respondent has activated email exchange ("MX") records for the disputed domain name. On November 9, 2023, the Complainant sent a cease and desist letter via email to the registrar listed in the Whois database, pointing out the Complainant's earlier trademark registrations and requesting the immediate transfer of the disputed domain name to the Complainant as it was breaching the Complainant's rights on the SYNGENTA mark. The Respondent did not reply to the Complainant's email.

The Respondent is an individual or a company based in the United States who used a privacy service provider at the time of the registration of 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 the disputed domain name is confusingly similar to its SYNGENTA mark as the only difference is the addition of a second letter "e" next to the letter "e" of the trademark SYNGENTA. This duplicate letter does not significantly change the trademark SYNGENTA. As the disputed domain name consists of a common, obvious and intentional misspelling of the Complainant's trademark it should be considered similar thereto.

The Complainant further contends that the Respondent lacks rights or legitimate interests in the disputed domain name, since the Respondent has no affiliation with the Complainant, nor is authorized to use the Complainant's registered mark.

Lastly, the Complainant maintains that the disputed domain name was registered and is being used in bad faith.

The Complainant's trademark enjoys reputation, and the disputed domain name is almost identical to the Complainant's trademark. It is therefore unlikely that the Respondent was not aware of the Complainant and of its trademark at the time of the registration of the disputed domain name.

By registering the disputed domain name, the Respondent is trading on the reputation of the Complainant and of its SYNGENTA trademark and on the likelihood of confusion to drive traffic to an income generating

PPC website. Moreover, the disputed domain name is causing a potential damage to the Complainant's business and reputation as the customers looking for the Complainant could reasonably assume that the disputed domain name is an official domain name of the Complainant connected to a page with unrelated links. Moreover, the Respondent has activated the MX records for the disputed domain name. The presence of MX records raises the possibility that the disputed domain name may be used for fraudulent email communications. Said use does not amount to a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name. Additional evidence of bad faith lies in the fact that the Respondent failed to reply to the Complainant's notification of its earlier rights over the trademark SYNGENTA, the infringement of these rights by the disputed domain name, and the request to transfer the ownership of the disputed domain name 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.

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 mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

This stems from the fact that the domain name contains sufficiently recognizable aspects of the relevant mark. In particular, the disputed domain name consists of a willful misspelling of the Complainant's mark. UDRP panels usually consider a domain name consisting of a common, obvious, or intentional misspelling of a trademark to be confusingly similar to the relevant mark for purposes of the first element. The repetition of the letter "e" in the disputed domain name is certainly one of these misspellings that fall squarely under the typosquatting category.

Accordingly, the Panel finds that 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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available 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 Panel notes that the Respondent is not affiliated to the Complainant and that the Complainant never authorized the Respondent to make use of its SYNGENTA mark or a misspelling of this mark in any way whatsoever, including as part of the disputed domain name. Moreover, the Respondent does not appear to be commonly known by the disputed domain name. The Respondent is using the disputed domain name to access a parked page containing PPC links to unrelated third parties' websites. The Respondent is probably deriving an income from each click on the sponsored links. The use of a domain name in connection with PPC links does not represent a *bona fide* offering, where such links capitalize on the reputation and goodwill of the Complainant's mark or otherwise mislead Internet users, [WIPO Overview 3.0](#), section 2.9. In the instant case, the Panel notes that the Complainant operates since many years prior to the registration of the disputed domain name and is active in more than 90 countries with 30,000 employees. The Complainant's sales in 2022 were very consistent. All these elements lead to the conclusion that the SYNGENTA trademark enjoys reputation in its area of business. Moreover, the disputed domain name is a misspelling of the Complainant's mark. Its close resemblance to the Complainant's mark is certainly capable of misleading the Internet users looking for the Complainant, inducing them to believe that the disputed domain name belongs to the Complainant, rather than to a third party.

In light of the foregoing, 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.

In the present case, the Panel finds that the Respondent incorporated the misspelling of the Complainant's trademark SYNGENTA (adding a second letter "e") in the disputed domain name. The Complainant's mark is certainly one that enjoys reputation in its field of business and in the jurisdictions where the Complainant's operate, including in the United States, where the Respondent is located, and where the Complainant has been using its trademark in commerce for 25 years. Accordingly, the Panel concludes that the Respondent was aware of the Complainant's mark when it registered the disputed domain name. The registration of a domain name incorporating a third party's trademark without rights or legitimate interests is a registration in bad faith.

The disputed domain name resolves to a parking page containing PPC links to the Complainant competitors' websites. The Respondent is probably deriving an income from each click on these links. Such use amounts to use in bad faith as it capitalizes on the Complainant's mark to attempt to attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

In addition, the Panel notes that the Respondent set up MX-Records for the disputed domain name, which enable the Respondent to communicate via email with the Complainant's potential customers through an email address reproducing a misspelling of the Complainant's SYNGENTA mark. Any possible use of the disputed domain name for communication purposes without the Complainant's consent would be illegitimate and in bad faith.

Further evidence of bad faith lies in the lack of reply to the Complainant's cease and desist letter, and in the registration of the disputed domain name through a privacy service provider to conceal the Respondent's identity. Moreover, the name provided at the time of the registration of the disputed domain name appears to be invented, or at least inaccurate. In particular, the Panel notes that the Respondent has provided a name and surname and a four-letter term. The latter is likely not part of the personal name, but does not seem to

be a company name either. Therefore, it is more likely than not, that the Respondent provided false contact details at the time of the registration of the disputed domain name and concealed its identity to make more difficult its identification to prevent, or at least delay, the Complainant's defense.

In light of the foregoing, the Panel finds that the Complainant has established the third element 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 <syngenta.com> be transferred to the Complainant.

/Angelica Lodigiani/

Angelica Lodigiani

Sole Panelist

Date: January 31, 2024.